

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

FORM 10-Q

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

For the quarterly period ended September 30, 2023

OR

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

For the transition period from to

Commission File Number: 001-37874

Everbridge, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

26-2919312
(I.R.S. Employer
Identification No.)

25 Corporate Drive, Suite 400
Burlington, Massachusetts
(Address of principal executive offices)

01803
(Zip Code)

Registrant's telephone number, including area code: (818) 230-9700

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value	EVBG	The Nasdaq Global Market

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

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

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

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

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

As of November 6, 2023, the registrant had 41,069,068 shares of common stock outstanding.

EVERBRIDGE, INC. AND SUBSIDIARIES
FORM 10-Q
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PART I—FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements (Unaudited).

EVERBRIDGE, INC. AND SUBSIDIARIES
Condensed Consolidated Balance Sheets
(in thousands, except share data)
(unaudited)

	<u>September 30, 2023</u>	<u>December 31, 2022</u>
Assets		
Current assets:		
Cash and cash equivalents	\$ 97,697	\$ 198,725
Restricted cash	2,067	2,046
Accounts receivable, net	92,627	119,986
Prepaid expenses	15,192	13,133
Assets held for sale	22	6,485
Deferred costs and other current assets	36,112	31,866
Total current assets	243,717	372,241
Property and equipment, net	9,218	8,993
Capitalized software development costs, net	30,701	27,370
Goodwill	507,420	508,781
Intangible assets, net	137,670	166,177
Restricted cash	783	823
Prepaid expenses	1,141	1,709
Deferred costs and other assets	42,129	39,570
Total assets	\$ 972,779	\$ 1,125,664
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 13,244	\$ 10,854
Accrued payroll and employee related liabilities	25,072	31,175
Accrued expenses	16,744	13,566
Deferred revenue	223,529	233,106
Liabilities held for sale	170	2,062
Other current liabilities	6,594	10,644
Total current liabilities	285,353	301,407
Long-term liabilities:		
Deferred revenue, noncurrent	7,226	9,278
Convertible senior notes	359,153	500,298
Deferred tax liabilities	5,048	6,236
Other long-term liabilities	17,805	19,334
Total liabilities	674,585	836,553
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, par value \$0.001, 10,000,000 shares authorized, no shares issued or outstanding as of September 30, 2023 and December 31, 2022, respectively	—	—
Common stock, \$0.001 par value, 100,000,000 shares authorized, 40,968,758 and 40,127,522 shares issued and outstanding as of September 30, 2023 and December 31, 2022, respectively	41	40
Additional paid-in capital	761,279	721,143
Accumulated deficit	(430,139)	(402,124)
Accumulated other comprehensive loss	(32,987)	(29,948)
Total stockholders' equity	298,194	289,111
Total liabilities and stockholders' equity	\$ 972,779	\$ 1,125,664

See accompanying notes to condensed consolidated financial statements.

EVERBRIDGE, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Operations
(in thousands, except share and per share data)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Revenue	\$ 114,191	\$ 111,401	\$ 333,028	\$ 314,762
Cost of revenue	33,069	35,447	98,141	100,543
Gross profit	81,122	75,954	234,887	214,219
Operating expenses:				
Sales and marketing	36,699	46,580	121,556	133,755
Research and development	23,852	25,177	73,469	75,355
General and administrative	31,204	23,357	80,633	72,786
Restructuring	2,109	37	2,794	6,779
Total operating expenses	93,864	95,151	278,452	288,675
Operating loss	(12,742)	(19,197)	(43,565)	(74,456)
Other income (expense), net				
Interest and investment income	2,140	2,054	6,162	2,795
Interest expense	(724)	(1,312)	(2,258)	(3,919)
Gain (loss) on extinguishment of convertible notes, capped call modification and change in fair value	12,658	(4,770)	12,658	(4,770)
Other income (expense), net	(573)	1,170	173	1,261
Total other income (expense), net	13,501	(2,858)	16,735	(4,633)
Income (loss) before income taxes	759	(22,055)	(26,830)	(79,089)
(Provision for) benefit from income taxes	924	(25)	(1,185)	1,754
Net income (loss)	\$ 1,683	\$ (22,080)	\$ (28,015)	\$ (77,335)
Net income (loss) per share attributable to common stockholders:				
Basic	\$ 0.04	\$ (0.56)	\$ (0.69)	\$ (1.95)
Diluted	\$ (0.23)	\$ (0.56)	\$ (0.87)	\$ (1.95)
Weighted-average common shares outstanding:				
Basic	40,782,696	39,746,242	40,537,922	39,583,684
Diluted	43,844,334	39,746,242	43,734,429	39,583,684

See accompanying notes to condensed consolidated financial statements.

EVERBRIDGE, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Comprehensive Loss
(in thousands)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net income (loss)	\$ 1,683	\$ (22,080)	\$ (28,015)	\$ (77,335)
Other comprehensive loss:				
Foreign currency translation adjustment, net of taxes	(7,776)	(19,879)	(3,039)	(48,424)
Total comprehensive loss	<u>\$ (6,093)</u>	<u>\$ (41,959)</u>	<u>\$ (31,054)</u>	<u>\$ (125,759)</u>

See accompanying notes to condensed consolidated financial statements.

EVERBRIDGE, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Stockholders' Equity
(in thousands, except share data)
(unaudited)

	Common stock		Additional paid-in capital	Accumulated deficit	Accumulated- other comprehensive loss	Total
	Shares	Par value				
Balance at December 31, 2022	40,127,522	\$ 40	\$ 721,143	\$ (402,124)	\$ (29,948)	\$ 289,111
Stock-based compensation	—	—	13,931	—	—	13,931
Vesting of restricted stock units and performance-based restricted stock units	250,127	—	—	—	—	—
Stock award shares withheld to settle employee tax withholding liability	(56,062)	—	(1,866)	—	—	(1,866)
Exercise of stock options	71,166	—	1,263	—	—	1,263
Issuance of shares under employee stock purchase plan	88,863	—	2,546	—	—	2,546
Other comprehensive income	—	—	—	—	2,426	2,426
Net loss	—	—	—	(14,648)	—	(14,648)
Balance at March 31, 2023	40,481,616	40	737,017	(416,772)	(27,522)	292,763
Stock-based compensation	—	—	17,494	—	—	17,494
Vesting of restricted stock units and performance-based restricted stock units	245,850	1	—	—	—	1
Stock award shares withheld to settle employee tax withholding liability	(69,388)	—	(1,824)	—	—	(1,824)
Exercise of stock options	870	—	12	—	—	12
Other comprehensive income	—	—	—	—	2,311	2,311
Net loss	—	—	—	(15,050)	—	(15,050)
Balance at June 30, 2023	40,658,948	41	752,699	(431,822)	(25,211)	295,707
Stock-based compensation	—	—	9,339	—	—	9,339
Vesting of restricted stock units and performance-based restricted stock units	320,961	—	—	—	—	—
Stock award shares withheld to settle employee tax withholding liability	(96,411)	—	(2,529)	—	—	(2,529)
Exercise of stock options	2,001	—	25	—	—	25
Issuance of shares under employee stock purchase plan	83,259	—	1,745	—	—	1,745
Other comprehensive loss	—	—	—	—	(7,776)	(7,776)
Net income	—	—	—	1,683	—	1,683
Balance at September 30, 2023	<u>40,968,758</u>	<u>\$ 41</u>	<u>\$ 761,279</u>	<u>\$ (430,139)</u>	<u>\$ (32,987)</u>	<u>\$ 298,194</u>

	Common stock		Additional paid-in capital	Accumulated deficit	Accumulated- other comprehensive loss	Total
	Shares	Par value				
Balance at December 31, 2021	39,389,733	\$ 39	\$ 853,664	\$ (388,112)	\$ (2,902)	\$ 462,689
Cumulative effect of adoption of ASU 2020-06, net of taxes	—	—	(185,141)	47,162	—	(137,979)
Stock-based compensation	—	—	6,314	—	—	6,314
Vesting of restricted stock units and performance-based restricted stock units	68,560	1	—	—	—	1
Stock award shares withheld to settle employee tax withholding liability	(13,411)	—	(572)	—	—	(572)
Exercise of stock options	725	—	17	—	—	17
Issuance of shares under employee stock purchase plan	58,747	—	1,702	—	—	1,702
Other comprehensive loss	—	—	—	—	(5,360)	(5,360)
Net loss	—	—	—	(19,073)	—	(19,073)
Balance at March 31, 2022	39,504,354	40	675,984	(360,023)	(8,262)	307,739
Stock-based compensation	—	—	16,578	—	—	16,578
Vesting of restricted stock units and performance-based restricted stock units	219,765	—	—	—	—	—
Stock award shares withheld to settle employee tax withholding liability	(50,305)	—	(1,724)	—	—	(1,724)
Exercise of stock options	3,286	—	65	—	—	65
Other comprehensive loss	—	—	—	—	(23,185)	(23,185)
Net loss	—	—	—	(36,182)	—	(36,182)
Balance at June 30, 2022	39,677,100	40	690,903	(396,205)	(31,447)	263,291
Modification of 2022 Notes capped call options and resulting reclassification to derivative asset	—	—	6,110	—	—	6,110
Stock-based compensation	—	—	18,181	—	—	18,181
Vesting of restricted stock units and performance-based restricted stock units	226,980	—	—	—	—	—
Stock award shares withheld to settle employee tax withholding liability	(65,212)	—	(1,913)	—	—	(1,913)
Exercise of stock options	1,122	—	17	—	—	17
Issuance of shares under employee stock purchase plan	46,949	—	1,463	—	—	1,463
Other comprehensive loss	—	—	—	—	(19,879)	(19,879)
Net loss	—	—	—	(22,080)	—	(22,080)
Balance at September 30, 2022	39,886,939	40	714,761	(418,285)	(51,326)	245,190

See accompanying notes to condensed consolidated financial statements.

EVERBRIDGE, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Cash Flows
(in thousands)
(unaudited)

	Nine Months Ended September 30,	
	2023	2022
Cash flows from operating activities:		
Net loss	\$ (28,015)	\$ (77,335)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	44,288	45,253
Amortization of deferred costs	14,478	13,365
Deferred income taxes	(1,037)	(7,132)
Accretion of interest on convertible senior notes	2,122	3,492
(Gain) loss on disposal of assets	(352)	940
(Gain) loss on extinguishment of convertible notes, capped call modification and change in fair value	(12,658)	4,770
Provision for credit losses and sales reserve	2,203	(712)
Stock-based compensation	38,177	39,702
Other non-cash adjustments	—	(57)
Changes in operating assets and liabilities:		
Accounts receivable	25,439	28,760
Prepaid expenses	(1,567)	17
Deferred costs	(18,815)	(16,157)
Other assets	(2,080)	7,591
Accounts payable	1,936	(3,172)
Accrued payroll and employee related liabilities	(6,103)	(6,919)
Accrued expenses	2,139	(637)
Deferred revenue	(11,885)	(4,678)
Other liabilities	(5,316)	(11,278)
Net cash provided by operating activities	42,954	15,813
Cash flows from investing activities:		
Capital expenditures	(4,124)	(2,951)
Proceeds from landlord reimbursement	88	1,219
Proceeds from sale of assets	4,368	—
Payment for acquisition of business, net of acquired cash	—	(1,249)
Additions to capitalized software development costs	(12,704)	(11,609)
Net cash used in investing activities	(12,372)	(14,590)
Cash flows from financing activities:		
Repurchase of convertible notes	(129,579)	—
Payments associated with shares withheld to settle employee tax withholding liability	(6,218)	(4,208)
Proceeds from employee stock purchase plan	4,291	3,165
Proceeds from stock option exercises	1,300	99
Other	(57)	(55)
Net cash used in financing activities	(130,263)	(999)
Effect of exchange rates on cash, cash equivalents and restricted cash	(1,366)	(3,309)
Net decrease in cash, cash equivalents and restricted cash	(101,047)	(3,085)
Cash, cash equivalents and restricted cash—beginning of period	201,594	492,758
Cash, cash equivalents and restricted cash—end of period	\$ 100,547	\$ 489,673
Supplemental disclosures of cash flow information:		
Cash paid during the period for:		
Interest	\$ 1,135	\$ 281
Taxes, net of refunds received	4,946	1,545
Supplemental disclosure of non-cash activities:		
Modification of 2022 Notes capped call options and resulting reclassification from equity to derivative asset	—	6,090
Capitalized assets included in accounts payable and accrued expenses	787	156
Capitalized development costs included in accounts payable and accrued expenses	175	—
Stock-based compensation capitalized for software development	2,380	1,675

See accompanying notes to condensed consolidated financial statements.

EVERBRIDGE, INC. AND SUBSIDIARIES
Notes to the Condensed Consolidated Financial Statements
(Unaudited)

(1) Business and Nature of Operations

Everbridge, Inc., a Delaware corporation (together with its wholly-owned subsidiaries, referred to as “Everbridge” or the “Company”), is a global software company that empowers resilience by leveraging intelligent automation technology to enable customers to anticipate, mitigate, respond to, and recover from critical events to keep people safe and organizations running. The Company’s SaaS-based platform enables the Company’s customers to manage and mitigate critical events. The Company’s enterprise applications, such as Mass Notification, Safety Connection, IT Alerting, Visual Command Center, Public Warning, Community Engagement, Risk Center, Crisis Management, CareConverge, Control Center, 911 Connect, Travel Risk Management, SnapComms and E911, automate numerous critical event management (“CEM”) processes. The Company generates revenue primarily from subscription fees to the Company’s enterprise applications. The Company has operations in the United States, United Kingdom, Norway, China, Netherlands, Canada, New Zealand, France, India, and other countries.

(2) Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America (“U.S. GAAP”) and applicable rules and regulations of the Securities and Exchange Commission (“SEC”) regarding interim financial reporting. Certain information and note disclosures normally included in the financial statements prepared in accordance with U.S. GAAP have been condensed or omitted pursuant to such rules and regulations. Therefore, these condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2022.

The condensed consolidated balance sheet as of December 31, 2022, included herein, was derived from the audited financial statements as of that date, but does not include all disclosures including certain notes required by U.S. GAAP on an annual reporting basis.

In the opinion of management, the accompanying unaudited condensed consolidated financial statements reflect all normal recurring adjustments necessary to present fairly the financial position, results of operations, comprehensive loss, statements of stockholders’ equity and cash flows for the interim periods, but are not necessarily indicative of the results of operations to be anticipated for the full year 2023 or any future period.

Principles of Consolidation

The condensed consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated.

Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amount of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Assets and liabilities which are subject to judgment and use of estimates include the determination of the period of benefit for deferred commissions, relative stand-alone selling price for identified performance obligations in the Company’s revenue transactions, allowances for credit losses, the fair value of assets acquired and liabilities assumed in business combinations, the fair value of contingent consideration, the recoverability of goodwill and long-lived assets, valuation allowances with respect to deferred tax assets, useful lives associated with property and equipment and intangible assets, contingencies, and the valuation and assumptions underlying stock-based compensation. On an ongoing basis, the Company evaluates its estimates compared to historical experience and trends, which form the basis for making judgments about the carrying value of assets and liabilities. In addition, the Company engages valuation specialists to assist with management’s determination of the valuation of its fair values of assets acquired and liabilities assumed in business combinations, convertible senior notes, and certain market-based performance equity awards.

In March 2023, Silicon Valley Bank and Signature Bank were closed and taken over by the Federal Deposit Insurance Corporation, which raised concern regarding the stability of other banks in the United States and in particular with respect to regional banks. While the Company has not been materially impacted by such events to date, if the Company's primary banking partners or the banking partners of the Company's customers were to experience a similar crisis, it may cause a material impact on the Company's liquidity, including the ability to access its cash and cash equivalents, or the liquidity of the Company's customers such as delays in, or failure to, make payments, or reduce their demand for the Company's products. Additionally, there have been significant changes to the global economic situation as a consequence of the COVID-19 pandemic. There continue to be uncertainties with respect to macroeconomic conditions as a result of the pandemic and otherwise and there may be future periods of global instability and volatility in markets where the Company conducts business which could cause changes to estimates as a result of the financial circumstances. Such changes to estimates could potentially result in impacts that would be material to the consolidated financial statements, particularly with respect to the timing of revenue recognition resulting from potential implementation delays, evaluating the recoverability of long-lived assets with finite useful lives for impairment and estimates of credit losses for accounts receivables and contract assets. No impairments were recorded as of the balance sheet date; however, due to significant uncertainty surrounding these situations, management's judgment could change in the future. As of the date of issuance of these financial statements, the Company's results of operations have not been significantly impacted by the banking industry disruption or the COVID-19 pandemic; however, the Company continues to monitor these situations.

Concentrations of Credit and Business Risk

Financial instruments that potentially subject the Company to a concentration of credit risk consist of cash, cash equivalents and accounts receivable.

The Company maintains cash and cash equivalent balances at several banks. Accounts located in the United States are insured by the Federal Deposit Insurance Corporation ("FDIC") up to \$250,000. From time to time, balances may exceed amounts insured by the FDIC. The Company has not experienced any losses in such amounts.

The Company's accounts receivable are generally unsecured and are derived from revenue earned from customers primarily located in the United States, Norway, Netherlands, Sweden and the United Kingdom and are generally denominated in U.S. Dollars, Norwegian Krone, Euro, Swedish Kronor or British Pounds. Each reporting period, the Company reevaluates each customer's ability to satisfy credit obligations and maintains an allowance for credit risk based on the evaluations. No single customer comprised more than 10% of the Company's total revenue for the three and nine months ended September 30, 2023 and 2022. No single customer comprised more than 10% of the Company's gross accounts receivable as of September 30, 2023 and December 31, 2022.

Cash and Cash Equivalents

The Company considers all highly liquid instruments with original maturities of three months or less at the date of purchase to be cash equivalents. Cash equivalents consist of funds deposited into money market funds. Cash and cash equivalents are recorded at cost, which approximates fair value.

Restricted Cash

The Company's restricted cash balance primarily consists of cash held at a financial institution for collateral against performance on the Company's customer contracts and certain other cash deposits for specific purposes.

Significant Accounting Policies

There have been no changes to the Company's significant accounting policies described in the Annual Report on Form 10-K for the year ended December 31, 2022 filed with the SEC on February 24, 2023, that have had a material impact on the Company's condensed consolidated financial statements and related notes.

Revenue Recognition

The Company derives its revenues primarily from subscription services and professional services. Revenues are recognized when control of services is transferred to the Company's customers in an amount that reflects the consideration it expects to be entitled to in exchange for those services.

The Company determines revenue recognition through the following steps:

- Identification of the contract, or contracts, with a customer;
- Identification of the performance obligations in the contract;

- Determination of the transaction price;
- Allocation of the transaction price to the performance obligations in the contract; and
- Recognition of revenue when, or as, the Company satisfies a performance obligation.

Subscription Services Revenues

Subscription services revenues primarily consist of fees that provide customers access to one or more of the Company's hosted applications for critical event management, with routine customer support. Revenue is generally recognized over time on a ratable basis over the contract term beginning on the date that the Company's service is made available to the customer. All services are recognized using an output measure of progress looking at time elapsed as the contract generally provides the customer equal benefit throughout the contract period. The Company's subscription contracts are generally two years or longer in length, billed annually in advance, and non-cancelable.

Professional Services Revenues

Professional services revenues primarily consist of fees for deployment and optimization services, as well as training. The majority of the Company's consulting contracts revenue is recognized over time as the services are performed. For contracts billed on a fixed price basis, revenue is recognized over time based on the proportion of services performed to date compared to total services expected to be performed.

Software License Revenues

The Company also sells software and related post contract support for on premises usage as well as professional services, hardware and hosting. The Company's on premises license transactions are generally perpetual in nature and are recognized at a point in time when made available to the customer for use. Significant judgment is required to determine the standalone selling prices for each distinct performance obligation in order to allocate the transaction price for purposes of revenue recognition. Making this judgment of estimating a standalone selling price involves consideration of overall pricing objectives, market conditions and other factors, including the value of the Company's other similar contracts, the applications sold, customer demographics, geographic locations, and the number and types of users within the Company's contracts. The significant judgment was primarily due to using such considerations to estimate the price that each distinct performance obligation would be sold for on a standalone basis because such performance obligations are typically sold together on a bundled basis. Changes in these estimates of standalone selling prices can have a material effect on the amount of revenue recognized from each distinct performance obligation.

Contracts with Multiple Performance Obligations

Most of the Company's contracts with customers contain multiple performance obligations. For these contracts, the Company accounts for individual performance obligations separately if they are distinct. The transaction price is allocated to the separate performance obligations on a relative standalone selling price basis for those performance obligations with stable observable prices and then the residual method applied for any performance obligation that has pricing which is highly variable. The Company determines the standalone selling prices based on the Company's overall pricing objectives, taking into consideration market conditions and other factors, including the value of the Company's contracts, pricing when certain services are sold on a standalone basis, the applications sold, customer demographics, geographic locations, and the volume of services and users.

Returns

The Company does not offer rights of return for its products and services in the normal course of business.

Customer Acceptance

The Company's contracts with customers generally do not include customer acceptance clauses.

Trade and Other Receivables

Trade and other receivables are primarily comprised of trade receivables that are recorded at the invoice amount, net of an allowance for credit risk, which is not material. Other receivables represent unbilled receivables related to subscription and professional services contracts, net of an allowance for credit losses, which is not material.

Deferred Costs

Sales commissions earned by the Company's sales force are considered incremental and recoverable costs of obtaining a contract with a customer. Subscription-related commissions costs are deferred and then amortized on a straight-line basis over a period of benefit that the Company has determined to be four years. Sales commissions attributable to professional services are expensed within twelve months of selling the service to the customer. The Company has determined the period of benefit by taking into consideration its customer contracts, its technology and other factors. Sales commissions attributed to renewals are not material and are not commensurate with initial and growth sales. Amortization of deferred commissions is included in sales and marketing expenses in the accompanying condensed consolidated statements of operations.

Deferred Revenue

Deferred revenue consists of amounts that have been invoiced and for which the Company has the right to bill, but that have not been recognized as revenue because the related goods or services have not been transferred. Deferred revenue that will be realized during the succeeding 12-month period is recorded as current, and the remaining deferred revenue is recorded as non-current.

In instances where the timing of revenue recognition differs from the timing of invoicing, the Company has determined its contracts generally do not include a significant financing component. The primary purpose of the Company's invoicing terms is to provide customers with simplified and predictable ways of purchasing the Company's products and services, not to receive financing from its customers or to provide customers with financing. Examples include invoicing at the beginning of a subscription term with revenue recognized ratably over the contract period.

Recently Adopted Accounting Pronouncements

ASU 2021-08

In October 2021, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2021-08, *Business Combinations (Topic 805), Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*. ASU 2021-08 requires the recognition and measurement of contract assets and contract liabilities acquired in a business combination in accordance with Accounting Standards Codification ("ASC") 606, *Revenue from Contracts with Customers*. Considerations to determine the amount of contract assets and contract liabilities to record at the acquisition date include the terms of the acquired contract, such as timing of payment, identification of each performance obligation in the contract and allocation of the contract transaction price to each identified performance obligation on a relative standalone selling price basis as of contract inception. The Company adopted ASU 2021-08 on January 1, 2023 on a prospective basis. The adoption of this standard did not have an impact on the Company's condensed consolidated financial statements.

ASU 2022-04

In September 2022, the FASB issued ASU 2022-04, *Liabilities—Supplier Finance Programs*. Supplier finance programs allow a buyer to offer its suppliers the option for access to payment in advance of an invoice due date, which is paid by a third-party finance provider or intermediary on the basis of invoices that the buyer has confirmed as valid. ASU 2022-04 requires that a buyer in a supplier finance program disclose key terms of the program, the balance sheet presentation of program obligations, amounts outstanding and rollforward of program obligations. The Company adopted ASU 2022-04 on January 1, 2023. The adoption of this standard did not have an impact on the Company's condensed consolidated financial statements.

Other accounting standard updates effective for interim and annual periods beginning after December 31, 2022 are not expected to have a material impact on the Company's financial position, results of operations or cash flows.

(3) Accounts Receivable and Contract Assets, Net

Accounts receivable, net is as follows (in thousands):

	As of September 30, 2023	As of December 31, 2022
Accounts receivable amortized cost	\$ 100,434	\$ 127,298
Allowance for credit losses	(7,807)	(7,312)
Net accounts receivable	<u>\$ 92,627</u>	<u>\$ 119,986</u>

The following table summarizes the changes in the allowance for credit losses for accounts receivable (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Balance, beginning of period	\$ (8,596)	\$ (6,685)	\$ (7,312)	\$ (6,922)
(Provision for) benefit from expected credit losses, net	239	1,127	(1,931)	731
Write-offs	550	262	1,436	895
Balance, end of period	<u>\$ (7,807)</u>	<u>\$ (5,296)</u>	<u>\$ (7,807)</u>	<u>\$ (5,296)</u>

Contract assets, net, included in deferred costs and other current assets on the condensed consolidated balance sheets is as follows (in thousands):

	As of September 30, 2023	As of December 31, 2022
Contract asset amortized cost	\$ 11,216	\$ 8,525
Allowance for credit losses	(989)	(1,015)
Net contract asset	<u>\$ 10,227</u>	<u>\$ 7,510</u>

The following table summarizes the changes in the allowance for credit losses for contract assets (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Balance, beginning of period	\$ (1,003)	\$ (1,067)	\$ (1,015)	\$ (1,160)
Provision for expected credit losses, net	—	(45)	—	(7)
Write-offs	14	34	26	89
Balance, end of period	<u>\$ (989)</u>	<u>\$ (1,078)</u>	<u>\$ (989)</u>	<u>\$ (1,078)</u>

The Company recognized net credit loss recoveries of \$0.1 million and \$1.1 million for the three months ended September 30, 2023 and 2022, respectively. Credit loss expense was \$2.2 million and credit loss recovery was \$0.8 million for the nine months ended September 30, 2023 and 2022, respectively. The Company recognized a net credit loss recovery during the three and nine months ended September 30, 2022 due to a payment received from a customer during the three months ended September 30, 2022 reducing the accounts receivable provision for expected credit losses by \$1.4 million.

The following table summarizes the changes in the sales reserve (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Balance, beginning of period	\$ (425)	\$ (251)	\$ (425)	\$ (250)
Additions	—	(135)	—	(136)
Write-offs	—	36	—	36
Balance, end of period	<u>\$ (425)</u>	<u>\$ (350)</u>	<u>\$ (425)</u>	<u>\$ (350)</u>

(4) Property and Equipment, Net

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

	Useful life in years	As of September 30, 2023	As of December 31, 2022
Furniture and equipment	5	\$ 2,098	\$ 1,655
Leasehold improvements ⁽¹⁾	9	9,309	7,081
System hardware	5	2,211	1,718
Office computers	3	8,560	7,553
Computer and system software	3	2,402	2,398
		24,580	20,405
Less accumulated depreciation and amortization		(15,362)	(11,412)
Property and equipment, net		<u>\$ 9,218</u>	<u>\$ 8,993</u>

⁽¹⁾ Lesser of the lease term or the estimated useful lives of the improvements, which may be up to 9 years as of September 30, 2023.

Depreciation and amortization expense for property and equipment was \$1.5 million and \$1.3 million for the three months ended September 30, 2023 and 2022, respectively. Depreciation and amortization expense for property and equipment was \$4.4 million and \$3.7 million for the nine months ended September 30, 2023 and 2022, respectively.

(5) Capitalized Software Development Costs, Net

Capitalized software development costs, net consisted of the following (in thousands):

	Gross carrying amount	Amortization period	Accumulated amortization	Net carrying amount
As of September 30, 2023	\$ 59,515	3 years	\$ (28,814)	\$ 30,701
As of December 31, 2022	92,115	3 years	(64,745)	27,370

The Company capitalized software development costs of \$15.3 million and \$13.3 million for the nine months ended September 30, 2023 and 2022, respectively.

Amortization expense for capitalized software development costs was \$4.2 million and \$2.9 million for the three months ended September 30, 2023 and 2022, respectively. Amortization expense for capitalized software development costs was \$11.9 million and \$8.4 million for the nine months ended September 30, 2023 and 2022, respectively. Amortization of capitalized software development costs is classified within cost of revenue in the condensed consolidated statements of operations. During the nine months ended September 30, 2023, the Company retired \$47.9 million of fully amortized capitalized software development assets.

The expected amortization of capitalized software development costs, as of September 30, 2023, for each of the following years is as follows (in thousands):

2023 (for the remaining three months)	\$ 4,248
2024	13,953
2025	9,285
2026	3,215
	<u>\$ 30,701</u>

(6) Fair Value Measurements

The carrying amounts of cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities approximate fair value because of the short maturity of these items.

Certain assets, including long-lived assets, goodwill and intangible assets are also subject to measurement at fair value on a non-recurring basis if they are deemed to be impaired as a result of an impairment review. For the nine months ended September 30, 2023 and year ended December 31, 2022, no impairments were identified of those assets requiring measurement at fair value on a non-recurring basis.

The following table summarizes the Company's financial assets and liabilities measured at fair value on a recurring basis by level within the fair value hierarchy. Financial assets and financial liabilities are classified in their entirety based on the lowest level of input that is significant to the fair value measurement (in thousands):

	As of September 30, 2023			Total Fair Value
	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
Assets:				
Cash equivalents:				
Money market funds	\$ 62,307	\$ —	\$ —	\$ 62,307
Total financial assets	<u>\$ 62,307</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 62,307</u>

	As of December 31, 2022			
	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value
Assets:				
Cash equivalents:				
Money market funds	\$ 140,336	\$ —	\$ —	\$ 140,336
Total financial assets	<u>\$ 140,336</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 140,336</u>

The Company classifies and discloses fair value measurements in one of the following three categories of fair value hierarchy:

Level 1 - Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets and liabilities.

Level 2 - Quoted prices in markets that are not active or financial instruments for which all significant inputs are observable, either directly or indirectly.

Level 3 - Prices or valuations that require inputs that are both significant to the fair value measurement and unobservable.

A financial instrument's level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement.

The Company's assets that are measured by management at fair value on a recurring basis are generally classified within Level 1 or Level 2 of the fair value hierarchy. The Company did not have any transfers into or out of Level 3 during the nine months ended September 30, 2023.

The Company considers all highly liquid investments purchased with a remaining maturity of three months or less to be cash equivalents. The fair value of the Company's investments in certain money market funds is their face value and such instruments are classified as Level 1 and are included in cash and cash equivalents on the condensed consolidated balance sheets.

The Company estimates the fair value of the convertible senior notes based on market-observable inputs (Level 2). As of September 30, 2023 and December 31, 2022, the fair value of the 0% convertible senior notes due March 15, 2026 (the "2026 Notes") was determined to be \$255.6 million and \$320.5 million, respectively, and the principal amount of the notes was \$300.3 million and \$375.0 million, respectively. As of September 30, 2023 and December 31, 2022, the fair value of the 0.125% convertible senior notes due December 15, 2024 (the "2024 Notes") was determined to be \$57.1 million and \$118.2 million, respectively, and the principal amount of the notes was \$63.5 million and \$133.6 million, respectively.

(7) Goodwill and Intangible Assets, Net

The following table displays the changes in the gross carrying amount of goodwill (in thousands):

Balance at December 31, 2022	\$ 508,781
Foreign currency translation	(1,361)
Balance at September 30, 2023	<u>\$ 507,420</u>

There were no impairments recorded against goodwill during the nine months ended September 30, 2023 and for the year ended December 31, 2022.

Intangible assets consisted of the following (in thousands):

			As of September 30, 2023	
	Gross carrying amount	Weighted average life (years)	Accumulated amortization	Net carrying amount
Amortizable intangible assets:				
Developed technology	\$ 34,846	3.48	\$ (27,641)	\$ 7,205
Tradenames	16,232	4.53	(9,337)	6,895
Customer relationships	203,106	8.34	(79,536)	123,570
Total intangible assets	\$ 254,184		\$ (116,514)	\$ 137,670

	Gross carrying amount	Weighted average life (years)	As of December 31, 2022	
			Accumulated amortization	Net carrying amount
Amortizable intangible assets:				
Developed technology	\$ 34,924	3.47	\$ (21,217)	\$ 13,707
Tradenames	16,513	4.55	(7,057)	9,456
Customer relationships	204,697	8.34	(61,683)	143,014
Total intangible assets	<u>\$ 256,134</u>		<u>\$ (89,957)</u>	<u>\$ 166,177</u>

Amortization expense for intangible assets was \$9.0 million and \$10.4 million for the three months ended September 30, 2023 and 2022, respectively. Included in the amortization expense amounts is amortization expense attributed to developed technology within cost of revenue of \$1.9 million and \$2.8 million for the three months ended September 30, 2023 and 2022, respectively. Amortization expense for intangible assets was \$28.0 million and \$33.2 million for the nine months ended September 30, 2023 and 2022, respectively. Included in the amortization expense amounts is amortization expense attributed to developed technology within cost of revenue of \$6.5 million and \$9.1 million for the nine months ended September 30, 2023 and 2022, respectively. During 2022, the Company assigned \$5.6 million net carrying amount of intangible assets associated with a pending asset sale to assets held for sale on the consolidated balance sheet. During the three months ended March 31, 2023, the Company completed the divestiture and derecognized the intangible assets (see Note 8). Additionally, during the nine months ended September 30, 2023, the Company retired \$0.3 million of fully amortized intangible assets.

The expected amortization of the intangible assets, as of September 30, 2023, for each of the next five years and thereafter is as follows (in thousands):

2023 (for the remaining three months)	\$ 8,997
2024	31,801
2025	25,911
2026	20,158
2027	15,801
Thereafter	35,002
	<u>\$ 137,670</u>

(8) Assets and Liabilities Held for Sale

The Company entered into an agreement in the fourth quarter of fiscal 2022 to sell certain assets. In connection with entering into this agreement, the Company concluded that the asset sale met the held for sale criteria and classified the assets and liabilities as held for sale.

Assets and liabilities classified as held for sale as of December 31, 2022 were comprised of the following (in thousands):

Accounts receivable	\$ 635
Prepaid assets	254
Trade names	184
Customer relationships	5,344
Acquired technology	68
Total assets held for sale	<u>\$ 6,485</u>
Accounts payable	\$ 53
Accrued expenses	8
Deferred revenue	2,001
Total liabilities held for sale	<u>\$ 2,062</u>

The Company completed the asset sale during March 2023 for total proceeds of \$4.8 million. In connection with the asset sale, the Company recorded a gain of \$0.3 million which is included in other income, net in the condensed consolidated statement of operations for the nine months ended September 30, 2023.

Additionally, during the three months ended September 30, 2023, the Company entered into an agreement to sell certain assets. In connection with entering into this agreement, the Company concluded that the asset sale met the held for sale criteria and classified the assets and liabilities as held for sale. The Company completed the asset sale during October 2023 for proceeds of \$0.2 million.

(9) Convertible Senior Notes

0% Convertible Senior Notes Due 2026

In March 2021, the Company issued \$375.0 million aggregate principal amount of 0% convertible senior notes due 2026, including \$50.0 million aggregate principal amount of 2026 Notes issued upon the initial purchasers' exercise in full of their option to purchase additional 2026 Notes. The 2026 Notes will mature on March 15, 2026, unless earlier redeemed or repurchased by the Company or converted by the holders pursuant to their terms. The Company will pay special interest, if any, at the Company's election as the sole remedy relating to the failure to comply with certain reporting obligations and under certain circumstances.

The 2026 Notes are governed by an Indenture between the Company, as issuer, and U.S. Bank National Association, as trustee (the "2026 Notes Indenture"). The 2026 Notes are unsecured and rank: senior in right of payment to the Company's indebtedness that is expressly subordinated in right of payment to the 2026 Notes; equal in right of payment to the Company's existing and future indebtedness that is not so subordinated, including its 0.125% convertible senior notes due 2024 (see 0.125% Convertible Senior Notes Due 2024 below); effectively junior in right of payment to any of the Company's secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally junior to all existing and future indebtedness and other liabilities incurred by the Company's subsidiaries.

Upon conversion, the Company will pay or deliver, as the case may be, cash, shares of the Company's common stock or a combination of cash and shares of common stock, at the Company's election.

The 2026 Notes have an initial conversion rate of 5.5341 shares of common stock per \$1,000 principal amount of 2026 Notes. This represents an initial effective conversion price of approximately \$180.70 per share of common stock and approximately 2.1 million shares issuable upon conversion. Throughout the term of the 2026 Notes, the conversion rate may be adjusted upon the occurrence of certain events. Holders of the 2026 Notes will not receive any cash payment representing accrued and unpaid special interest, if any, upon conversion of a 2026 Note, except in limited circumstances. Accrued but unpaid special interest, if any, will be deemed to be paid by cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock paid or delivered, as the case may be, to the holder upon conversion of a 2026 Note.

Holders may convert all or a portion of their 2026 Notes prior to the close of business on the business day immediately preceding December 15, 2025, in multiples of \$1,000 principal amount, only under the following circumstances:

- during any calendar quarter commencing after the calendar quarter ending on June 30, 2021 (and only during such calendar quarter), if the last reported sale price of the Company's common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day;
- during the five business day period after any ten consecutive trading day period (the "2026 Notes Measurement Period"), in which the "trading price" (as the term is defined in the 2026 Notes Indenture) per \$1,000 principal amount of notes for each trading day of such 2026 Notes Measurement Period was less than 98% of the product of the last reported sale price of the Company's common stock and the conversion rate on each such trading day;
- if the Company calls such notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date, but only with respect to the notes called (or deemed called) for redemption; or
- upon the occurrence of specified corporate events.

On or after December 15, 2025 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert all or any portion of their 2026 Notes at the conversion rate at any time regardless of whether the conditions set forth above have been met.

As of September 30, 2023, the 2026 Notes are not yet convertible at the option of the debt holder and were classified as long-term on the condensed consolidated balance sheets as of September 30, 2023 and December 31, 2022.

The 2026 Notes are not redeemable by the Company prior to March 20, 2024. The Company may redeem for cash all or any portion of the 2026 Notes, at its option, on or after March 20, 2024 if the last reported sale price of the Company's common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive), including the trading day immediately preceding the date on which the Company provides notice of redemption, during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company provides notice of redemption at a redemption price equal to 100% of the principal amount of the 2026 Notes to be redeemed, plus accrued and unpaid special interest, if any, to, but excluding, the redemption date.

During the three months ended September 30, 2023, the Company paid approximately \$64.9 million in cash to repurchase approximately \$74.7 million aggregate principal amount of the 2026 Notes and recognized an extinguishment gain in the amount of \$8.8 million in gain (loss) on extinguishment of debt, capped call modification and change in fair value on the consolidated statement of operations during the three and nine months ended September 30, 2023.

The 2026 Notes consist of the following (in thousands):

	As of September 30, 2023	As of December 31, 2022
Liability component:		
Principal	\$ 300,276	\$ 375,000
Less: debt discount, net of amortization	(4,142)	(6,763)
Net carrying amount	<u>\$ 296,134</u>	<u>\$ 368,237</u>

The following table sets forth total interest expense recognized related to the 2026 Notes (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Amortization of debt discount and transaction costs	\$ 513	\$ 530	\$ 1,570	\$ 1,581

Effective interest rates were 0.6% during both the three months ended September 30, 2023 and 2022. Effective interest rates were 0.6% during both the nine months ended September 30, 2023 and 2022.

The fair value of the 2026 Notes, which was determined based on inputs that are observable in the market or that could be derived from, or corroborated with, observable market data, quoted price of the 2026 Notes in an over-the-counter market (Level 2), and carrying value of debt instruments were as follows (in thousands):

	As of September 30, 2023		As of December 31, 2022	
	Fair Value	Carrying Value	Fair Value	Carrying Value
2026 Notes	\$ 255,610	\$ 296,134	\$ 320,520	\$ 368,237

In connection with the issuance of the 2026 Notes, the Company entered into capped call transactions with certain counterparties affiliated with the initial purchasers and other financial institutions. The capped call transactions are expected generally to reduce potential dilution to the Company's common stock upon any conversion of the 2026 Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of converted 2026 Notes, as the case may be, with such reduction and/or offset subject to a cap. Under the capped call transactions, the Company purchased capped call options that in the aggregate relate to the total number of shares of the Company's common stock underlying the 2026 Notes, with an initial strike price of approximately \$180.70 per share, which corresponds to the initial conversion price of the 2026 Notes and is subject to anti-dilution adjustments substantially similar to those applicable to the conversion rate of the 2026 Notes, and with a cap price of approximately \$258.14. The cost of the purchased capped calls of \$35.1 million was recorded to shareholders' equity and will not be re-measured.

Based on the closing price of the Company's common stock of \$22.42 on September 30, 2023, the if-converted value of the 2026 Notes was less than their respective principal amounts.

0.125% Convertible Senior Notes Due 2024

In December 2019, the Company issued \$450.0 million aggregate principal amount of 0.125% convertible senior notes due 2024, including \$75.0 million aggregate principal amount of 2024 Notes issued upon the initial purchasers' exercise in full of their option to purchase additional 2024 Notes. The 2024 Notes will mature on December 15, 2024, unless earlier redeemed or repurchased by the Company or converted by the holders pursuant to their terms. Interest is payable semiannually in arrears on June 15 and December 15 of each year, commencing on June 15, 2020.

The 2024 Notes are governed by an Indenture between the Company, as issuer, and U.S. Bank National Association, as trustee (the “2024 Notes Indenture”). The 2024 Notes are unsecured and rank: senior in right of payment to the Company’s indebtedness that is expressly subordinated in right of payment to the 2024 Notes; equal in right of payment to the Company’s existing and future indebtedness that is not so subordinated, including its 2026 Notes; effectively junior in right of payment to any of the Company’s secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally junior to all existing and future indebtedness and other liabilities incurred by the Company’s subsidiaries.

Upon conversion, the Company will pay or deliver, as the case may be, cash, shares of the Company’s common stock or a combination of cash and shares of common stock, at the Company’s election. The Company’s current intention is to settle the conversion in shares of common stock if a conversion were to occur.

The 2024 Notes have an initial conversion rate of 8.8999 shares of common stock per \$1,000 principal amount of 2024 Notes. This represents an initial effective conversion price of approximately \$112.36 per share of common stock and approximately 4.0 million shares issuable upon conversion. Throughout the term of the 2024 Notes, the conversion rate may be adjusted upon the occurrence of certain events. Holders of the 2024 Notes will not receive any cash payment representing accrued and unpaid interest, if any, upon conversion of a 2024 Note, except in limited circumstances. Accrued but unpaid interest will be deemed to be paid by cash, shares of the Company’s common stock or a combination of cash and shares of the Company’s common stock paid or delivered, as the case may be, to the holder upon conversion of a 2024 Note.

Holders may convert all or a portion of their 2024 Notes prior to the close of business on the business day immediately preceding June 15, 2024, in multiples of \$1,000 principal amount, only under the following circumstances:

- during any calendar quarter commencing after the calendar quarter ending on March 31, 2020 (and only during such calendar quarter), if the last reported sale price of the Company’s common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day;
- during the five business day period after any ten consecutive trading day period (the “2024 Notes Measurement Period”), in which the “trading price” (as the term is defined in the 2024 Notes Indenture) per \$1,000 principal amount of notes for each trading day of such 2024 Notes Measurement Period was less than 98% of the product of the last reported sale price of the Company’s common stock and the conversion rate on each such trading day;
- if the Company calls such notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date; or
- upon the occurrence of specified corporate events.

On or after June 15, 2024 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert all or any portion of their 2024 Notes at the conversion rate at any time regardless of whether the conditions set forth above have been met.

As of September 30, 2023, the 2024 Notes were not convertible at the option of the debt holder and were classified as long-term on the condensed consolidated balance sheets as of September 30, 2023 and December 31, 2022.

The 2024 Notes were not redeemable by the Company prior to December 20, 2022. The Company may redeem for cash all or any portion of the 2024 Notes, at its option, on or after December 20, 2022 if the last reported sale price of the Company’s common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive), including the trading day immediately preceding the date on which the Company provides notice of redemption, during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company provides notice of redemption at a redemption price equal to 100% of the principal amount of the 2024 Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date.

During the three months ended September 30, 2023, the Company paid approximately \$65.7 million in cash to repurchase approximately \$70.1 million aggregate principal amount of the 2024 Notes and recognized an extinguishment gain in the amount of \$3.9 million in gain (loss) on extinguishment of debt, capped call modification and change in fair value on the consolidated statement of operations during the three and nine months ended September 30, 2023.

During the year ended December 31, 2022, the Company paid approximately \$288.8 million in cash to repurchase approximately \$316.4 million aggregate principal amount of the 2024 Notes and recognized an extinguishment gain in the amount of \$24.0 million in gain (loss) on extinguishment of debt, capped call modification and change in fair value on the consolidated statement of operations during the year ended December 31, 2022.

The 2024 Notes consist of the following (in thousands):

	As of September 30, 2023	As of December 31, 2022
Liability component:		
Principal	\$ 63,459	\$ 133,558
Less: debt discount, net of amortization	(440)	(1,497)
Net carrying amount	<u>\$ 63,019</u>	<u>\$ 132,061</u>

The following table sets forth total interest expense recognized related to the 2024 Notes (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
0.125% coupon	\$ 39	\$ 140	\$ 122	\$ 422
Amortization of debt discount and transaction costs	171	638	552	1,911
	<u>\$ 210</u>	<u>\$ 778</u>	<u>\$ 674</u>	<u>\$ 2,333</u>

Effective interest rates were 0.7% during both the three months ended September 30, 2023 and 2022. Effective interest rates were 0.7% during both the nine months ended September 30, 2023 and 2022.

The fair value of the 2024 Notes, which was determined based on inputs that are observable in the market or that could be derived from, or corroborated with, observable market data, quoted price of the 2024 Notes in an over-the-counter market (Level 2), and carrying value of debt instruments were as follows (in thousands):

	As of September 30, 2023		As of December 31, 2022	
	Fair Value	Carrying Value	Fair Value	Carrying Value
2024 Notes	\$ 57,113	\$ 63,019	\$ 118,199	\$ 132,061

In connection with the issuance of the 2024 Notes, the Company entered into capped call transactions with certain counterparties affiliated with the initial purchasers and other financial institutions. The capped call transactions are expected generally to reduce potential dilution to the Company's common stock upon any conversion of the 2024 Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of converted 2024 Notes, as the case may be, with such reduction and/or offset subject to a cap. Under the capped call transactions, the Company purchased capped call options that in the aggregate relate to the total number of shares of the Company's common stock underlying the 2024 Notes, with an initial strike price of approximately \$112.36 per share, which corresponds to the initial conversion price of the 2024 Notes and is subject to anti-dilution adjustments substantially similar to those applicable to the conversion rate of the 2024 Notes, and with a cap price of approximately \$166.46. The cost of the purchased capped calls of \$44.9 million was recorded to shareholders' equity and will not be re-measured.

Based on the closing price of the Company's common stock of \$22.42 on September 30, 2023, the if-converted value of the 2024 Notes was less than their respective principal amounts.

The following table summarizes the Company's debt obligations as of September 30, 2023 (in thousands):

	Remainder of 2023	2024	2025	2026	Total
Debt obligations	\$ —	\$ 63,459	\$ —	\$ 300,276	\$ 363,735

Debt obligations include the principal amount of the 2026 Notes and 2024 Notes but exclude interest payments to be made under the 2026 Notes and 2024 Notes. Although the 2026 Notes and 2024 Notes mature in 2026 and 2024, respectively, they can be converted into cash and shares of the Company's common stock prior to maturity if certain conditions are met. Any conversion prior to maturity can result in repayments of the principal amounts sooner than the scheduled repayments as indicated in the table. The 2026 Notes and 2024 Notes balance excludes debt discount capitalized on the balance sheet.

(10) Stockholders' Equity

Preferred Stock

As of September 30, 2023, the Company had authorized 10,000,000 shares of preferred stock, par value \$0.001, of which no shares were outstanding.

Common Stock

As of September 30, 2023, the Company had authorized 100,000,000 shares of common stock, par value \$0.001. Holders of common stock are entitled to one vote per share. At September 30, 2023 and December 31, 2022, there were 40,968,758 and 40,127,522 shares of common stock issued and outstanding, respectively.

(11) Stock Plans and Stock-Based Compensation

The Company's 2016 Equity Incentive Plan (the "2016 Plan") became effective on September 15, 2016. The 2016 Plan provides for the grant of incentive stock options, non-qualified stock options, restricted stock awards, restricted stock unit awards, stock appreciation rights and performance share awards to employees, directors and consultants of the Company. The number of shares of common stock reserved for issuance under the 2016 Plan will automatically increase on January 1 of each year by 3% of the number of shares of the Company's capital stock outstanding on the immediately preceding December 31, or such lesser number of shares as determined by the Company's board of directors (the "Board"). Additionally, on December 16, 2022, the Board adopted the Everbridge, Inc. 2022 Inducement Plan (the "2022 Inducement Plan"). The only persons eligible to receive grants of Inducement Awards (as defined below) under the 2022 Inducement Plan are individuals who satisfy the standards for inducement grants under Nasdaq Listing Rule 5635(c)(4). An "Inducement Award" means any right to receive Common Stock, cash or other property granted under the 2022 Inducement Plan (including nonstatutory stock options, restricted stock awards, restricted stock unit awards, stock appreciation rights, performance stock awards, performance cash awards or other stock-based awards).

2016 Employee Stock Purchase Plan

The Company's Employee Stock Purchase Plan (the "2016 ESPP") became effective on September 15, 2016. The number of shares reserved for issuance under the 2016 ESPP will automatically increase on January 1 of each year by the lesser of 200,000 shares of the Company's common stock, 1% of the number of shares of the Company's common stock outstanding on the immediately preceding December 31, or such lesser number of shares as determined by the Company's Board.

The 2016 ESPP allows eligible employees to purchase shares of the Company's common stock at a discount of up to 15% through payroll deductions of their eligible compensation, subject to any plan limitations. The 2016 ESPP provides for separate six-month offering periods beginning each March and September of each fiscal year.

On each purchase date, eligible employees will purchase the Company's stock at a price per share equal to 85% of the lesser of (i) the fair market value of the Company's common stock on the offering date or (ii) the fair market value of the Company's common stock on the purchase date.

For the nine months ended September 30, 2023 and 2022, 172,122 and 105,696 shares of common stock were purchased under the 2016 ESPP, respectively. The Company recorded stock-based compensation expense of \$0.3 million and \$0.4 million for the three months ended September 30, 2023 and 2022, respectively. The Company recorded stock-based compensation expense of \$1.2 million for each of the nine months ended September 30, 2023 and 2022. As of September 30, 2023, unrecognized compensation cost related to the 2016 ESPP was \$0.5 million which will be amortized over a weighted-average period of 0.42 years.

The fair value of shares issuable under the 2016 ESPP is determined using the Black-Scholes option pricing model with the following weighted average assumptions:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Employee Stock Purchase Plan:				
Expected term (in years) ⁽¹⁾	0.50	0.50	0.50	0.50
Expected volatility ⁽²⁾	50%	70%	50% - 60%	65% - 70%
Risk-free interest rate ⁽³⁾	5.51%	3.33%	5.18% - 5.51%	0.86% - 3.33%
Dividend rate ⁽⁴⁾	0%	0%	0%	0%

⁽¹⁾ The expected term represents the contractual term of the 2016 ESPP;

- (2) The expected volatility of the Company's common stock on the date of grant is based on the weighted average of the Company's historical volatility as a public company, the implied volatility of publicly-traded options on the Company's common stock and the volatilities of publicly traded peer companies that are reasonably comparable to the Company's own operations;
- (3) The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of grant for zero coupon U.S. Treasury notes with maturities approximately equal to the expected term of the grant; and
- (4) The expected dividend yield is assumed to be zero as the Company has never paid dividends and has no current plans to pay any dividends on the Company's common stock.

Stock Options

Stock option awards are granted with an exercise price equal to the fair market value of the Company's common stock at the date of grant based on the closing market price of its common stock as reported on The Nasdaq Global Market. The option awards generally vest over four years and are exercisable any time after vesting. The stock options expire ten years after the date of grant.

There were no stock options granted during the nine months ended September 30, 2023. There was no stock-based compensation expense recorded during the nine months ended September 30, 2023 or the three months ended September 30, 2022 as stock options were fully vested. The Company recorded stock-based compensation expense of \$0.1 million for the nine months ended September 30, 2022 attributed to stock options.

The total intrinsic value of options exercised for the nine months ended September 30, 2023 and 2022 was \$1.1 million and \$0.1 million, respectively. This intrinsic value represents the difference between the fair market value of the Company's common stock on the date of exercise and the exercise price of each option. Based on the fair market value of the Company's common stock at September 30, 2023 and 2022, the total intrinsic value of all outstanding options was \$0.1 million and \$1.4 million, respectively.

There were no nonvested stock options as of September 30, 2023. The amount of cash received from the exercise of stock options during the nine months ended September 30, 2023 and 2022 was \$1.3 million and \$0.1 million, respectively.

The following table summarizes the Company's stock option activity:

	Stock options outstanding	Weighted average exercise price
Outstanding at December 31, 2022	142,202	\$ 23.89
Exercised	(74,037)	17.56
Forfeited	(2,588)	39.25
Outstanding at September 30, 2023	65,577	30.42

Stock options outstanding and exercisable are as follows:

	As of September 30, 2023		
	Number of shares	Remaining contractual life (years)	Weighted- average exercise price
Outstanding and exercisable	65,577	3.90	\$ 30.42

Restricted Stock Units

During the nine months ended September 30, 2023, the Company granted 1,189,650 restricted stock units ("RSUs") to members of its senior management and certain other employees pursuant to the 2016 Plan. There were 745,510 RSUs that vested during the nine months ended September 30, 2023. The Company accounts for RSUs issued to employees at fair value, based on the market price of the Company's common stock on the date of grant. The weighted-average grant date fair values of RSUs granted during the nine months ended September 30, 2023 and 2022 were \$31.01 and \$40.23, respectively. The fair values of RSUs that vested during the nine months ended September 30, 2023 and 2022, were \$36.2 million and \$29.7 million, respectively. During the three months ended September 30, 2023 and 2022, the Company recorded \$10.4 million and \$13.0 million, respectively, of stock-based compensation related to RSUs. During the nine months ended September 30, 2023 and 2022, the Company recorded \$32.9 million and \$31.9 million, respectively, of stock-based compensation related to RSUs.

As of September 30, 2023, there was \$72.7 million of unrecognized compensation expense related to unvested RSUs which is expected to be recognized over a weighted-average period of approximately 2.08 years. For RSUs subject to graded vesting, the Company recognizes compensation cost on a straight-line basis over the service period for the entire award.

Performance-Based Restricted Stock Units

During the nine months ended September 30, 2023, the Company granted 337,639 performance-based restricted stock units (“PSUs”) to members of its management pursuant to the 2016 Plan. There were 71,428 PSUs that vested during the nine months ended September 30, 2023. Starting in 2023, PSU grants vest based on the achievement of pre-determined performance-based milestones including annual recurring revenue growth thresholds and adjusted earnings before interest, taxes, depreciation and amortization thresholds, as well as the employee’s continued employment with the Company through the date of achievement; through 2022 PSU grants vest based on revenue growth thresholds as well as the employee’s continued employment with the Company through the date of achievement. The measurement periods for PSUs are two and three years with awards vesting after each measurement period. PSUs contain minimum, target and maximum milestones for each performance-based milestone. The number of shares of common stock to be issued at vesting will range from zero to 125% of the target number of PSUs starting in 2023 and from zero to 150% of the target number of PSUs through 2022. During the nine months ended September 30, 2023, the share price of the Company’s common stock on the date of issuance of PSUs ranged from \$32.31 to \$34.13 per share. The fair value is based on the value of the Company’s common stock at the date of issuance and the probability of achieving the performance metric. Compensation cost is adjusted in future periods for subsequent changes in the expected outcome of the performance-related conditions. The weighted-average grant date fair values of PSUs granted during the nine months ended September 30, 2023 and 2022 were \$34.09 and \$35.29, respectively.

During the three months ended September 30, 2023 and 2022, the Company recognized a credit of \$2.1 million and expense of \$4.0 million, respectively, of stock compensation expense in connection with PSU awards. During the nine months ended September 30, 2023 and 2022, the Company recognized \$4.3 million and \$6.2 million, respectively, of stock compensation expense in connection with PSU awards. As of September 30, 2023, there was \$6.1 million of unrecognized compensation expense related to unvested PSUs which is expected to be recognized over a weighted-average period of approximately 1.65 years. Compensation cost is recognized under the accelerated method and is adjusted in future periods for subsequent changes in the expected outcome of the performance-related conditions.

The following table summarizes the Company’s RSU and PSU activity:

	Number of Shares
Outstanding at December 31, 2022	3,233,298
Granted	1,527,301
Vested	(816,938)
Forfeited	(604,038)
Outstanding at September 30, 2023	3,339,623

Market-Based Grants

During the three months ended March 31, 2022, the Company issued market-based grants which were payable in cash to partially settle a vendor contract. Vesting was contingent upon the achievement of pre-determined market and service conditions. Cash payment at settlement ranged from zero to approximately \$1.3 million based on the Company’s total stockholder return (“TSR”) relative to the performance of peer companies through September 2023. The market-based grants were classified as a liability on the Company’s balance sheet and were remeasured at each reporting period until settlement. Cash payment determined as of the settlement date in September 2023 was zero. Fair value of the market-based grants at December 31, 2022 was \$0.4 million. During the three months ended September 30, 2023 and 2022, the Company recognized a stock compensation credit of less than \$0.1 million and stock compensation expense of less than \$0.1 million, respectively, in connection with these awards. During the nine months ended September 30, 2023 and 2022, the Company recognized a stock compensation credit of \$0.2 million and stock compensation expense of \$0.3 million, respectively, in connection with these awards.

Prior to vesting during the three months ended September 2023, fair value of the market-based grants was determined using the Monte-Carlo simulation with the following assumptions:

	Three Months Ended September 30, 2022	Nine Months Ended September 30, 2023	2022
Market-Based Grants:			
Expected term (in years)	0.98	0.23 - 0.48	0.98 - 1.50
Expected volatility	69%	51% - 57%	58% - 69%
Risk-free interest rate	4.00%	4.88% - 5.35%	1.97% - 4.00%
Dividend rate	0%	0%	0%

Stock-Based Compensation Expense

During 2022, the Company updated the presentation of the allocation of stock-based compensation capitalized for software development. Interim periods within 2022 have been recast to conform to the current presentation. The Company recorded the total stock-based compensation expense as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Cost of revenue	\$ 1,285	\$ 1,978	\$ 4,757	\$ 4,276
Sales and marketing	2,398	6,415	13,346	14,320
Research and development	2,810	3,994	10,306	9,367
General and administrative	2,105	5,020	9,768	11,739
Total	\$ 8,598	\$ 17,407	\$ 38,177	\$ 39,702

Stock-based compensation expense is recognized over the award's expected vesting schedule, which is reduced for forfeitures.

(12) Basic and Diluted Net Income (Loss) per Share

The following table summarizes the computations of basic net income (loss) per share and diluted net loss per share. Basic net income (loss) per share is computed by dividing net income (loss) by the weighted-average number of shares of common stock outstanding during the period. Diluted net loss per share is computed by giving effect to all potential dilutive shares of common stock. The Company uses the if converted method for convertible senior notes for calculating any potential dilutive effect on diluted net loss per share. (In thousands, except share and per share data).

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net income (loss)	\$ 1,683	\$ (22,080)	\$ (28,015)	\$ (77,335)
Dilutive effect of convertible notes, net of tax	(11,611)	—	(10,132)	—
Adjusted net loss	\$ (9,928)	\$ (22,080)	\$ (38,147)	\$ (77,335)
Weighted-average common stock outstanding — basic	40,782,696	39,746,242	40,537,922	39,583,684
Dilutive potential common shares related to convertible notes	3,061,638	—	3,196,507	—
Weighted-average common stock outstanding — diluted	43,844,334	39,746,242	43,734,429	39,583,684
Basic net income (loss) per share	\$ 0.04	\$ (0.56)	\$ (0.69)	\$ (1.95)
Diluted net loss per share	\$ (0.23)	\$ (0.56)	\$ (0.87)	\$ (1.95)

The following common equivalent shares were excluded from the diluted net loss per share calculation because their inclusion would have been anti-dilutive:

	As of September 30,	
	2023	2022
Convertible senior notes	—	6,080,480
Stock-based compensation grants	3,405,200	3,995,619
Total	3,405,200	10,076,099

In connection with the issuance of the 2026 Notes in March 2021, the Company paid \$35.1 million to enter into capped call option agreements to reduce the potential dilution to holders of the Company's common stock upon conversion of the 2026 Notes. In connection with the issuance of the 2024 Notes in December 2019, the Company paid \$44.9 million to enter into capped call option agreements to reduce the potential dilution to holders of the Company's common stock upon conversion of the 2024 Notes. The capped call option agreements are excluded from the calculation of diluted net loss per share attributable to common stockholders as their effect is antidilutive.

Reserve for Unissued Shares of Common Stock

The Company is required to reserve and keep available out of its authorized but unissued shares of common stock such number of shares sufficient for the exercise of all shares granted and available for grant under the Company's 2008 Equity Incentive Plan, 2016 Plan, 2016 ESPP and 2022 Inducement Plan. The amount of such shares of the Company's common stock reserved for these purposes at September 30, 2023 was 7.2 million shares. Additionally, the Company is required to reserve and keep available out of its authorized but unissued shares of common stock shares that become issuable pursuant to the terms of the 2026 Notes and 2024 Notes.

(13) Income Taxes

The Company is subject to income tax in the United States as well as other tax jurisdictions in which it conducts business. Earnings from non-U.S. activities are subject to local country income tax. The Company does not provide for U.S. deferred income taxes on the undistributed earnings of its foreign subsidiaries as such earnings are reinvested indefinitely.

The Company's tax provision for interim periods is determined using an estimate of its annual effective tax rate, adjusted for discrete items arising in that quarter. In each quarter, the Company updates its estimate of the annual effective tax rate, and if the estimated annual tax rate changes, the Company makes a cumulative adjustment in that quarter. The Company's quarterly tax provision, and its quarterly estimate of its annual effective tax rate, are subject to significant volatility due to several factors, including the Company's ability to accurately predict its pre-tax income and loss in multiple jurisdictions.

For the three months ended September 30, 2023 and 2022, the Company recorded a benefit from income taxes of \$0.9 million and a provision for income taxes of less than \$0.1 million, respectively, resulting in an effective tax rate of (121.74)% and (0.11)%, respectively. For the nine months ended September 30, 2023 and 2022, the Company recorded a provision for income taxes of \$1.2 million and a benefit from income taxes of \$1.8 million, respectively, resulting in an effective tax rate of (4.42)% and 2.22%, respectively. The benefit from income taxes of \$0.9 million generated in the three months ended September 30, 2023 was primarily generated by a reduction in estimated cash taxes required in jurisdictions in which the estimated deferred tax assets for the year will require a valuation allowance. The provision for income taxes of \$1.2 million generated in the nine months ended September 30, 2023 was associated with estimated cash taxes required in jurisdictions in which the estimated deferred tax assets for the year will require a valuation allowance.

As of September 30, 2023, the Company had gross tax-effected unrecognized tax provision of \$0.2 million which, if recognized, would favorably impact the effective tax rate. The Company's existing tax positions will continue to generate an increase in unrecognized tax benefits in subsequent periods. The Company's policy is to record interest and penalties related to unrecognized tax benefits as a component of income tax expense. During the three and nine months ended September 30, 2023 and 2022, the amounts recorded related to the accrual of interest and penalties were immaterial in each period.

(14) Segment information

The Company operates as one operating segment. Operating segments are defined as components of an enterprise for which separate financial information is evaluated regularly by the chief operating decision maker ("CODM"), who is the Company's chief executive officer, in deciding how to allocate resources and assess the Company's financial and operational performance. While the Company has applications that address multiple use cases, the Company's applications generally operate on and leverage a single technology platform and are deployed and sold in an identical way. In addition, the Company's CODM evaluates the Company's financial information and resources and assesses the performance of these resources on a consolidated basis. As a result, the Company has determined that the Company's business operates in a single operating segment. Since the Company operates as one operating segment, all required financial segment information can be found in the consolidated financial statements.

(15) Revenue Recognition

The following table disaggregates the Company's revenue by geography which provides information as to the major source of revenue. North America includes United States and Canada and International aggregates international revenues excluding Canada. The majority of the Company's North America revenue is generated in the United States (in thousands):

Primary Geographic Markets	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
North America	\$ 85,648	\$ 81,880	\$ 250,870	\$ 233,379
International	28,543	29,521	82,158	81,383
Total	<u>\$ 114,191</u>	<u>\$ 111,401</u>	<u>\$ 333,028</u>	<u>\$ 314,762</u>

The following table presents the Company's revenues disaggregated by revenue source (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Subscription services	\$ 104,318	\$ 96,790	\$ 304,940	\$ 283,203
Professional services	6,186	8,006	18,366	20,571
Software licenses and other	3,687	6,605	9,722	10,988
Total	<u>\$ 114,191</u>	<u>\$ 111,401</u>	<u>\$ 333,028</u>	<u>\$ 314,762</u>

Contract Assets

Contract assets arise when the Company has earned revenue on a contract with a customer prior to billing. Any contract assets that may arise are recorded in other assets on the condensed consolidated balance sheets net of an allowance for credit losses.

Contract Liabilities

The Company's contract liabilities consist of advance payments and deferred revenue. The Company's contract liabilities are reported in a net position on a contract-by-contract basis at the end of each reporting period. The Company classifies advance payments and deferred revenue as current or noncurrent based on the timing of when it expects to recognize revenue. Generally, all contract liabilities are expected to be recognized within one year and are included in deferred revenue on the condensed consolidated balance sheets. The noncurrent portion of deferred revenue is included and separately disclosed on the condensed consolidated balance sheets.

Deferred Costs

Current deferred costs, which primarily consist of deferred sales commissions, were \$17.3 million and \$16.2 million as of September 30, 2023 and December 31, 2022, respectively. Noncurrent deferred costs, which primarily consist of deferred sales commissions, were \$24.6 million and \$21.4 million as of September 30, 2023 and December 31, 2022, respectively. During each of the three months ended September 30, 2023 and 2022, amortization expense for the deferred costs was \$5.0 million. During the nine months ended September 30, 2023 and 2022, amortization expense for the deferred costs was \$14.5 million and \$13.7 million, respectively. There was no impairment loss in relation to the costs capitalized for the nine months ended September 30, 2023 and the year ended December 31, 2022, respectively.

Deferred Revenue

During the three months ended September 30, 2023 and 2022, \$94.8 million and \$89.3 million, respectively, of subscription services, license and other revenue was recognized and was included in the deferred revenue balances at the beginning of the respective period. During the nine months ended September 30, 2023 and 2022, \$206.4 million and \$189.9 million, respectively, of subscription services, license and other revenue was recognized and was included in the deferred revenue balances at the beginning of the respective period.

During the three months ended September 30, 2023 and 2022, \$1.4 million and \$3.0 million, respectively, of professional services revenue was recognized and was included in the deferred revenue balances at the beginning of the respective period. During the nine months ended September 30, 2023 and 2022, \$5.2 million and \$7.3 million, respectively, of professional services revenue was recognized and was included in the deferred revenue balances at the beginning of the respective period.

Remaining Performance Obligations

As of September 30, 2023, approximately \$472.0 million of revenue is expected to be recognized from remaining performance obligations for subscription and other contracts. The Company expects to recognize revenue on approximately \$291.4 million of these remaining performance obligations over the next 12 months, with the balance recognized thereafter.

As of September 30, 2023, approximately \$8.8 million of revenue is expected to be recognized from remaining performance obligations for professional services contracts. The Company expects to recognize revenue on approximately \$8.7 million of these remaining professional services performance obligations over the next 12 months, with the balance recognized thereafter.

(16) Leases

The Company's leases relate primarily to office facilities that expire on various dates from 2023 through 2031. The terms of the Company's non-cancelable operating lease arrangements typically contain fixed lease payment which increases over the term of the lease at fixed rates, rent holidays and provide for additional renewal periods. Lease expense is recognized over the term of the lease on a straight-line basis. All of the Company's leases are classified as operating leases. The Company has determined that periods covered by options to extend the Company's leases are excluded from the lease term as the Company is not reasonably certain the Company will exercise such options.

The Company records its right-of-use ("ROU") asset within other assets (long term) and its operating lease liabilities within other current and long-term liabilities.

Additional information related to the Company's leases is as follows (in thousands, except lease term and discount rate):

	As of September 30, 2023	As of December 31, 2022
Balance sheet information		
ROU assets	\$ 16,414	\$ 17,872
Lease liabilities, current	\$ 3,759	\$ 3,797
Lease liabilities, non-current	17,243	18,742
Total lease liabilities	\$ 21,002	\$ 22,539
Supplemental data		
Weighted average remaining lease term	6.14 years	6.57 years
Weighted average discount rate	6.07 %	5.68 %
	Nine Months Ended September 30,	
	2023	2022
Cash paid for amounts included in lease liabilities	\$ 3,441	\$ 5,552
ROU assets obtained in exchange for new lease obligations	2,215	287

Maturities of lease liabilities as of September 30, 2023 were as follows (in thousands):

Year ending December 31,		
2023 (for the remaining three months)	\$	1,358
2024		4,638
2025		4,108
2026		3,694
2027		3,380
Thereafter		9,467
Total undiscounted lease payments		26,645
Less: imputed interest		(5,643)
Total lease liabilities	\$	21,002

The following table presents components of lease expense (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Operating lease expense	\$ 1,192	\$ 1,446	\$ 3,673	\$ 4,667
Short-term lease expense ⁽¹⁾	113	143	423	473
	1,305	1,589	4,096	5,140
Less: Sublease income	(64)	(56)	(190)	(102)
Total lease expense	\$ 1,241	\$ 1,533	\$ 3,906	\$ 5,038

⁽¹⁾ Short-term lease expense includes all leases with lease terms ranging from less than one month to one year.

As of September 30, 2023, the Company does not have any leases that have not yet commenced that create significant rights and obligations.

(17) Commitments and Contingencies

Litigation

In April 2022, certain former shareholders of The Anvil Group (International) Limited, Anvil Worldwide Limited and The Anvil Group Limited (collectively, "Anvil"), which was acquired by Everbridge on November 4, 2021, filed a claim in the United Kingdom Commercial Court against Everbridge Holdings Limited and Everbridge, Inc. The suit claims that these companies breached certain provisions of the acquisition documents relating to the issuance of Everbridge, Inc. stock, which formed part of the consideration payable for the stock in Anvil, and the claimants are currently seeking the Court's permission to expand their allegations against Everbridge. The claimants are seeking damages of up to \$75 million for losses they purport to have suffered as a result of these alleged breaches. The Court has set a trial date in late April 2024. As of September 30, 2023, the Company has accrued a liability of \$9.1 million on the Company's condensed consolidated balance sheet with respect to this claim.

In April 2022, a putative class action lawsuit was filed in the United States District Court for the Central District of California against the Company, Jaime Ellertson, Patrick Brickley, and David Meredith (the Company's former Chief Executive Officer) by Sylebra Capital Partners Master Fund Ltd, Sylebra Capital Parc Master Fund, and Sylebra Capital Menlo Master Fund (collectively, "Sylebra"). In September 2022, Sylebra filed an amended and restated complaint (the "First Amended Complaint"). The lawsuit alleges violations of the federal securities laws by the Company and certain of its officers and directors arising out of purported misrepresentations in the information the Company provided to investors regarding the Company's organic and inorganic revenue growth, and the status of integrating acquisitions, which allegedly artificially inflated the price of the Company's stock during the period from November 4, 2019 to February 24, 2022. The Company is not able to estimate the amount of the loss allegedly suffered by members of the putative class or the amount of legal costs and internal efforts associated with defending the Company and the Company's officers and directors. The Company intends to defend the action vigorously. In October 2022, the Company filed a motion to dismiss the lawsuit on various grounds, including failure to plead any actionable misstatement or omission, failure to establish scienter, and failure to meet the pleading requirements of the Private Securities Litigation Reform Act and other applicable law. On May 9, 2023, the Court granted the Company's motion to dismiss each of the claims, dismissing the First Amended Complaint in its entirety, without prejudice. Sylebra filed a Second Amended Complaint on June 30, 2023. The Company has filed a motion to dismiss the Second Amended Complaint and that motion is scheduled to be heard by the Court on December 7, 2023. Even if the Company were to prevail again, this litigation could continue to be costly and time-consuming and divert the attention of the Company's management and key personnel from the Company's business operations. During the course of the litigation, the Company anticipates announcements of the results of hearings and motions, and other interim developments related to the litigation. If securities analysts or investors regard these announcements as negative, the market price of the Company's common stock may decline. If the Company is unsuccessful in defending itself in this litigation, this lawsuit could materially and adversely affect the Company's business, financial condition, results of operations and cash flows.

In June 2022, a purported shareholder derivative action was filed in the United States District Court for the Central District of California against certain current and former directors and officers of the Company, naming the Company as a nominal defendant. The suit claims that these individuals breached their fiduciary duties to the Company's shareholders and to the Company generally in connection with the same set of circumstances alleged in the class action lawsuit. The complaint is derivative in nature and does not seek relief from the Company. This action has been stayed pending the outcome of the motion to dismiss filed in the putative class action lawsuit brought by Sylebra.

From time to time the Company may become involved in other legal proceedings or be subject to claims arising in the ordinary course of business. Although the results of ordinary course litigation and claims cannot be predicted with certainty, the Company currently believes that the final outcome of these ordinary course matters will not have a material adverse effect on its business, financial condition, results of operations or cash flows. Regardless of the outcome, litigation can have an adverse impact because of defense and settlement costs, diversion of management resources and other factors.

Employee Contracts

The Company has entered into employment contracts with certain of the Company's executive officers which provide for at-will employment. However, under the provisions of the contracts, the Company would incur severance obligations of up to twelve months of the executive's annual base salary for certain events, such as involuntary terminations.

(18) Restructuring and Restructuring-Related Activities

In May 2022, the Board approved a program (the "2022 Strategic Realignment") to strategically realign the Company's resources in order to accelerate and grow the Company's investments in the Company's largest growth opportunities while streamlining the Company's operations. The 2022 Strategic Realignment program includes a targeted realignment and reduction of headcount, facilities and other third-party spend. In November 2022 and July 2023, the Board approved amendments to the 2022 Strategic Realignment program to include additional targeted realignment and reduction of headcount and other third-party spend.

The 2022 Strategic Realignment program is in support of the 2022 strategic initiatives to simplify the Company's business and accelerate the integration of recent acquisitions, and will help to drive the financial outcomes of sustainable growth and improved profitability and cash flow and is expected to be substantially completed by the first half of fiscal 2024.

In addition to restructuring costs, the Company will also incur costs that do not constitute restructuring under ASC 420, *Exit and Disposal Cost Obligations*, and which the Company instead refers to as business transformation costs. These costs consist primarily of expenditures directly related to the 2022 Strategic Realignment and include employee retention costs, professional fees and investments in automation and technology. The following table provides a summary of the Company's estimates of total pre-tax charges associated with the 2022 Strategic Realignment, by major type of cost, of which approximately \$33 million to \$35 million are expected to result in cash outlays (in millions):

	Total Estimated Amount Expected to be Incurred			
Restructuring charges:				
Workforce	\$	13	to	\$ 14
Facilities-related		5	to	5
Other		—	to	—
Business transformation charges		16	to	17
Total restructuring and business transformation charges	\$	34	to	\$ 36

The following table sets provides a summary of restructuring activities (in thousands):

	Workforce ⁽¹⁾	Facilities-related ⁽²⁾	Other	Total
Balance at January 1, 2023	\$ 1,294	\$ 36	\$ —	\$ 1,330
Charges	2,727	66	1	2,794
Charges settled in cash	(3,072)	(70)	(109)	(3,251)
Charges settled in non-cash	26	(37)	108	97
Balance at September 30, 2023	\$ 975	\$ (5)	\$ —	\$ 970

⁽¹⁾ Balance at September 30, 2023 is recorded in accrued payroll and employee related liabilities on the condensed consolidated balance sheet.

⁽²⁾ Balance at September 30, 2023 is recorded in prepaid expenses on the condensed consolidated balance sheet.

Since the inception of the 2022 Strategic Realignment program through September 30, 2023, the Company incurred approximately \$15.0 million of restructuring charges, of which \$10.4 million was for employee-related expenses, \$4.3 million was for facilities-related expenses and \$0.2 million for other expenses.

The following table presents restructuring and business transformation expenses by major type and line item within our accompanying condensed consolidated statement of operations (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Restructuring charges	\$ 2,109	\$ 37	\$ 2,794	\$ 6,779
Business transformation charges:				
Cost of revenue	125	259	790	694
Sales and marketing	1,249	426	3,217	634
Research and development	1,670	396	2,810	609
General and administrative	579	106	1,125	2,102
Other income (expense), net	(18)	3	(18)	3
Total business transformation charges	3,605	1,190	7,924	4,042
Total restructuring and business transformation charges	\$ 5,714	\$ 1,227	\$ 10,718	\$ 10,821

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with (i) our condensed consolidated financial statements and related notes appearing elsewhere in this Quarterly Report on Form 10-Q and (ii) our audited consolidated financial statements and the related notes and management’s discussion and analysis of financial condition and results of operations for the fiscal year ended December 31, 2022 included in our Annual Report on Form 10-K filed with the Securities and Exchange Commission (“SEC”) on February 24, 2023. This Quarterly Report on Form 10-Q contains “forward-looking statements” within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). These statements are often identified by the use of words such as “anticipate,” “believe,” “can,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “project,” “seek,” “should,” “target,” “will,” “would” or the negative or plural of these words or similar expressions or variations. Such forward-looking statements include, but are not limited to, statements with respect to our outlook; the impact of new accounting standards; our ability to service our debt; our business strategy, including with respect to potential acquisitions; plans and objectives of future operations; the potential impact of macroeconomic events such as the COVID-19 pandemic or the ongoing war in Ukraine; the success of the 2022 Strategic Realignment; expected expenses, cash charges and cost savings; and our future financial and business performance. The events described in these forward-looking statements are subject to a number of risks, uncertainties, assumptions and other factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by the forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified herein, our ability to implement and achieve cost savings and the other operational and personnel changes described herein, and those discussed in the section titled “Risk Factors”, set forth in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2022, Part II, Item 1A of this Quarterly Report on Form 10-Q and in our other SEC filings. You should not rely upon forward-looking statements as predictions of future events. Furthermore, such forward-looking statements speak only as of the date of this report. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements.

Overview

Everbridge is a global software company that empowers resilience by leveraging intelligent automation technology to enable customers to anticipate, mitigate, respond to, and recover from critical events to keep people safe and organizations running. During public safety threats including severe weather conditions, active shooter situations, terrorist attacks or a pandemic, as well as critical business events such as IT outages, cyber-attacks, product recalls or supply-chain interruptions, global customers rely on our Critical Event Management platform to empower their resilience and to quickly and reliably aggregate and assess threat data, locate people at risk and responders able to assist, automate the execution of pre-defined communications processes through the secure delivery to a comprehensive range of different communication channels and devices, and track progress on executing response plans. Our customers use our platform to identify and assess hundreds of different types of threats to their organizations, people, assets or brand. Our solutions enable organizations to automate and deliver intelligent, contextual messages to, and receive verification of delivery from, hundreds of millions of recipients, across multiple communications modalities such as voice, SMS and e-mail, in several languages and dialects – all simultaneously. Our Critical Event Management platform is comprised of a comprehensive set of software applications packaged for organizations to address five core use cases, safeguarding: Business Operations, People Resilience, Digital Operations, Smart Security, and Public Safety. Our individual products address the full spectrum of tasks an organization requires to manage a critical event, including Mass Notification, Safety Connection, IT Alerting, Visual Command Center, Public Warning, Community Engagement, Risk Center, Crisis Management, CareConverge, Control Center, 911 Connect, Travel Risk Management, SnapComms and E911. Our applications leverage the Everbridge Critical Event Management platform, permitting customers to use a single contacts database, rules engine of algorithms and hierarchies, and user interface to accomplish multiple objectives. We believe that our broad suite of integrated applications delivered via a single global Critical Event Management (“CEM”) platform is a significant competitive advantage in the resilience market for CEM solutions.

Our customer base has grown from 867 customers at the end of 2011 to more than 6,600 customers as of September 30, 2023. We provide our applications to customers of varying sizes, including enterprises, small businesses, non-profit organizations, educational institutions and governmental agencies. Our customers span a wide variety of industries including technology, energy, financial services, healthcare and life sciences, manufacturing, media and entertainment, retail, higher education and professional services.

We sell all of our critical event management applications on a subscription basis. We generally enter into contracts that range from one to three years in length, with an average contract duration of 1.7 years as of September 30, 2023, and generally bill and collect payment annually in advance. We derive most of our revenue from subscriptions to applications. On average, 95% of the revenue that we recognized in each of the eight most recently completed quarters was generated from contracts entered into in prior quarters or renewals of those contracts; the balance of the revenue that we recognized in each such quarter was generated from contracts entered into with new customers or new contracts, other than renewals, entered into with existing customers in such quarter. Our pricing model is based on the number of applications subscribed to and, per application, the number of people, locations and things connected to our platform as well as the volume of communications. We also offer premium services including data feeds for social media, threat intelligence and weather. We generate additional revenue by expanding the number of applications that our customers subscribe to and the number of contacts and devices connected to our platform.

We generated revenue of \$114.2 million and \$111.4 million for the three months ended September 30, 2023 and 2022, respectively, representing a period-over-period increase of 3%. We generated revenue of \$333.0 million and \$314.8 million for the nine months ended September 30, 2023 and 2022, respectively, representing a period-over-period increase of 6%. We had net income of \$1.7 million and net loss of \$22.1 million for the three months ended September 30, 2023 and 2022, respectively. We had net losses of \$28.0 million and \$77.3 million for the nine months ended September 30, 2023 and 2022, respectively. As of September 30, 2023 and 2022, 18% and 19% of our customers, respectively, were located outside of North America. These customers generated 25% and 26% of our total revenue for the three months ended September 30, 2023 and 2022, respectively, and 25% and 26% of our total revenue for the nine months ended September 30, 2023 and 2022, respectively. North America includes United States and Canada and International aggregates international revenues excluding Canada.

We have focused on rapidly growing our business and believe that the future growth of our business is dependent on many factors, including our ability to increase the functionality of our platform and applications, expand our customer base, accelerate adoption of our applications beyond Mass Notification within our existing customer base and expand our international presence. Our future growth will also depend on the growth in the market for critical event management solutions and our ability to effectively compete. In order to further penetrate the market for critical event management solutions and capitalize on what we believe to be a significant opportunity, we intend to continue to invest in research and development, build-out our data center infrastructure and services capabilities and hire additional sales representatives, both domestically and internationally, to drive sales to new customers and incremental sales of new applications to existing customers. Nevertheless, we expect to continue to incur losses in the near term and, if we are unable to achieve our growth objectives, we may not be able to achieve profitability.

Recent Developments

Settlement of 2024 Notes and 2026 Notes

During the three months ended September 30, 2023, we paid approximately \$65.7 million in cash to repurchase approximately \$70.1 million principal amount of the 0.125% convertible senior notes due December 15, 2024 (the “2024 Notes”) and approximately \$64.9 million in cash to repurchase approximately \$74.7 million principal amount of the 0% convertible senior notes due March 15, 2026 (the “2026 Notes”).

Other Business and Macroeconomic Conditions

Rising interest rates present a recent challenge impacting the U.S. economy and could make it more difficult for us to obtain traditional financing on acceptable terms, if at all, in the future. The general consensus among economists suggests that we should expect a higher recession risk to continue over the next year, which, together with rising interest rates and inflation, could result in further economic uncertainty and volatility in the capital markets in the near term, and could negatively affect our operations. Furthermore, such economic conditions have produced downward pressure on share prices. Although we do not believe that inflation has had a material impact on our financial position or results of operations to date, we may experience increases in the near future, especially if inflation rates continue to rise, on our operating costs including our labor costs, employee availability and wage increases, consequences associated with COVID-19, the Israel and Hamas conflict and the ongoing conflict between Russia and Ukraine which may result in additional stress on the Company’s working capital resources. Additionally, in March 2023, Silicon Valley Bank and Signature Bank were closed and taken over by the Federal Deposit Insurance Corporation, which raised concern regarding the stability of other banks in the United States and in particular with respect to regional banks. While we have not been materially impacted by such events to date, if our primary banking partners or the banking partners of our customers were to experience a similar crisis, it may cause a material impact on our liquidity, including the ability to access our cash and cash equivalents, or the liquidity of our customers such as delays in, or failure to, make payments, or reduce their demand for our products.

Presentation of Financial Statements

Our consolidated financial statements include the accounts of our wholly-owned subsidiaries. Business acquisitions are included in our consolidated financial statements from the date of the acquisition. Our purchase accounting resulted in all assets and liabilities of acquired businesses being recorded at their estimated fair values on the acquisition dates. All intercompany balances and transactions have been eliminated in consolidation.

We report our financial results as one operating segment. Our operating results are regularly reviewed on a consolidated basis by our chief executive officer, who is our chief operating decision maker, principally to make strategic decisions regarding how we allocate our resources and to assess our consolidated operating performance.

Components of Results of Operations

Revenue

We derive most of our revenue from the sale of subscriptions to our critical event management and enterprise safety applications.

We generally bill and collect payment for our subscriptions annually in advance. All revenue billed in advance of services being delivered is recorded in deferred revenue. The initial subscription period typically ranges from one to three years. We offer varying levels of customer support based on customer needs and the complexity of their businesses, including the level of usage by a customer in terms of minutes or the amount of data used to transmit the notifications. Our pricing model is based on the number of applications subscribed to and, per application, the number of people, locations and things connected to our platform as well as the volume of communications. We also offer premium services including data feeds for social media, threat intelligence and weather. We generate additional revenue by expanding the number of premium features and applications that our customers subscribe to and the number of contacts connected to our platform. Our revenue growth in the near-term may be adversely affected by our ability to integrate our recent acquisitions, drive new client adoption and sales of our full-suite of solutions.

We also sell professional services, which primarily consist of fees for deployment and optimization services as well as training. In addition, we also sell our software and related post contract support for on premises usage.

Cost of Revenue

Cost of revenue includes expenses related to the fulfillment of our subscription services, consisting primarily of employee-related expenses for data center operations and customer support, including salaries, bonuses, benefits and stock-based compensation expense. Cost of revenue also includes hosting costs, messaging costs and depreciation and amortization. As we add data center capacity and support personnel in advance of anticipated growth, our cost of revenue will increase and, if anticipated revenue growth does not occur, our gross profit will be adversely affected. After the 2022 Strategic Realignment (as defined below) is completed, we expect a reduction in operational costs.

Operating Expenses

Operating expenses consist of sales and marketing, research and development and general and administrative expenses. Salaries, bonuses, stock-based compensation expense and other personnel costs are the most significant components of each of these expense categories. We include stock-based compensation expense incurred in connection with the grant of stock options, restricted stock units, performance-based restricted stock units, market-based grants and our employee stock purchase plan within the applicable operating expense category based on the equity award recipient's functional area.

Sales and Marketing

Sales and marketing expense primarily consists of employee-related expenses for sales, marketing and public relations employees, including salaries, bonuses, commissions, benefits and stock-based compensation expense. Sales and marketing expense also includes trade show, market research, advertising and other related external marketing expense as well as office and software related costs to support sales. We defer certain sales commissions related to acquiring new customers or services and amortize these expenses ratably over the period of benefit that we have determined to be four years. Sales commissions attributable to professional services are expensed within twelve months of selling the service to the customer. We plan to continue to expand our sales and marketing functions to grow our customer base and increase sales to existing customers. This growth will include adding sales personnel and expanding our marketing activities to continue to generate additional leads and build brand awareness. After the 2022 Strategic Realignment (as defined below) is completed, we expect a reduction in operational costs.

Research and Development

Research and development expense primarily consists of employee-related expenses for research and development staff, including salaries, bonuses, benefits and stock-based compensation expense. Research and development expense also includes the cost of certain third-party services, office-related costs to support research and development activities, software subscriptions and hosting costs. We capitalize certain software development costs that are attributable to developing new applications and adding incremental functionality to our platform and amortize these costs over the estimated life of the new application or incremental functionality, which is generally three years. We focus our research and development efforts on improving our applications, developing new applications and delivering new functionality. After the 2022 Strategic Realignment (as defined below) is completed, we expect a reduction in operational costs.

General and Administrative

General and administrative expense primarily consists of employee-related expenses for administrative, legal, finance and human resource personnel, including salaries, bonuses, benefits and stock-based compensation expense. General and administrative expense also includes professional fees, insurance premiums, corporate expenses, transaction-related costs, office-related expenses, facility costs, depreciation and amortization and software license costs. After the 2022 Strategic Realignment (as defined below) is completed, we expect a reduction in operational costs.

Restructuring

In May 2022, our board of directors (the “Board”) approved a program (the “2022 Strategic Realignment”), as amended, to strategically realign our resources in order to accelerate and grow our investments in our largest growth opportunities while streamlining our operations. This program is in support of the 2022 strategic initiatives to simplify our business and accelerate the integration of recent acquisitions, and will help to drive the financial outcomes of sustainable growth and improved profitability and cash flow. The 2022 Strategic Realignment program includes a targeted realignment and reduction of headcount, facilities and other third-party spend. See Note 18 in the notes to our condensed consolidated financial statements included in this Quarterly Report on Form 10-Q.

Restructuring expense consists of 2022 Strategic Realignment program expenses related to headcount, facilities and other third-party spend.

Interest and Investment Income

Interest income consists of interest earned on our cash balances held at financial institutions. Investment income consist of interest earned on our short-term investments which consist of U.S. treasuries, U.S. government agency obligations and money market funds.

Interest Expense

Interest expense consists of interest on our outstanding debt obligations including amortization of debt discounts and offering costs.

Gain (Loss) on Extinguishment of Convertible Notes, Capped Call Modification and Change in Fair Value

Gain (loss) on extinguishment of convertible notes, capped call modification and change in fair value relates to the partial extinguishment of our 2026 Notes and 2024 Notes, extinguishment of our 1.50% convertible senior notes due November 1, 2022 (the “2022 Notes”), modification of a capped call agreement related to the 2022 Notes and change in the fair value of 2022 Notes capped call options which were settled in cash.

Other income (expense), net

Other income (expense), net consists primarily of realized foreign currency gains and losses.

Results of Operations

The following tables set forth our results of operations for the periods presented and as a percentage of our total revenue for those periods. The period-to-period comparison of our historical results is not necessarily indicative of the results that may be expected in the future (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Revenue	\$ 114,191	\$ 111,401	\$ 333,028	\$ 314,762
Cost of revenue ⁽¹⁾	33,069	35,447	98,141	100,543
Gross profit	81,122	75,954	234,887	214,219
Operating expenses:				
Sales and marketing ⁽¹⁾	36,699	46,580	121,556	133,755
Research and development ⁽¹⁾	23,852	25,177	73,469	75,355
General and administrative ⁽¹⁾	31,204	23,357	80,633	72,786
Restructuring	2,109	37	2,794	6,779
Total operating expenses	93,864	95,151	278,452	288,675
Operating loss	(12,742)	(19,197)	(43,565)	(74,456)
Other income (expense), net	13,501	(2,858)	16,735	(4,633)
Income (loss) before income taxes	759	(22,055)	(26,830)	(79,089)
(Provision for) benefit from income taxes	924	(25)	(1,185)	1,754
Net income (loss)	\$ 1,683	\$ (22,080)	\$ (28,015)	\$ (77,335)

⁽¹⁾ Includes stock-based compensation expense and depreciation and amortization of acquired intangible assets as follows. During 2022, we updated the presentation of the allocation of stock-based compensation capitalized for software development. Interim periods within 2022 have been recast to conform to the current presentation (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Stock-based compensation expense				
Cost of revenue	\$ 1,285	\$ 1,978	\$ 4,757	\$ 4,276
Sales and marketing	2,398	6,415	13,346	14,320
Research and development	2,810	3,994	10,306	9,367
General and administrative	2,105	5,020	9,768	11,739
Total	\$ 8,598	\$ 17,407	\$ 38,177	\$ 39,702

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Depreciation and amortization expense				
Cost of revenue	\$ 6,405	\$ 5,885	\$ 19,084	\$ 17,977
Sales and marketing	352	340	1,106	863
Research and development	305	243	940	657
General and administrative	7,568	8,094	23,158	25,756
Total	\$ 14,630	\$ 14,562	\$ 44,288	\$ 45,253

The following table sets forth our condensed consolidated statements of operations as a percentage of revenue⁽¹⁾:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Revenue	100 %	100 %	100 %	100 %
Cost of revenue	29 %	32 %	29 %	32 %
Gross profit	71 %	68 %	71 %	68 %
Operating expenses:				
Sales and marketing	32 %	42 %	37 %	42 %
Research and development	21 %	23 %	22 %	24 %
General and administrative	27 %	21 %	24 %	23 %
Restructuring	2 %	0 %	1 %	2 %
Total operating expenses	82 %	85 %	84 %	92 %
Operating loss	(11) %	(17) %	(13) %	(24) %
Other income (expense), net	12 %	(3) %	5 %	(1) %
Income (loss) before income taxes	1 %	(20) %	(8) %	(25) %
(Provision for) benefit from income taxes	1 %	(0) %	(0) %	1 %
Net income (loss)	1 %	(20) %	(8) %	(25) %

(1) Columns may not add up to 100% due to rounding.

Comparison of the Three Months Ended September 30, 2023 and 2022

Revenue

(dollars in thousands)	Three Months Ended September 30,		Change	
	2023	2022	\$	%
Revenue	\$ 114,191	\$ 111,401	\$ 2,790	2.5 %

Revenue increased by \$2.8 million for the three months ended September 30, 2023 compared to the same period in 2022. The increase was due to a \$2.8 million increase in sales of our solutions driven by expansion of our customer base from 6,417 customers as of September 30, 2022 to 6,619 customers as of September 30, 2023, including increased sales to larger organizations with greater numbers of contacts and locations.

Cost of Revenue

(dollars in thousands)	Three Months Ended September 30,		Change	
	2023	2022	\$	%
Cost of revenue	\$ 33,069	\$ 35,447	\$ (2,378)	(6.7) %
Gross margin %	71 %	68 %		

Cost of revenue decreased by \$2.4 million for the three months ended September 30, 2023 compared to the same period in 2022. The decrease was primarily due to a \$2.1 million decrease in employee-related costs, which includes stock-based compensation and employee-related costs related to the 2022 Strategic Realignment. There were 398 and 471 employees as of September 30, 2023 and 2022, respectively. The remaining decrease was principally the result of a \$0.5 million decrease in travel risk management, operational resiliency and occupational health solutions costs, a \$0.3 million decrease in hosting, software and messaging costs and other costs. These amounts were offset by a \$0.5 million increase in depreciation and amortization expense attributed to our fixed assets, acquired intangibles and capitalized software.

Gross margin percentage increased due to revenue growth outpacing cost.

Operating Expenses

Sales and Marketing Expense

(dollars in thousands)	Three Months Ended September 30,		Change	
	2023	2022	\$	%
Sales and marketing	\$ 36,699	\$ 46,580	\$ (9,881)	(21.2) %
% of revenue	32 %	42 %		

Sales and marketing expense decreased by \$9.9 million for the three months ended September 30, 2023 compared to the same period in 2022. The decrease was primarily due to a \$9.4 million decrease in employee-related costs, which includes stock-based compensation and employee-related costs related to the 2022 Strategic Realignment. There were 505 and 642 employees as of September 30, 2023 and 2022, respectively. The remaining decrease was principally the result of a \$0.3 million decrease in office-related expenses, a \$0.1 million decrease in software expenses to support the sales team and a \$0.1 million decrease in decrease in advertising-related costs and trade show expenses.

Research and Development Expense

(dollars in thousands)	Three Months Ended September 30,		Change	
	2023	2022	\$	%
Research and development	\$ 23,852	\$ 25,177	\$ (1,325)	(5.3)%
% of revenue	21 %	23 %		

Research and development expense decreased by \$1.3 million for the three months ended September 30, 2023 compared to the same period in 2022. The decrease was primarily due to a \$1.3 million decrease in employee-related costs, which includes stock-based compensation and employee-related costs related to the 2022 Strategic Realignment. There were 532 and 564 employees as of September 30, 2023 and 2022, respectively. The decrease was also due to a \$0.3 million decrease in software-related costs. These decreases were partially offset by a \$0.2 million increase in office-related expenses and a \$0.1 million increase in professional services to support research and development activities.

General and Administrative Expense

(dollars in thousands)	Three Months Ended September 30,		Change	
	2023	2022	\$	%
General and administrative	\$ 31,204	\$ 23,357	\$ 7,847	33.6%
% of revenue	27 %	21 %		

General and administrative expense increased by \$7.8 million for the three months ended September 30, 2023 compared to the same period in 2022. The increase was due to a \$10.3 million increase in professional services and office-related expenses primarily due to an Anvil legal dispute accrual (see Note 17 in the notes to our condensed consolidated financial statements included in this Quarterly Report on Form 10-Q) and a \$1.0 million increase in allowance for credit losses partially due to a recovery during the three months ended September 30, 2022. These increases were partially offset by a \$3.0 million decrease in employee-related costs, which includes stock-based compensation and employee-related costs related to the 2022 Strategic Realignment and a \$0.5 million decrease in depreciation and amortization. There were 191 and 216 employees as of September 30, 2023 and 2022, respectively.

Restructuring

(dollars in thousands)	Three Months Ended September 30,		Change	
	2023	2022	\$	%
Restructuring	\$ 2,109	\$ 37	\$ 2,072	N/M
% of revenue	2 %	0 %		

Restructuring expense increased by \$2.1 million for the three months ended September 30, 2023 compared to the same period in 2022. The increase was primarily due to higher restructuring expenses recognized in the current year related to the 2022 Strategic Realignment initiatives primarily related to an increase of \$2.1 million for employee-related expenses.

Other income (expense), net

(dollars in thousands)	Three Months Ended September 30,		Change	
	2023	2022	\$	%
Other income (expense), net	\$ 13,501	\$ (2,858)	\$ 16,359	N/M
% of revenue	12 %	(3)%		

Other income (expense), net changed to income of \$13.5 million from an expense of \$2.9 million for the three months ended September 30, 2023 when compared to the same period in 2022. Gain on extinguishment of convertible notes of \$12.7 million was recognized during the three months ended September 30, 2023 as compared to a \$4.7 million decrease in fair value of 2022 Notes capped call options during the three months ended September 30, 2022, which were to be settled in cash, resulting in a \$17.4 million increase in other income (expense), net. The remainder of the increase was due to a \$0.6 million decrease in interest expense and a \$0.1 million increase in interest income. These amounts were partially offset by a \$1.7 million decrease in other income, net primarily due to a settlement of a receivable during the three months ended September 30, 2022.

Income Taxes

(dollars in thousands)	Three Months Ended September 30,		Change	
	2023	2022	\$	%
Benefit from (provision for) income taxes	\$ 924	\$ (25)	\$ 949	N/M
% of revenue	1 %	(0) %		

A portion of the losses incurred during the three months ended September 30, 2023 are expected to be realized in some jurisdictions during the year or recognized as a deferred tax asset as of December 31, 2023. Losses incurred for other operating jurisdictions required a valuation allowance. The benefit from income taxes of \$0.9 million generated in the three months ended September 30, 2023 was primarily generated by a reduction in estimated cash taxes required in jurisdictions in which the estimated deferred tax assets for the year will require a valuation allowance. The change in income taxes of \$0.9 million for the three months ended September 30, 2023 as compared to the same period in 2022 was primarily related to a reduction in estimated cash taxes associated with fiscal year 2023 as compared to what was estimated in the prior quarters of 2023.

Comparison of the Nine Months Ended September 30, 2023 and 2022

Revenue

(dollars in thousands)	Nine Months Ended September 30,		Change	
	2023	2022	\$	%
Revenue	\$ 333,028	\$ 314,762	\$ 18,266	5.8 %

Revenue increased by \$18.3 million for the nine months ended September 30, 2023 compared to the same period in 2022. The increase was due to a \$18.3 million increase in sales of our solutions driven by expansion of our customer base from 6,417 customers as of September 30, 2022 to 6,619 customers as of September 30, 2023, including increased sales to larger organizations with greater numbers of contacts and locations.

Cost of Revenue

(dollars in thousands)	Nine Months Ended September 30,		Change	
	2023	2022	\$	%
Cost of revenue	\$ 98,141	\$ 100,543	\$ (2,402)	(2.4) %
Gross margin %	71 %	68 %		

Cost of revenue decreased by \$2.4 million during the nine months ended September 30, 2023 compared to the same period in 2022. The decrease was primarily due to a \$3.2 million decrease in employee-related costs, which includes stock-based compensation and employee-related costs related to the 2022 Strategic Realignment. There were 398 and 471 employees as of September 30, 2023 and 2022, respectively. The remaining decrease was principally the result of a \$1.0 million decrease in travel risk management, operational resiliency and occupational health solutions costs and a \$0.1 million decrease in office and other related expenses to support revenue generating activities. These amounts were offset by a \$1.1 million increase in depreciation and amortization expense attributed to our fixed assets, acquired intangibles and capitalized software and a \$0.8 million increase in hosting, software and messaging costs and other costs.

Gross margin percentage increased due to revenue growth outpacing cost.

Operating Expenses

Sales and Marketing Expense

(dollars in thousands)	Nine Months Ended September 30,		Change	
	2023	2022	\$	%
Sales and marketing	\$ 121,556	\$ 133,755	\$ (12,199)	(9.1)%
% of revenue	37%	42%		

Sales and marketing expense decreased by \$12.2 million for the nine months ended September 30, 2023 compared to the same period in 2022. The decrease was primarily due to a \$10.2 million decrease in employee-related costs, which includes stock-based compensation and employee-related costs related to the 2022 Strategic Realignment. There were 505 and 642 employees as of September 30, 2023 and 2022, respectively. The remaining decrease was principally the result of a \$1.3 million decrease in advertising-related costs and trade show expenses, a \$0.4 million decrease in office-related expenses and a \$0.3 million decrease in software expenses to support the sales team.

Research and Development Expense

(dollars in thousands)	Nine Months Ended September 30,		Change	
	2023	2022	\$	%
Research and development	\$ 73,469	\$ 75,355	\$ (1,886)	(2.5)%
% of revenue	22%	24%		

Research and development expense decreased by \$1.9 million for the nine months ended September 30, 2023 compared to the same period in 2022. A total of \$11.9 million of internally developed software costs during the nine months ended September 30, 2022 and \$13.3 million of internally developed software costs during the nine months ended September 30, 2023 were capitalized, resulting in a \$1.4 million decrease in research and development expense during the nine months ended September 30, 2023. The decrease was also due to a \$0.6 million decrease in employee-related costs, which includes stock-based compensation and employee-related costs related to the 2022 Strategic Realignment and a \$0.3 million decrease in software-related costs. There were 532 and 564 employees as of September 30, 2023 and 2022, respectively. These decreases were offset by a \$0.4 million increase in office-related and other expenses to support research and development activities.

General and Administrative Expense

(dollars in thousands)	Nine Months Ended September 30,		Change	
	2023	2022	\$	%
General and administrative	\$ 80,633	\$ 72,786	\$ 7,847	10.8%
% of revenue	24%	23%		

General and administrative expense increased by \$7.8 million during the nine months ended September 30, 2023 as compared to the same period in 2022. The increase was due to a \$10.1 million increase in professional services and office-related expenses primarily due to an Anvil legal dispute accrual (see Note 17 in the notes to our condensed consolidated financial statements included in this Quarterly Report on Form 10-Q) and a \$3.0 million increase in allowance for credit losses partially due to a recovery during the three months ended September 30, 2022. These increases were partially offset by a \$2.7 million decrease in employee-related costs, which includes stock-based compensation and employee-related costs related to the 2022 Strategic Realignment and a \$2.6 million decrease in depreciation and amortization. There were 191 and 216 employees as of September 30, 2023 and 2022, respectively.

Restructuring

(dollars in thousands)	Nine Months Ended September 30,		Change	
	2023	2022	\$	%
Restructuring	\$ 2,794	\$ 6,779	\$ (3,985)	(58.8)%
% of revenue	1%	2%		

Restructuring expense decreased by \$4.0 million for the nine months ended September 30, 2023 compared to the same period in 2022. The decrease was primarily due to higher restructuring expenses recognized in the prior year related to the 2022 Strategic Realignment initiatives and includes decreases of \$4.1 million for facilities-related expenses and \$0.2 million for other expenses. These decreases were partially offset by a \$0.3 million increase in employee-related expenses.

Other income (expense), net

(dollars in thousands)	Nine Months Ended September 30,		Change	
	2023	2022	\$	%
Other income (expense), net	\$ 16,735	\$ (4,633)	\$ 21,368	461.2 %
% of revenue	5 %	(1) %		

Other income (expense), net changed to income of \$16.7 million from expense of \$4.6 million for the nine months ended September 30, 2023 when compared to the same period in 2022. Gain on extinguishment of convertible notes of \$12.7 million was recognized during the three months ended September 30, 2023 as compared to a \$4.7 million decrease in fair value of 2022 Notes capped call options to be settled in cash during the three months ended September 30, 2022 resulting in a \$17.4 million increase in other income (expense), net. The remainder of the increase was due to a \$3.4 million increase in interest income, a \$1.7 million decrease in interest expense and a \$0.3 million gain recognized in connection with an asset sale during the nine months ended September 30, 2023. These amounts were partially offset by a \$1.4 million decrease in other income, net primarily due to a settlement of a receivable during the three months ended September 30, 2022.

Income Taxes

(dollars in thousands)	Nine Months Ended September 30,		Change	
	2023	2022	\$	%
Benefit from (provision for) income taxes	\$ (1,185)	\$ 1,754	\$ (2,939)	(167.6) %
% of revenue	(0) %	1 %		

A portion of the losses incurred during the nine months ended September 30, 2023 are expected to be realized in some jurisdictions during the year or recognized as a deferred tax asset as of December 31, 2023. Losses incurred for other operating jurisdictions required a valuation allowance. The provision for income taxes of \$1.2 million generated in the nine months ended September 30, 2023 was associated with estimated cash taxes required in jurisdictions in which the estimated deferred tax assets for the year will require a valuation allowance. The change in income taxes of \$2.9 million for the nine months ended September 30, 2023 as compared to the same period in 2022 was primarily related to a benefit recorded in 2022 for a change in valuation allowance and realization of losses against deferred tax liabilities established for prior acquisitions.

Other Metrics

We regularly monitor a number of financial and operating metrics, including the following key metrics, to evaluate our business, measure our performance, identify trends affecting our business, formulate business plans, and make strategic decisions.

- Adjusted EBITDA.** Adjusted EBITDA represents our net income (loss) before interest and investment (income) expense, net, provision for (benefit from) income taxes, depreciation and amortization expense, stock-based compensation expense, costs related to the 2022 Strategic Realignment, Anvil legal dispute accrual, change in fair value of contingent consideration, and (gain) loss on extinguishment of convertible notes, capped call modification and change in fair value. We do not consider these items to be indicative of our core operating performance. The items that are non-cash include depreciation and amortization expense, stock-based compensation expense, change in fair value of contingent consideration and (gain) loss on extinguishment of convertible notes, capped call modification and change in fair value. Adjusted EBITDA is a measure used by management to understand and evaluate our core operating performance and trends and to generate future operating plans, make strategic decisions regarding the allocation of capital and invest in initiatives that are focused on cultivating new markets for our solutions. In particular, the exclusion of certain expenses in calculating adjusted EBITDA facilitates comparisons of our operating performance on a period-to-period basis. Adjusted EBITDA is not a measure calculated in accordance with generally accepted accounting principles in the United States of America ("U.S. GAAP"). We believe that adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results in the same manner as our management and the Board. Nevertheless, use of adjusted EBITDA has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our financial results as reported under GAAP. Some of these limitations are: (1) although depreciation and amortization are non-cash charges, the capitalized software that is amortized will need to be replaced in the future, and adjusted EBITDA does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements; (2) adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs; (3) adjusted EBITDA does not reflect the potentially dilutive impact of equity-based compensation; (4) adjusted EBITDA does not reflect tax payments or receipts that may represent a reduction or increase in cash available to us; and (5) other companies, including companies in our industry, may calculate adjusted EBITDA or similarly titled measures differently, which reduces the usefulness of the metric as a comparative measure. Because of these and other limitations, you should consider adjusted EBITDA alongside our other GAAP-based financial performance measures, net loss and our other GAAP financial results. The following table presents a reconciliation of adjusted EBITDA to net income (loss), the most directly comparable GAAP measure, for each of the periods indicated (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net income (loss)	\$ 1,683	\$ (22,080)	\$ (28,015)	\$ (77,335)
Interest and investment expense, net	(1,416)	(742)	(3,904)	1,124
Provision for (benefit from) income taxes	(924)	25	1,185	(1,754)
Depreciation and amortization	14,630	14,562	44,288	45,253
Stock-based compensation	8,598	17,407	38,177	39,702
2022 Strategic Realignment	5,714	1,227	10,718	10,821
Anvil legal dispute accrual	8,064	—	8,064	—
Change in fair value of contingent consideration	—	—	—	(57)
(Gain) loss on extinguishment of convertible notes, capped call modification and change in fair value	(12,658)	4,770	(12,658)	4,770
Adjusted EBITDA	<u>\$ 23,691</u>	<u>\$ 15,169</u>	<u>\$ 57,855</u>	<u>\$ 22,524</u>

- **Free Cash Flow and Adjusted Free Cash Flow.** Free cash flow represents net cash provided by (used in) operating activities minus capital expenditures and capitalized software development costs. Adjusted free cash flow represents free cash flow as further adjusted for cash payments for the 2022 Strategic Realignment. Free cash flow and adjusted free cash flow are measures used by management to understand and evaluate our core operating performance and trends and to generate future operating plans. The exclusion of capital expenditures, amounts capitalized for internally-developed software and cash payments for the 2022 Strategic Realignment facilitates comparisons of our operating performance on a period-to-period basis and excludes items that we do not consider to be indicative of our core operating performance. Free cash flow and adjusted free cash flow are not measures calculated in accordance with GAAP. We believe that free cash flow and adjusted free cash flow provide useful information to investors and others in understanding and evaluating our operating results in the same manner as our management and the Board. Nevertheless, our use of free cash flow and adjusted free cash flow have limitations as an analytical tool, and you should not consider them in isolation or as a substitute for analysis of our financial results as reported under GAAP. You should consider free cash flow and adjusted free cash flow alongside our other GAAP-based financial performance measures, net cash provided by (used in) operating activities, and our other GAAP financial results. The following table presents a reconciliation of free cash flow and adjusted free cash flow to net cash provided by (used in) operating activities, the most directly comparable GAAP measure, for each of the periods indicated (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net cash provided by operating activities	\$ 17,009	\$ 18,035	\$ 42,954	\$ 15,813
Capital expenditures	(1,945)	(225)	(4,124)	(2,951)
Capitalized software development costs	(4,835)	(4,173)	(12,704)	(11,609)
Free cash flow	10,229	13,637	26,126	1,253
Cash payments for 2022 Strategic Realignment	5,269	1,760	10,951	8,079
Adjusted free cash flow	\$ 15,498	\$ 15,397	\$ 37,077	\$ 9,332

- **Additional Supplemental Non-GAAP Financial Measures.** To supplement our consolidated financial statements, which are prepared and presented in accordance with GAAP, we provide investors with certain additional supplemental non-GAAP financial measures, including non-GAAP gross profit, non-GAAP gross margin and non-GAAP net income (loss), which we collectively refer to as non-GAAP financial measures. These non-GAAP financial measures exclude all or a combination of the following (as reflected in the following reconciliation tables): amortization of acquired intangibles, stock-based compensation expense, costs related to the 2022 Strategic Realignment, Anvil legal dispute accrual, change in fair value of contingent consideration, accretion of interest on convertible senior notes, (gain) loss on extinguishment of convertible notes, capped call modification and change in fair value and the tax impact of such adjustments. The tax impact of such adjustments was determined by recalculating the estimated annual effective tax rate utilizing non-GAAP pre-tax income estimated for the year and then applying the recalculated estimated annual effective tax rate to year-to-date non-GAAP income. The presentation of the non-GAAP financial measures is not intended to be considered in isolation or as a substitute for, or superior to, the financial information prepared and presented in accordance with GAAP. We use these non-GAAP financial measures for financial and operational decision-making purposes and as a means to evaluate period-to-period comparisons. We believe that these non-GAAP financial measures provide useful information about our operating results, enhance the overall understanding of past financial performance and future prospects and allow for greater transparency with respect to metrics used by our management in its financial and operational decision making. While our non-GAAP financial measures are an important tool for financial and operational decision making and for evaluating our own operating results over different periods of time, you should consider our non-GAAP financial measures alongside our GAAP financial results.

We believe that excluding the impact of amortization of acquired intangibles allows for more meaningful comparisons between operating results from period to period as the intangibles are valued at the time of acquisition and are amortized over a period of several years after the acquisition. We exclude stock-based compensation expense which can vary based on plan design, share price, share price volatility, and the expected lives of equity instruments granted. We believe that providing non-GAAP financial measures that exclude stock-based compensation expense allow for more meaningful comparisons between our operating results from period to period because stock-based compensation expense does not represent a cash expenditure. We believe that excluding costs related to the 2022 Strategic Realignment allows for more meaningful comparisons between operating results from period to period as this is a discrete event based on a unique set of business objectives and is incremental to the core activities that arise in the ordinary course of our business. We believe that excluding the Anvil legal dispute accrual, which reflects an estimated potential liability in connection with a lawsuit filed in April 2022 by certain former shareholders of The Anvil Group (International) Limited, Anvil Worldwide Limited and The Anvil Group Limited (collectively, “Anvil”) (see Note 17 in the notes to our condensed consolidated financial statements included in this Quarterly Report on Form 10-Q), allows for more meaningful comparisons between operating results from period to period as the litigation expense being excluded is not considered a normal, recurring expense, does not have a direct correlation to the operations of our business and is outside of the ordinary course of business due to the lack of frequency of similar cases that have been brought against us to date, the complexity of the case and the nature of the remedies sought. We believe that excluding the change in fair value of contingent consideration allows for more meaningful comparisons between operating results from period to period as it is non-operating in nature. We believe that excluding the impact of accretion of interest on convertible senior notes allows for more meaningful comparisons between operating results from period to period as accretion of interest on convertible senior notes relates to interest cost for the time value of money and are non-operating in nature. We believe that excluding (gain) loss on extinguishment of convertible notes, capped call modification and change in fair value allows for more meaningful comparisons between operating results from period to period as gains and losses on the extinguishment of convertible notes, capped call modifications and change in fair value are non-operating in nature. We do not engage in the repurchase of convertible notes on a regular basis or in the ordinary course of business. Accordingly, we believe that excluding these expenses provides investors and management with greater visibility of the underlying performance of our business operations, facilitates comparison of our results with other periods and may also facilitate comparison with the results of other companies in our industry.

There are limitations in using non-GAAP financial measures because the non-GAAP financial measures are not prepared in accordance with GAAP, may be different from non-GAAP financial measures used by other companies and exclude expenses that may have a material impact upon our reported financial results. Further, stock-based compensation expense has been and will continue to be for the foreseeable future a significant recurring expense in our business and an important part of the compensation provided to our employees.

The following table reconciles our GAAP gross profit to non-GAAP gross profit (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Gross profit	\$ 81,122	\$ 75,954	\$ 234,887	\$ 214,219
Amortization of acquired intangibles	1,980	2,790	6,530	9,055
Stock-based compensation	1,285	1,978	4,757	4,276
2022 Strategic Realignment	125	259	790	694
Non-GAAP gross profit	<u>\$ 84,512</u>	<u>\$ 80,981</u>	<u>\$ 246,964</u>	<u>\$ 228,244</u>

The following table reconciles our GAAP gross margin to non-GAAP gross margin⁽¹⁾:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Gross margin	71.0 %	68.2 %	70.5 %	68.1 %
Amortization of acquired intangibles margin	1.7 %	2.5 %	2.0 %	2.9 %
Stock-based compensation margin	1.1 %	1.8 %	1.4 %	1.4 %
2022 Strategic Realignment margin	0.1 %	0.2 %	0.2 %	0.2 %
Non-GAAP gross margin	<u>74.0 %</u>	<u>72.7 %</u>	<u>74.2 %</u>	<u>72.5 %</u>

⁽¹⁾ Columns may not add up to 100% due to rounding.

The following table reconciles our GAAP net income (loss) to non-GAAP net income (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net income (loss)	\$ 1,683	\$ (22,080)	\$ (28,015)	\$ (77,335)
Amortization of acquired intangibles	8,979	10,328	27,988	33,128
Stock-based compensation	8,598	17,407	38,177	39,702
2022 Strategic Realignment	5,714	1,227	10,718	10,821
Anvil legal dispute accrual	8,064	—	8,064	—
Change in fair value of contingent consideration	—	—	—	(57)
Accretion of interest on convertible senior notes	684	1,168	2,122	3,492
(Gain) loss on extinguishment of convertible notes, capped call modification and change in fair value	(12,658)	4,770	(12,658)	4,770
Income tax adjustments	(841)	(510)	(1,918)	(1,321)
Non-GAAP net income	<u>\$ 20,223</u>	<u>\$ 12,310</u>	<u>\$ 44,478</u>	<u>\$ 13,200</u>

Liquidity and Capital Resources

To date, we have financed our operations primarily through cash from sales to our customers, along with equity issuances and debt financing arrangements. Our principal source of liquidity is cash and cash equivalents totaling \$97.7 million as of September 30, 2023. We have generated significant losses since inception and expect to continue to generate losses for the foreseeable future.

In March 2023, Silicon Valley Bank and Signature Bank were closed and taken over by the Federal Deposit Insurance Corporation, which raised concern regarding the stability of other banks in the United States and in particular with respect to regional banks. While we have not been materially impacted by such events to date, if our primary banking partners or the banking partners of our customers were to experience a similar crisis, it may cause a material impact on our liquidity, including the ability to access our cash and cash equivalents, or the liquidity of our customers such as delays in, or failure to, make payments, or reduce their demand for our products.

We believe that our cash and cash equivalent balances and the cash flows generated by our operations will be sufficient to satisfy our anticipated cash needs for working capital and capital expenditures for at least the next 12 months. We believe we will meet longer-term expected future cash requirements and obligations. However, our belief may prove to be incorrect, and we could utilize our available financial resources sooner than we currently expect. Our future capital requirements and the adequacy of available funds will depend on many factors, including those set forth in the section of Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2022 and Part II, Item 1A of this Quarterly Report on Form 10-Q. We cannot assure you that we will be able to raise additional capital on acceptable terms or at all. In addition, if we fail to meet our operating plan during the next 12 months, our liquidity could be adversely affected.

Material Cash Requirements and Contractual Obligations

We expect to use cash primarily for operating activities, such as expansion of our sales and marketing operations, research and development activities and other working capital needs, such as salaries, bonuses, and other personnel cost and data center hosting costs, as well as payments for acquisitions of businesses, interest payments on our convertible senior notes and payments related to the 2022 Strategic Realignment. We expect to continue to finance our operations primarily through cash from sales to our customers and may consider future equity issuances and debt financing arrangements. As of September 30, 2023, our commitments to settle contractual obligations include \$363.7 million principal amount of indebtedness under the 2026 Notes and 2024 Notes (see Note 9 of the notes to consolidated financial statements) and lease obligations of \$26.6 million (see Note 16 of the notes to condensed consolidated financial statements).

Cash Flows

The following table summarizes our cash flows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Cash, cash equivalents and restricted cash at beginning of period	\$ 221,882	\$ 477,479	\$ 201,594	\$ 492,758
Net cash provided by operating activities	17,009	18,035	42,954	15,813
Net cash used in investing activities	(6,692)	(4,381)	(12,372)	(14,590)
Net cash used in financing activities	(130,357)	(450)	(130,263)	(999)
Effects of exchange rates on cash, cash equivalents and restricted cash	(1,295)	(1,010)	(1,366)	(3,309)
Cash, cash equivalents and restricted cash at end of period	<u>\$ 100,547</u>	<u>\$ 489,673</u>	<u>\$ 100,547</u>	<u>\$ 489,673</u>

Sources of Funds

Our sources of funds include cash from sales to our customers, along with equity issuances and debt financing arrangements including our 2026 Notes and 2024 Notes.

Uses of Funds

Our historical uses of cash have primarily consisted of cash used for operating activities, such as expansion of our sales and marketing operations, research and development activities and other working capital needs as well as repurchases of convertible notes and payments related to the 2022 Strategic Realignment.

Operating Activities

Our net loss and cash flows provided by or used in operating activities are significantly influenced by our investments in headcount and infrastructure to support our growth, marketing and sponsorship expenses, and our ability to bill and collect in a timely manner. Our net loss has been significantly greater than our use of cash for operating activities due to the inclusion of non-cash expenses and charges.

Operating activities generated \$43.0 million in cash in the nine months ended September 30, 2023, primarily as a result of non-cash operating expenses of \$87.2 million which was offset by our net loss of \$28.0 million and \$16.3 million in cash used as a result of changes in operating assets and liabilities. Included in the \$43.0 million cash provided by operating activities was \$11.0 million cash paid related to the 2022 Strategic Realignment. Specifically, we recognized non-cash charges aggregating to \$44.3 million for depreciation and amortization of intangible assets, capitalized software development costs and property and equipment, \$38.2 million for stock-based compensation, \$14.5 million for amortization of deferred commissions, \$2.2 million for provision for credit losses and \$2.1 million related to the accretion of interest on our convertible senior notes, partially offset by \$12.7 million gain on extinguishment of convertible notes, capped call modification and change in fair value, \$1.0 million for deferred income taxes and \$0.4 million for gain on disposal of assets. The net change in operating assets and liabilities of \$16.3 million reflected an \$18.8 million increase in deferred cost, an \$11.9 million decrease in deferred revenue, a \$5.3 million decrease in other liabilities, a \$6.1 million decrease in accrued payroll and employee related liabilities, a \$2.1 million increase in other assets and a \$1.6 million increase in prepaid expenses. These amounts were offset by a \$25.4 million decrease in accounts receivable, a \$2.1 million increase in accrued expenses and a \$1.9 million increase in accounts payable.

Operating activities generated \$15.8 million in cash in the nine months ended September 30, 2022, primarily as a result of non-cash operating expenses of \$99.6 million which was offset by our net loss of \$77.3 million and \$6.5 million in cash used as a result of changes in operating assets and liabilities. Included in the \$15.8 million cash provided by operating activities was \$8.1 million cash paid related to the 2022 Strategic Realignment. We recognized non-cash charges aggregating to \$45.3 million for depreciation and amortization of intangible assets, capitalized software development costs and property and equipment, \$39.7 million for stock-based compensation, \$13.4 million for amortization of deferred commissions, \$4.8 million loss on extinguishment of convertible notes, capped call modification and change in fair value, \$3.5 million related to the accretion of interest on our convertible senior notes, and \$0.9 million for loss on disposal of assets, offset by \$7.1 million for deferred income taxes, \$0.7 million for provision for credit losses and \$0.1 million change in the fair value of our contingent consideration obligation. The net change in operating assets and liabilities of \$6.5 million reflected a \$16.2 million increase in deferred cost, an \$11.3 million decrease in other liabilities, a \$6.9 million decrease in accrued payroll and employee related liabilities, a \$4.7 million decrease in deferred revenue, a \$3.2 million decrease in accounts payable and a \$0.6 million decrease in accrued expenses. These amounts were offset by a \$28.8 million decrease in accounts receivable and a \$7.6 million decrease in other assets.

Investing Activities

Our investing activities consist primarily of capital expenditures for capitalized software development costs, business acquisitions, property and equipment expenses, purchase and sales of short-term investments and the sale of assets.

Investing activities used \$12.4 million in cash in the nine months ended September 30, 2023, which consists of a \$12.7 million investment in software development, \$4.1 million in purchases of property and equipment offset by \$4.4 million cash received from the sale of assets and \$0.1 million attributed to a landlord reimbursement.

Investing activities used \$14.6 million in cash in the nine months ended September 30, 2022, which consists of a \$11.6 million investment in software development, \$3.0 million in purchases of property and equipment and \$1.2 million to settle certain Anvil acquisition purchase liabilities, offset by \$1.2 million attributed to a landlord reimbursement.

Financing Activities

Cash generated by financing activities includes proceeds from borrowings under our convertible senior notes, proceeds from the partial termination of convertible note capped call hedges, proceeds from the exercise of employee stock options and contributions to our employee stock purchase plan. Cash used in financing activities includes payments for debt and offering issuance costs, purchases of convertible notes capped call hedges, extinguishment of debt, payment of contingent consideration and employee withholding liabilities from the issuance of shares related to restricted stock units and performance-based restricted stock units.

We may from time to time seek to retire or purchase additional outstanding debt through cash purchases and/or exchanges for equity securities, in open market purchases, privately negotiated transactions or otherwise. Such repurchases or exchanges, if any, will depend on prevailing market conditions, our liquidity requirements, contractual restrictions and other factors. The amounts involved in any such transactions, individually or in the aggregate, may be material. Further, any such repurchases or exchanges may result in us acquiring and retiring a substantial amount of such indebtedness, which could impact the trading liquidity of such indebtedness.

Financing activities used \$130.3 million of cash in the nine months ended September 30, 2023, which reflects \$129.6 million in payments for the extinguishment of the 2026 Notes and 2024 Notes, \$6.2 million payment for employee withholding taxes related to the issuance of restricted stock units and performance-based restricted stock units and \$0.1 million in other financing activities partially offset by \$4.3 million from the issuance of stock under our employee stock purchase plan and \$1.3 million from the exercise of stock options.

Financing activities used \$1.0 million of cash in the nine months ended September 30, 2022, which reflects a \$4.2 million payment for employee withholding taxes related to the issuance of restricted stock units and performance-based restricted stock units offset by \$3.2 million from the issuance of stock under our employee stock purchase plan.

Critical Accounting Estimates

Our condensed consolidated financial statements are prepared in accordance with U.S. GAAP. The preparation of our condensed consolidated financial statements requires us to make estimates, assumptions and judgments that affect the reported amounts of assets, liabilities, revenue, costs and expenses, and related disclosures. We base our estimates and assumptions on historical experience and other factors that we believe to be reasonable under the circumstances. We evaluate our estimates and assumptions on an ongoing basis. Our actual results may differ from these estimates.

There have been no changes to our critical accounting estimates described in the Annual Report on Form 10-K for the year ended December 31, 2022, filed with the SEC on February 24, 2023, that have had a material impact on our condensed consolidated financial statements and related notes.

Recently Issued Accounting Pronouncements

See Note 2 to our unaudited condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q for a summary of recently issued and adopted accounting pronouncements.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our market risk exposure is primarily the result of fluctuations in interest rates and foreign exchange rates as well as, to a lesser extent, inflation.

Interest Rate Risk

Our investment portfolio is exposed to market risk from changes in interest rates. The fair market value of fixed rate securities may be adversely impacted by fluctuations in interest rates while income earned on floating rate securities may decline as a result of decreases in interest rates. Under our current policies, we do not use interest rate derivative instruments to manage exposure to interest rate changes. We attempt to ensure the safety and preservation of our invested principal funds by limiting default risk, market risk and reinvestment risk. We mitigate default risk by investing in investment grade securities. We have historically maintained a relatively short average maturity for our investment portfolio, and we believe a hypothetical 100 basis point adverse move in interest rates along the entire interest rate yield curve would not change the fair value of our interest sensitive financial instruments by a material amount. In addition, if a 100 basis point change in overall interest rates were to occur in 2023, our interest income would not change significantly in relation to amounts we would expect to earn, based on our cash, cash equivalents, and investments as of September 30, 2023.

Changes in interest rates may also impact gains or losses from the conversion of our outstanding convertible senior notes. In March 2021, we issued \$375 million in aggregate principal amount of our 2026 Notes of which \$300.3 million remain outstanding as of September 30, 2023. During the three months ended September 30, 2023, we paid approximately \$64.9 million in cash to repurchase approximately \$74.7 million principal amount of the 2026 Notes. In December 2019, we issued \$450 million in aggregate principal amount of our 2024 Notes of which \$63.5 million remain outstanding as of September 30, 2023. During the year ended December 31, 2022, we paid approximately \$288.8 million in cash to repurchase approximately \$316.4 million principal amount of the 2024 Notes. During the three months ended September 30, 2023, we paid approximately \$65.7 million in cash to repurchase approximately \$70.1 million principal amount of the 2024 Notes. The 2026 Notes and 2024 Notes are convertible under certain circumstances, including trading price conditions related to our common stock, and upon conversion, we will pay or deliver, as the case may be, cash, shares of our common stock, or a combination of cash and shares of our common stock, at our election. The 2026 Notes and 2024 Notes were not convertible as of September 30, 2023.

We are exposed to interest rate risk in the ordinary course of our business. Our cash, cash equivalents and investments include cash in readily available checking and money market accounts and marketable securities. These securities are not dependent on interest rate fluctuations that may cause the principal amount of these assets to fluctuate.

We had cash and cash equivalents of \$97.7 million as of September 30, 2023, which consisted of bank deposits and money market funds. To date, fluctuations in interest income have not been significant.

We do not enter into investments for trading or speculative purposes and have not used any derivative financial instruments to manage our interest rate risk exposure.

Foreign Currency Exchange Risk

We have foreign currency risks related to our revenue and operating expenses denominated in currencies other than our functional currency, the U.S. dollar, principally British Pounds, Euro, Norwegian Krone, Swedish Kronor and other foreign currencies. Movements in foreign currencies in which we transact business could significantly affect future net earnings. For example, the strengthening of the U.S. dollar has a negative impact on our reported international net revenue but a positive impact on our reported international operating expenses. We do not currently engage in any hedging activity to reduce our potential exposure to currency fluctuations, although we may choose to do so in the future. A hypothetical 10% change in foreign exchange rates during any of the periods presented would not have had a material impact on our consolidated financial statements. As our international operations grow, we will continue to reassess our approach to manage our risk relating to fluctuations in foreign currency rate.

Inflation Risk

We do not believe that inflation has had a material effect on our business, financial condition or results of operations historically. If our costs were to become subject to significant inflationary pressures, we may not be able to fully offset such higher costs through price increases. Our inability or failure to do so could harm our business, financial condition and results of operations.

Item 4. Controls and Procedures.**Evaluation of Disclosure Controls and Procedures**

We maintain “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

Our management, with the participation of our principal executive officer and principal financial officer, has evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on such evaluation, our principal executive officer and principal financial officer have concluded that as of such date, our disclosure controls and procedures were effective at a reasonable assurance level.

Changes in Internal Control

There were no changes in our internal control over financial reporting identified in management’s evaluation pursuant to Rules 13a-15(d) or 15d-15(d) of the Exchange Act during the period covered by this Quarterly Report on Form 10-Q that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

Our management, including our principal executive officer and principal financial officer, does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent or detect all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within our global organization have been detected. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings.

See Note 17 in the notes to our condensed consolidated financial statements included in this Quarterly Report on Form 10-Q for a discussion of our legal proceedings, which is incorporated herein by reference.

Item 1A. Risk Factors.

We operate in a rapidly changing environment that involves a number of risks, which could materially affect our business, financial condition or future results, some of which are beyond our control. In addition to the other information set forth in this Quarterly Report on Form 10-Q, the risks and uncertainties that we believe are most important for you to consider are discussed in Part I-Item 1A under the heading “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2022, as filed with the SEC on February 24, 2023. During the nine months ended September 30, 2023, there were no material changes to the risk factors that were disclosed in our Annual Report on Form 10-K for the year ended December 31, 2022.

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

(a) Recent Sales of Unregistered Equity Securities

None

(b) Use of Proceeds

None

(c) Issuer Purchase of Equity Securities

None

Item 3. Defaults Upon Senior Securities.

None

Item 4. Mine Safety Disclosures.

Not applicable

Item 5. Other Information.

Trading Arrangements

During the three months ended September 30, 2023, the following officers (as defined in Rule 16a-1(f) under the Exchange Act) adopted “Rule 10b5-1 trading arrangements” (as such term is defined in Item 408(a) of Regulation S-K).

Name and Title	Action Taken (Date of Action)	Expiration Date	Aggregate Number of Shares of Common Stock to be Sold
Noah F. Webster, Chief Legal and Compliance Officer	Adoption (September 6, 2023)	January 31, 2025	Up to 28,746 shares ⁽¹⁾
John Di Leo, Chief Revenue Officer	Adoption (September 7, 2023)	March 31, 2025	See footnote ⁽²⁾
Bryan Barney, Executive Vice President and Chief Product Officer	Adoption (September 13, 2023)	January 31, 2025	Up to 50,730 shares ⁽³⁾
Patrick Brickley, Executive Vice President and Chief Financial Officer	Adoption (September 15, 2023)	March 31, 2025	See footnote ⁽⁴⁾
Phillip E. Huff, Chief Accounting Officer and Corporate Controller	Adoption (September 15, 2023)	March 31, 2025	See footnote ⁽⁵⁾

- (1) Includes (1) 14,373 shares subject to restricted stock unit (“RSU”) awards previously granted to Mr. Webster that may vest and be released to him on or before January 31, 2025 upon satisfaction of the applicable service-based vesting conditions and (2) up to 14,373 shares subject to performance-based restricted stock unit (“PSU”) awards previously granted to Mr. Webster that may vest and be released to him on or before January 31, 2025 upon satisfaction of the applicable performance-based vesting conditions. The actual number of shares that may vest and be released to Mr. Webster pursuant to PSU awards and that will be subject to the Rule 10b5-1 trading arrangement upon satisfaction of the applicable performance conditions is not yet determinable.
- (2) This Rule 10b5-1 trading arrangement includes shares to be sold to satisfy tax withholding obligations arising from the vesting of 50,000 RSUs previously granted to Mr. Di Leo that may vest and be released to him on or before March 31, 2025 upon satisfaction of the applicable service-based vesting conditions. The actual number of shares that will be subject to the Rule 10b5-1 trading arrangement is not yet determinable.
- (3) This Rule 10b5-1 trading arrangement includes (1) shares to be sold to satisfy tax withholding obligations arising from the vesting of 50,000 RSU awards previously granted to Mr. Barney that may vest and be released to him on or before January 31, 2025 upon satisfaction of the applicable service-based vesting conditions, (2) up to 100% of such shares remaining after the satisfaction of such tax withholding obligations and (3) up to 730 owned shares.
- (4) This Rule 10b5-1 trading arrangement includes shares to be sold to satisfy tax withholding obligations arising from the vesting of (1) 59,137 RSU awards previously granted to Mr. Brickley that may vest and be released to him on or before March 31, 2025 upon satisfaction of the applicable service-based vesting conditions and (2) up to 6,903 PSU awards previously granted to Mr. Brickley that may vest and be released to him on or before March 31, 2025 upon satisfaction of the applicable performance-based vesting conditions. The actual number of shares that may vest and be released to Mr. Brickley pursuant to PSU awards upon satisfaction of the applicable performance conditions is not yet determinable. Moreover, the actual number of shares that will be subject to the Rule 10b5-1 trading arrangement is not yet determinable.
- (5) This Rule 10b5-1 trading arrangement includes (1) shares to be sold to satisfy tax withholding obligations arising from the vesting of (a) 6,204 RSU awards previously granted to Mr. Huff that may vest and be released to him on or before March 31, 2025 upon satisfaction of the applicable service-based vesting conditions and (b) up to 3,981 PSU awards previously granted to Mr. Huff that may vest and be released to him on or before March 31, 2025 upon satisfaction of the applicable performance-based vesting conditions and (2) up to 35% of such shares remaining after the satisfaction of such tax withholding obligations. The actual number of shares that may vest and be released to Mr. Huff pursuant to PSU awards upon satisfaction of the applicable performance conditions is not yet determinable. Moreover, the actual number of shares that will be subject to the Rule 10b5-1 trading arrangement is not yet determinable.

Amendments to Bylaws

On November 7, 2023, our Board approved amendments to our Second Amended and Restated Bylaws (the “Bylaws”), which became effective the same day. Among other things, the amendments:

- update the advance notice provisions that apply where a stockholder intends to propose a director nomination or other business at a stockholder meeting, including to address newly adopted Rule 14a-19 of the Exchange Act (“Rule 14a-19”), by requiring:
 - any stockholder submitting a nomination notice to make a representation as to whether such stockholder intends to solicit proxies in support of director nominees other than our nominees in accordance with Rule 14a-19 and to provide reasonable evidence that certain requirements of such rule have been satisfied;
 - the nomination of each proposed director nominee other than our nominees be disregarded (notwithstanding that the nominee is included as a nominee in our proxy statement, notice of meeting or other proxy materials for any stockholder meeting (or any supplement thereto) and notwithstanding that proxies or votes in respect of the election of such proposed nominees may have been received by us (which proxies and votes shall be disregarded)) if, after a stockholder provides notice pursuant to Rule 14a-19, such stockholder subsequently fails to comply with the requirements of Rule 14a-19 or fails to timely provide reasonable evidence that certain requirements of such rule have been satisfied;
 - that the number of nominees a stockholder may nominate for election at a stockholder meeting may not exceed the number of directors to be elected at such meeting;
 - certain representations with respect to a proposed nominee regarding the absence of certain voting commitments, disclosure of compensation for service and compliance with our corporate governance and other policies, and intent to serve the entire term;

- additional background information and disclosures regarding proposing stockholders, proposed nominees and business, and other persons related to a stockholder's solicitation of proxies; and
- that whenever a document or information must be delivered to us under the advance notice provisions such document or information must be in writing exclusively and must be delivered exclusively by hand, or by certified or registered mail, return receipt requested.
- require that any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, with the white proxy card being reserved for exclusive use by our Board; and
- make certain other technical, modernizing and clarifying changes.

The foregoing description is a summary and is qualified in its entirety by reference to the full text of the Bylaws, a copy of which is attached as Exhibit 3.2 hereto and is incorporated by reference herein.

Item 6. Exhibits.

Exhibit No.	Exhibit Description	Filed Herewith	Incorporated by Reference			
			Form	File No.	Exhibit	Filing Date
3.1	Sixth Amended and Restated Certificate of Incorporation of Everbridge, Inc.		10-Q	001-37874	3.1	8/9/21
3.2	Third Amended and Restated Bylaws of Everbridge, Inc.	X				
31.1	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	X				
31.2	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	X				
32.1*	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	X				
32.2*	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	X				
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.	X				
101.SCH	Inline XBRL Taxonomy Extension Schema Document	X				
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document	X				
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document	X				
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	X				
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	X				
104	Cover Page Interactive Data File - the cover page interactive data is embedded within the Inline XBRL document or included within the Exhibit 101 attachments.	X				

* This certification is deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

SIGNATURES

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

Everbridge, Inc.

Date: November 9, 2023

By: /s/ David J. Wagner
David J. Wagner
Chief Executive Officer

Date: November 9, 2023

By: /s/ Patrick Brickley
Patrick Brickley
Executive Vice President and Chief Financial Officer

THIRD AMENDED AND RESTATED BYLAWS
OF
EVERBRIDGE, INC.
(A DELAWARE CORPORATION)

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THIRD AMENDED AND RESTATED BYLAWS

OF

EVERBRIDGE, INC. (A DELAWARE CORPORATION)

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the corporation in the State of Delaware shall be in the City of Wilmington, County of New Castle.

Section 2. Other Offices. The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II

CORPORATE SEAL

Section 1. Corporate Seal. The Board of Directors may adopt a corporate seal. The corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE III

STOCKHOLDERS' MEETINGS

Section 1. Place of Meetings. Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law ("**DGCL**").

Section 2. Annual Meetings.

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may properly come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. The corporation may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board of Directors at any time, before or after notice of such meeting has been sent to the stockholders. Nominations of persons for election to the Board of Directors of the corporation and the proposal of other business to be considered by the stockholders may be made

at an annual meeting of stockholders: (i) pursuant to the corporation's notice of meeting (or any supplement thereto) of stockholders (with respect to business other than nominations); (ii) brought specifically by or at the direction of the Board of Directors or a duly authorized committee thereof; or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving the stockholder's notice provided for in Section 5(b) below and who is a stockholder of record at the time of the annual meeting of stockholders, who is entitled to vote at the meeting and who complied with the notice procedures set forth in Section 5. For the avoidance of doubt, clause (iii) above shall be the exclusive means for a stockholder to make nominations and submit other business (other than matters properly included in the corporation's notice of meeting of stockholders and proxy statement under Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the "**1934 Act**")) before an annual meeting of stockholders.

(b) At an annual meeting of the stockholders, only such business shall be conducted as is a proper matter for stockholder action under Delaware law and as shall have been properly brought before the meeting in accordance with the procedures below.

(i) For nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Bylaws, the stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 5(b)(iii) and must update and supplement the information contained in such written notice on a timely basis as set forth in Section 5(c). Such stockholder's notice shall set forth: (A) as to each nominee such stockholder proposes to nominate at the meeting: (1) the name, age, business address and residence address of such nominee, (2) the principal occupation or employment of such nominee, (3) the class or series and number of shares of each class or series of capital stock of the corporation which are owned of record and beneficially by such nominee and list any pledge of or encumbrances on such shares, (4) the date or dates on which such shares were acquired and the investment intent of such acquisition, (5) the questionnaire, representation and agreement required by Section 5(e), completed and signed by such nominee, and (6) such other information concerning such nominee as would be required to be disclosed in a proxy statement soliciting proxies for the election of such nominee as a director in an election contest (even if an election contest is not involved and whether or not proxies are being or will be solicited), or that is otherwise required to be disclosed or provided to the corporation pursuant to Section 14 of the 1934 Act and the rules and regulations promulgated thereunder (including such person's written consent to being named as a nominee in a proxy statement, associated proxy card or other filings as a nominee and to serving as a director if elected); and (B) all of the information required by Section 5(b)(iv). The corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the corporation and to determine the independence (as such term is used in any applicable stock exchange listing requirements or applicable law) of such proposed nominee or to determine the eligibility of such proposed nominee to serve on any committee or sub-committee of the Board of Directors under any applicable stock exchange listing requirements or applicable law, or that the Board of Directors determines could be material to a reasonable stockholder's understanding of the background, qualifications, experience, independence, or lack thereof, of such proposed nominee. The number of nominees a stockholder may nominate for election at the annual meeting on its own behalf (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a

stockholder may nominate for election at the annual meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such annual meeting. A stockholder may not designate any substitute nominees unless the stockholder provides timely notice of such substitute nominee(s) in accordance with this Section 5, in the case of an annual meeting, or Section 6, in the case of a special meeting (and such notice contains all of the information, representations, questionnaires and certifications with respect to such substitute nominee(s) that are required by the Bylaws with respect to nominees for director).

(ii) Other than proposals sought to be included in the corporation's proxy materials pursuant to Rule 14(a)-8 under the 1934 Act, for business other than nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Bylaws, the stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 5(b)(iii), and must update and supplement the information contained in such written notice on a timely basis as set forth in Section 5(c). Such stockholder's notice shall set forth: (A) as to each matter such stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and the language of any proposed amendment to these Bylaws of the corporation), the reasons for conducting such business at the meeting, and any material interest (including any anticipated benefit of such business to any Proponent (as defined below) other than solely as a result of its ownership of the corporation's capital stock, that is material to any Proponent individually, or to the Proponents in the aggregate) in such business of any Proponent; and (B) all of the information required by Section 5(b)(iv).

(iii) To be timely, the written notice required by Section 5(b)(i) or 5(b)(ii) must be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that, subject to the last sentence of this Section 5(b)(iii), in the event that the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than seventy (70) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so received not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. In no event shall an adjournment or a postponement (or the public announcement thereof) of an annual meeting for which notice has been given, or for which a public announcement of the date of the meeting has been made by the corporation, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(iv) The written notice required by Section 5(b)(i) or 5(b)(ii) shall also set forth, as of the date of the notice and as to the stockholder giving the notice, the beneficial owner, if any, on whose behalf the nomination or proposal is made and any affiliate who controls either of the foregoing stockholder or beneficial owner, directly or indirectly (each, a **"Proponent"** and collectively, the **"Proponents"**): (A) the name and address of each Proponent who is a record stockholder, as they appear on the corporation's books, and the name and address of each other Proponent; (B) the class, series and number of shares of each class or series of the capital stock of

the corporation that are, directly or indirectly, owned of record or beneficially (within the meaning of Rule 13d-3 under the 1934 Act) by each Proponent (provided, that for purposes of this Section 5(b)(iv), such Proponent shall in all events be deemed to beneficially own all, including any shares of any class or series of capital stock of the corporation as to which such Proponent or any of its affiliates or associates has a right to acquire beneficial ownership whether immediately or at any time in the future; (C) a description of any agreement, arrangement or understanding (whether oral or in writing) with respect to such nomination or proposal (and/or the voting of shares of any class or series of capital stock of the corporation) between or among any Proponent and any of its affiliates or associates, the nominee (if applicable), and/or any other person (including their names), including, without limitation, any agreements, arrangements or understandings required to be disclosed pursuant to Item 5 or Item 6 of 1934 Act Schedule 13D, regardless of whether the requirement to file a Schedule 13D is applicable; (D) a representation that the stockholder is a holder of record of shares of the corporation at the time of giving notice, will be entitled to vote at the meeting and that such stockholder (or a qualified representative thereof) intends to appear at the meeting to nominate the person or persons specified in the notice (with respect to a notice under Section 5(b)(i)) or to propose the business that is specified in the notice (with respect to a notice under Section 5(b)(ii)); (E) a representation whether any Proponent or any other participant (as defined in Item 4 of Schedule 14A under the 1934 Act) will engage in a solicitation with respect to such nomination or proposal and, if so, the name of each participant in such solicitation and the amount of the cost of solicitation that has been and will be borne, directly or indirectly, by each participant in such solicitation and a representation as to whether the Proponents intend or are part of a group that intends (x) to deliver, or make available, a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's voting shares required to approve or adopt the proposal or elect the nominee, (y) to otherwise solicit proxies or votes from stockholders in support of such proposal or nomination and/or (z) to solicit proxies in support of any proposed nominee in accordance with Rule 14a-19 promulgated under the 1934 Act; (F) to the extent known by any Proponent, the name and address of any other stockholder supporting the proposal on the date of such stockholder's notice; (G) a description of all Derivative Transactions (as defined below) by each Proponent during the previous twelve (12) month period, including the date of the transactions and the class, series and number of securities involved in, and the material economic or voting terms of, such Derivative Transactions; (H) a certification regarding whether each Proponent has complied with all applicable federal, state and other legal requirements in connection with such Proponent's acquisition of shares of capital stock or other securities of the corporation and/or such Proponent's acts or omissions as a stockholder or beneficial owner of the corporation; and (I) any other information relating to each Proponent required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to, and in accordance with, Section 14 of the 1934 Act and the rules and regulations promulgated thereunder. For purposes of Sections 5 and 6, a "**Derivative Transaction**" means any agreement, arrangement, interest or understanding entered into by, or on behalf or for the benefit of, any Proponent or any of its affiliates or associates, whether record or beneficial:

- (w) the value of which is derived in whole or in part from the value of any class or series of shares or other securities of the corporation,
- (x) which otherwise provides any direct or indirect opportunity to gain or share in any gain derived from a change in the value of securities of the corporation,

- (y) the effect or intent of which is to mitigate loss, manage risk or benefit of security value or price changes, or
- (z) which provides the right to vote or increase or decrease the voting power of, such Proponent, or any of its affiliates or associates, with respect to any securities of the corporation,

which agreement, arrangement, interest or understanding may include, without limitation, any option, warrant, debt position, note, bond, convertible security, swap, stock appreciation right, short position, profit interest, hedge, right to dividends, voting agreement, performance-related fee or arrangement to borrow or lend shares (whether or not subject to payment, settlement, exercise or conversion in any such class or series), and any proportionate interest of such Proponent in the securities of the corporation held by any general or limited partnership, or any limited liability company, of which such Proponent is, directly or indirectly, a general partner or managing member.

(c) A stockholder providing the written notice required by Section 5(b)(i) or (ii) shall update and supplement such notice in writing, if necessary, so that the information (other than the representations required by Section 5(b)(iv)(E)) provided or required to be provided in such notice is true and correct in all material respects as of (i) the record date for the determination of stockholders entitled to notice of the meeting and (ii) the date that is five (5) Business Days prior to the meeting and, in the event of any adjournment or postponement thereof, five (5) Business Days prior to such adjourned or postponed meeting, provided, that no such update or supplement shall cure or affect the accuracy (or inaccuracy) of any representations made by any Proponent, any of its affiliates or associates, or a nominee or the validity (or invalidity) of any nomination or proposal that failed to comply with this Section 5 or is rendered invalid as a result of any inaccuracy therein. In the case of an update and supplement pursuant to clause (i) of this Section 5(c), such update and supplement must be received by the Secretary at the principal executive offices of the corporation not later than five (5) Business Days after the later of the record date for the determination of stockholders entitled to notice of the meeting or the public announcement of such record date. In the case of an update and supplement pursuant to clause (ii) of this Section 5(c), such update and supplement shall be received by the Secretary at the principal executive offices of the not later than two (2) Business Days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, two (2) Business Days prior to such adjourned or postponed meeting (or if there are fewer than two (2) Business Days between the date for the meeting, or the date of the immediately preceding adjournment or postponement thereof, and the date for the adjourned or postponed meeting, not later the day prior to such adjourned or postponed meeting).

(d) Notwithstanding anything in Section 5(b)(iii) to the contrary, in the event that the number of directors to be elected to the Board of Directors of the corporation at an annual meeting is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the corporation at least ten (10) days before the last day a stockholder may deliver a notice of nomination in accordance with Section 5(b)(iii), a stockholder's notice required by this Section 5 and which complies with the requirements in Section 5(b)(i), other than the timing requirements in Section 5(b)(iii), shall also be considered timely, but only with respect to nominees for any new positions created by such

increase, if it shall be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the corporation.

(e) To be eligible to be a nominee for election or re-election as a director of the corporation pursuant to a nomination under clause (iii) of Section 5(a) or clause (ii) of Section 6(c), as applicable, each Proponent must deliver (in accordance with the time periods prescribed for delivery of notice under Sections 5(b)(iii), 5(d) or 6(c), as applicable) to the Secretary at the principal executive offices of the corporation a written questionnaire with respect to the background, qualifications, stock ownership and independence of such proposed nominee and the background of any other person or entity on whose behalf the nomination is being made (in the form provided by the Secretary within ten (10) days following a written request therefor by a stockholder of record) and a written representation and agreement (in the form provided by the Secretary within ten (10) days following a written request therefor by a stockholder of record) that such person (i) is not and will not become a party to (A) any agreement, arrangement or understanding (whether oral or in writing) with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed in the questionnaire or (B) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the corporation, with such person's fiduciary duties under applicable law; (ii) is not and will not become a party to any agreement, arrangement or understanding (whether oral or in writing) with any person or entity other than the corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director of the corporation or nominee that has not been disclosed in such questionnaire; (iii) would be in compliance, if elected as a director of the corporation, and will comply with, all applicable corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the corporation that are publicly disclosed or which were provided by the Secretary with the written representation and agreement required by this Section 5(e) and (iv) if elected as a director of the corporation, intends to serve the entire term until the next meeting at which such candidate would face re-election.

(f) A person shall not be eligible for election or re-election as a director unless the person is nominated, in the case of an annual meeting, in accordance with clause (ii) or (iii) of Section 5(a) and in accordance with the procedures set forth in Sections 5(b), 5(c), 5(d), 5(e) and 5(f), as applicable, or in the case of a special meeting, in accordance with paragraph (c) of Section 6 of these Bylaws and the requirements thereof. Only such business shall be conducted at any annual meeting of the stockholders of the corporation as shall have been brought before the meeting in accordance with Section 5(a) of these Bylaws and in accordance with the procedures set forth in Sections 5(b), 5(c) and 5(f) of these Bylaws, as applicable. Notwithstanding anything to the contrary in these Bylaws, unless otherwise required by applicable law, if any Proponent (i) provides notice pursuant to Rule 14a-19(b) promulgated under the 1934 Act with respect to any proposed nominee and (ii) subsequently (x) fails to comply with the requirements of Rule 14a-19 promulgated under the 1934 Act (or fails to timely provide reasonable evidence sufficient to satisfy the corporation that such Proponent has met the requirements of Rule 14a-19(a)(3) promulgated under the 1934 Act in accordance with the following sentence) or (y) fails to inform the corporation that such Proponent no longer plans to solicit proxies in accordance with the requirements of Rule 14a-19 promulgated under the 1934 Act by delivering a written notice to the Secretary at the

principal executive offices of the corporation within two (2) Business Days after the occurrence of such change, then the nomination of each such proposed nominee shall be disregarded (and such nominee disqualified from standing for election or re-election), notwithstanding that the nominee is included (as applicable) as a nominee in the corporation's proxy statement, notice of meeting or other proxy materials for any stockholder meeting (or any supplement thereto) and notwithstanding that proxies or votes in respect of the election of such proposed nominees may have been delivered to the corporation (which proxies and votes shall be disregarded). If any Proponent provides notice pursuant to Rule 14a-19(b) promulgated under the 1934 Act, such Proponent shall deliver to the corporation, no later than five (5) Business Days prior to the applicable meeting, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3) promulgated under the 1934 Act. Notwithstanding anything to the contrary set forth herein, and for the avoidance of doubt, the nomination of any person whose name is included (as applicable) as a nominee in the corporation's proxy statement, notice of meeting or other proxy materials for any stockholder meeting (or any supplement thereto) as a result of any notice provided by any Proponent pursuant to Rule 14a-19(b) promulgated under the 1934 Act with respect to such proposed nominee and whose nomination is not made by or at the direction of the Board of Directors or any authorized committee thereof shall not be deemed (for purposes of clause (i) of Section 5(a) or otherwise) to have been made pursuant to the corporation's notice of meeting (or any supplement thereto) and any such nominee may only be nominated by a Proponent pursuant to clause (iii) of Section 5(a) and, in the case of a special meeting of stockholders, pursuant to and to the extent permitted under paragraph (c) of Section 6 of these Bylaws. Except as otherwise required by applicable law, the chairperson of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures and requirements set forth in these Bylaws (including, without limitation, compliance with Rule 14a-19 promulgated under the 1934 Act) and, if any proposed nomination or business is not in compliance with these Bylaws, or the Proponent does not act in accordance with the representations required by this Section 5, to declare that such proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded (and such nominee disqualified from standing for election or re-election), or that business shall not be transacted, notwithstanding that such proposal or nomination is set forth in (as applicable) the corporation's proxy statement, notice of meeting or other proxy materials and notwithstanding that proxies or votes in respect of such nominations or such business may have been solicited or received. Notwithstanding the foregoing provisions of this Section 5, unless otherwise required by applicable law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the corporation to present a nomination or proposed business, such nomination shall be disregarded (and such nominee disqualified from standing for election or re-election) and such proposed business shall not be transacted, notwithstanding that such nomination or proposed business is set forth in (as applicable) the corporation's proxy statement, notice of meeting or other proxy materials and notwithstanding that proxies or votes in respect of such vote may have been solicited or delivered to the corporation. For purposes of this Section 5, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders, which writing or electronic transmission, or a reliable reproduction of the

writing or electronic transmission, shall be provided to the Secretary of the corporation at least five (5) Business Days prior to the meeting of stockholders.

(g) Notwithstanding the foregoing provisions of this Section 5, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to the matters set forth in this Section 5, and any violation thereof shall be deemed a violation of these Bylaws. Nothing in these Bylaws shall be deemed to affect any rights of (i) stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided, however*, that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to proposals and/or nominations to be considered pursuant to Section 5(a)(iii) of these Bylaws; or (ii) the holders of any class or series of preferred stock of the corporation as to dividends or upon liquidation to make nominations of persons for election to the Board of Directors if and to the extent provided for under law, the Certificate of Incorporation, or these Bylaws.

(h) For purposes of Sections 5 and 6,

(i) "**affiliates**" and "**associates**" shall have the meanings set forth in Rule 405 under the Securities Act of 1933, as amended (the "**1933 Act**").

(ii) "**close of business**" means 5:00 p.m. local time at the principal executive offices of the corporation on any calendar day, whether or not such day is a business day.

(iii) "**public announcement**" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act or by such other means reasonably designed to inform the public or security holders in general of such information, including, without limitation, posting on the corporation's investor relations website.

Section 3.Special Meetings.

(a) Special meetings of the stockholders of the corporation may be called, for any purpose as is a proper matter for stockholder action under Delaware law, by (i) the Chairperson of the Board of Directors, (ii) the Chief Executive Officer, or (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption). The corporation may postpone, reschedule or cancel any special meeting of stockholders previously scheduled by the Board of Directors at any time, before or after notice of such meeting has been sent to the stockholders.

(b) For a special meeting called pursuant to Section 6(a), the Board of Directors shall determine the time and place, if any, of such special meeting. Upon determination of the time and place, if any, of the meeting, the Secretary shall cause a notice of meeting to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7 of these Bylaws. No business may be transacted at a special meeting otherwise than as specified in the notice of meeting.

(c) Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (i) by or at the direction of the Board of Directors or a duly authorized committee thereof or (ii) by any stockholder of the corporation who is a stockholder of record at the time of giving notice provided for in this paragraph and who is a stockholder of record at the time of the special meeting of stockholders, who shall be entitled to vote at the meeting and who complies with Section 5(b)(i), 5(b)(iv), 5(c), 5(e) and 5(f). The number of nominees a stockholder may nominate for election at the special meeting on its own behalf (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the special meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such special meeting. In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder of record entitled to vote in such election of directors may nominate a person or persons (as the case may be), for election to such position(s) as specified in the corporation's notice of meeting, if written notice setting forth the information required by Section 5(b)(i) of these Bylaws shall be received by the Secretary at the principal executive offices of the corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such meeting or the tenth (10th) day following the day on which public announcement is first made by the corporation of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. The stockholder shall also update and supplement such information as required under Section 5(c). In no event shall an adjournment or a postponement (or the public announcement thereof) of a special meeting for which notice has been given, or for which a public announcement of the date of the meeting has been made by the corporation, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(d) A person shall not be eligible for election or re-election as a director at the special meeting unless the person is nominated either in accordance with clause (i) or clause (ii) of Section 6(c). Except as otherwise required by law, the chairperson of the special meeting shall have the power and duty to determine whether a nomination was made in accordance with the procedures and requirements set forth in these Bylaws and, if any nomination or business is not in compliance with these Bylaws (including, without limitation, compliance with Rule 14a-19 promulgated under the 1934 Act), or if the Proponent does not act in accordance with the representations required by Section 5, to declare that such nomination shall not be presented for stockholder action at the meeting and shall be disregarded (and such nominee disqualified from standing for election or re-election), notwithstanding that such nomination is set forth in (as applicable) the corporation's proxy statement, notice of meeting, or other proxy materials and notwithstanding that proxies or votes in respect of such nomination may have been solicited or received. Notwithstanding the foregoing provisions of this Section 6, unless otherwise required by applicable law, if the stockholder (or a qualified representative of the stockholder (meeting the requirements specified in Section 5(f)) does not appear at the special meeting of stockholders of the corporation to present a nomination, such nomination shall be disregarded (and such nominee disqualified from standing for election or re-election), notwithstanding that the nomination is set forth in (as applicable) the corporation's proxy statement, notice of meeting or other proxy materials and notwithstanding that proxies or votes in respect of such nomination may have been solicited or delivered to the corporation.

(e) Notwithstanding the foregoing provisions of this Section 6, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 6, and any violation thereof shall be deemed a violation of these Bylaws. Nothing in these Bylaws shall be deemed to affect any rights of (i) stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided, however*, that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to nominations for the election to the Board of Directors or proposals of other business to be considered pursuant to Section 6(c) of these Bylaws; or (ii) the holders of any class or series of stock having a preference over the common stock as to dividends or upon liquidation to make nominations of persons for election to the Board of Directors if and to the extent provided for under law, the Certificate of Incorporation or these Bylaws.

Section 4. Notice of Meetings. Except as otherwise provided by law, notice of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of such meeting, such notice to specify the place, if any, date and hour of such meeting, the record date for determining the stockholders entitled to vote at such meeting, if such date is different from the record date for determining the stockholders entitled to notice of such meeting, in the case of special meetings, the purpose or purposes of the meeting, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at any such meeting. Notice shall be deemed given as provided in Section 232 of the DGCL.

Section 5. Quorum. At all meetings of stockholders, except where otherwise required by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the voting power of the outstanding shares of stock entitled to vote thereat shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairperson of the meeting or by the affirmative vote of the holders of a majority of the voting power of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote thereon, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute or by applicable stock exchange rules, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of the holders of a majority of the voting power of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise required by statute or by the Certificate of Incorporation or these Bylaws or by applicable stock exchange rules, a majority of the voting power of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall

constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute or by the Certificate of Incorporation or these Bylaws or by applicable stock exchange rules, the affirmative vote of the holders of a majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series.

Section 6.Adjournment And Notice of Adjourned Meetings. Any meeting of stockholders, whether annual or special, may be adjourned from time to time, whether or not a quorum is present, either by the chairperson of the meeting or by the affirmative vote of the holders of a majority of the voting power of the shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote thereon. When a meeting is adjourned to another time or place (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication) notice need not be given of the adjourned meeting if the time and place, if any, thereof and the means of remote communication, if any, by which stockholders and proxyholders may be deemed present in person and vote at such meeting are (i) announced at the meeting at which the adjournment is taken; (ii) displayed, during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication or (iii) set forth in the notice of meeting given in accordance with Section 7 of these Bylaws. At the adjourned meeting, the corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 38(a) of these Bylaws and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Section 7.Voting Rights. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period. Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board of Directors.

Section 8.Joint Owners of Stock. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his or her act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; or (c) if more than one (1) votes, but

the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or any person voting the shares, or a beneficiary, if any, may apply to the Delaware Court of Chancery or such other court as may have jurisdiction for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

Section 9. List of Stockholders. The corporation shall prepare, no later than the tenth day before each meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder; provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect all of the stockholders entitled to vote as of the tenth (10th) day before the meeting date. Nothing in this Section 12 shall require the corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of ten (10) days ending on the day before the meeting date, (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation.

Section 10. Action Without Meeting. Unless otherwise provided in the Certificate of Incorporation, no action shall be taken by the stockholders of the corporation except at an annual or a special meeting of the stockholders called in accordance with these Bylaws, and no action of the stockholders of the corporation may be taken by written consent or electronic transmission.

Section 11. Organization; Delivery to the Corporation.

(a) At every meeting of stockholders, the Chairperson of the Board of Directors, or, if a Chairperson has not been appointed or is absent, the Lead Independent Director, or if the Lead Independent Director has not been appointed or is absent, the Chief Executive Officer, or if no Chief Executive Officer is then serving or is absent, the President, or, if the President is absent, a chairperson of the meeting chosen by the Board of Directors shall act as chairperson. The Chairperson of the Board of Directors may appoint the Chief Executive Officer as chairperson of the meeting. The Secretary, or, in his or her absence, an Assistant Secretary or other officer or other person directed to do so by the chairperson of the meeting, shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairperson of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairperson, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining

order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairperson shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairperson of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

(c) Whenever this Article III requires one or more persons (including a record or beneficial owner of stock) to deliver a document or information (other than a document authorizing another person to act for a stockholder by proxy at a meeting of stockholders pursuant to Section 212 of the DGCL) to the corporation or any officer, employee or agent thereof (including any notice, request, questionnaire, revocation, representation or other document or agreement), the corporation shall not be required to accept delivery of such document or information unless the document or information is in writing exclusively (and not in an electronic transmission) and delivered exclusively by hand (including, without limitation, overnight courier service) or by certified or registered mail, return receipt requested.

ARTICLE IV

DIRECTORS

Section 1.Number. The authorized number of directors of the corporation shall be fixed in accordance with the Certificate of Incorporation. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

Section 2.Powers. The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

Section 3.Term of Office. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, each director whether elected at an annual meeting of stockholders or elected in the interim to fill vacancies and newly created directorships, shall be elected for a term expiring at the next annual meeting of stockholders following their election. In addition, notwithstanding the length of term of any director elected at an annual meeting of stockholders prior to the effective date of these Bylaws, or elected in the interim to fill vacancies or newly created directorships, each such director shall serve a term expiring at the next annual meeting of stockholders.

Notwithstanding the foregoing provisions of this Section 17, each director shall serve until his or her successor is duly elected and qualified or until his or her earlier death, resignation or

removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Section 4.Vacancies. Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock or as otherwise provided by applicable law, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director, and not by the stockholders, *provided, however*, that whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Bylaw in the case of the death, removal or resignation of any director.

Section 5.Resignation. Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time. If no such specification is made, the Secretary, in his or her discretion, may either (a) require confirmation from the director prior to deeming the resignation effective, in which case the resignation will be deemed effective upon receipt of such confirmation, or (b) deem the resignation effective at the time of delivery of the resignation to the Secretary. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until his or her successor shall have been duly elected and qualified.

Section 6.Removal. Subject to the rights of any series of Preferred Stock to elect additional directors under specified circumstances, and subject to any limitations imposed by law, the Board of Directors and any individual director may be removed with or without cause by the affirmative vote of the holders of a majority of the voting power of all then outstanding shares of capital stock of the corporation entitled to vote generally at an election of directors.

Section 7.Meetings.

(a) Regular Meetings. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place, if any, within or without the State of Delaware which has been designated by the Board

of Directors and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile or by electronic mail or other electronic means. No further notice shall be required for regular meetings of the Board of Directors.

(b) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place, if any, within or without the State of Delaware whenever called by the Chairperson of the Board of Directors, the Chief Executive Officer or a majority of the total number of authorized directors.

(c) Meetings by Electronic Communications Equipment. Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) Notice of Special Meetings. Notice of the time and place, if any, of all special meetings of the Board of Directors shall be given orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile or by electronic mail or other electronic means at least twenty-four (24) hours before the date and time of the meeting. If notice is sent by U.S. mail, it shall be sent by first class mail, postage prepaid, at least three (3) days before the date of the meeting.

Section 8.Quorum And Voting.

(a) Unless the Certificate of Incorporation requires a greater number a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; *provided, however*, at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

Section 9.Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission. After an action is taken, such writing or writings or transmission or transmissions shall be filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 10.Fees And Compensation. Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance

at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

Section 11. Committees.

(a) Executive Committee. The Board of Directors may appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any Bylaw of the corporation.

(b) Other Committees. The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) Term. The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock and the provisions of subsections (a) or (b) of this Section 25, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his or her death or voluntary resignation from the committee or on such date that the committee member, for any reason, is no longer a member of the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) Meetings. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 25 shall be held at such times and places (if any) as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place (if any) which has been determined from time to

time by such committee, and may be called by any director who is a member of such committee, upon notice to the members of such committee of the time and place (if any) of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

Section 12.Duties of Chairperson of the Board of Directors and Lead Independent Director.

(a) The Chairperson of the Board of Directors, if appointed and when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairperson of the Board of Directors shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(b) The Chairperson of the Board of Directors, or if the Chairperson is not an independent director, one of the independent directors, may be designated by the Board of Directors as lead independent director to serve until replaced by the Board of Directors ("Lead Independent Director"). The Lead Independent Director will: with the Chairperson of the Board of Directors, establish the agenda for regular Board of Directors meetings and serve as chairperson of Board of Directors meetings in the absence of the Chairperson of the Board of Directors; establish the agenda for meetings of the independent directors; coordinate with the committee chairs regarding meeting agendas and informational requirements; preside over meetings of the independent directors; preside over any portions of meetings of the Board of Directors at which the evaluation or compensation of the Chief Executive Officer is presented or discussed; preside over any portions of meetings of the Board of Directors at which the performance of the Board of Directors is presented or discussed; and perform such other duties as may be established or delegated by the Board of Directors.

Section 13.Organization. At every meeting of the directors, the Chairperson of the Board of Directors, or, if a Chairperson has not been appointed or is absent, the Lead Independent Director, or if the Lead Independent Director has not been appointed or is absent, the Chief Executive Officer (if a director), or, if a Chief Executive Officer is absent, the President (if a director), or if the President is absent, the most senior Vice President (if a director), or, in the absence of any such person, a chairperson of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his or her absence, any Assistant Secretary or other officer, director or other person directed to do so by the person presiding over the meeting, shall act as secretary of the meeting.

ARTICLE V

OFFICERS

Section 1. Officers Designated. The officers of the corporation shall include, if and when designated by the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer and the Treasurer. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and agents with such powers and duties as it shall deem appropriate or necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors or a committee thereof to which the Board of Directors has delegated such responsibility.

Section 2. Tenure And Duties of Officers.

(a) General. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

(b) Duties of Chief Executive Officer. The Chief Executive Officer shall preside at all meetings of the stockholders and at all meetings of the Board of Directors (if a director), unless the Chairperson of the Board of Directors or the Lead Independent Director has been appointed and is present. Unless an officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. To the extent that a Chief Executive Officer has been appointed and no President has been appointed, all references in these Bylaws to the President shall be deemed references to the Chief Executive Officer. The Chief Executive Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(c) Duties of President. The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors (if a director), unless the Chairperson of the Board of Directors, the Lead Independent Director or the Chief Executive Officer has been appointed and is present. Unless another officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors (or the Chief Executive Officer, if the Chief Executive Officer and President are not the same person and the Board of Directors has delegated the designation of the President's duties to the Chief Executive Officer) shall designate from time to time.

(d) Duties of Vice Presidents. A Vice President may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant (unless the duties of the President are being filled by the Chief Executive Officer). A Vice President shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief

Executive Officer, or, if the Chief Executive Officer has not been appointed or is absent, the President shall designate from time to time.

(e) Duties of Secretary. The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. The Chief Executive Officer, or if no Chief Executive Officer is then serving, the President may direct any Assistant Secretary or other officer to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time.

(f) Duties of Chief Financial Officer. The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time. To the extent that a Chief Financial Officer has been appointed and no Treasurer has been appointed, all references in these Bylaws to the Treasurer shall be deemed references to the Chief Financial Officer. The President may direct the Treasurer, if any, or any Assistant Treasurer, or the controller or any assistant controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each controller and assistant controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time.

(g) Duties of Treasurer. Unless another officer has been appointed Chief Financial Officer of the corporation, the Treasurer shall be the chief financial officer of the corporation and shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President, and, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Treasurer shall perform other duties commonly incident to the office of Chief Financial Officer and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President and Chief Financial Officer (if not Treasurer) shall designate from time to time.

Section 3.Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

Section 4.Resignations. Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

Section 5.Removal. Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any duly authorized committee of the Board of Directors or by any officer upon whom such power of removal may have been conferred by the Board of Directors.

ARTICLE VI

EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

Section 1.Execution of Corporate Instruments. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 2.Voting of Securities Owned By The Corporation. All stock and other securities and interests of other entities owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies and consents with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairperson of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

ARTICLE VII

SHARES OF STOCK

Section 1. Form And Execution of Certificates. The shares of the corporation shall be represented by certificates, or shall be uncertificated if so provided by resolution or resolutions of the Board of Directors. Certificates for the shares of stock, if any, shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation represented by certificates shall be entitled to have a certificate signed by or in the name of the corporation by any two authorized officers of the corporation, including, without limitation, the Chairperson of the Board of Directors, the Chief Executive Officer, the President, any Vice President, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, certifying the number of shares of the corporation owned by such holder in certificated form. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

Section 2. Lost Certificates. The corporation may issue a new certificate or certificates or uncertificated shares in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to give the corporation a bond (or other adequate security) sufficient to indemnify it against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed or the issuance of such new certificate or uncertificated shares.

Section 3. Transfers.

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

Section 4. Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not

be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a record date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for determining the stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 38(a) at the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 5.Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VIII

OTHER SECURITIES OF THE CORPORATION

Section 1.Execution of Other Securities. All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 35), may be signed by the Chairperson of the Board of Directors, the Chief Executive Officer, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided, however*, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such

persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX

DIVIDENDS

Section 1. Declaration of Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

Section 2. Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE X

FISCAL YEAR

Section 1. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

ARTICLE XI

INDEMNIFICATION

Section 1. Indemnification of Directors, Executive Officers, Other Officers, Employees and Other Agents.

(a) Directors and Executive Officers. The corporation shall indemnify any person who was or is made a party or is threatened to be made a party to or is otherwise involved in any proceeding by reason of the fact that he or she is or was a director or executive officer (for the purposes of this Article XI, "*executive officers*" shall have the meaning defined in Rule 3b-7 promulgated under the 1934 Act) of the corporation to the extent not prohibited by the DGCL,

whether the basis of such proceeding is alleged action in an official capacity as a director or executive officer or in any other capacity while serving as a director or executive officer, provided, however, that the corporation shall not be required to indemnify such person in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the DGCL or (iv) such indemnification is required to be made under subsection (d).

(b) Other Officers, Employees and Other Agents. The corporation shall have the power to indemnify (including the power to advance expenses to, in a manner consistent with subsection (c) of this Section 44) its other officers, employees and other agents as set forth in the DGCL. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person except executive officers to such officers or other persons as the Board of Directors shall determine.

(c) Expenses. The corporation shall advance to any current or former director or executive officer of the corporation, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by such person in defending (or participating as a witness in) any proceeding referred to in paragraph (a) of this section, provided, however, that an advancement of expenses incurred by a current or former director or executive officer in his or her capacity as a director or executive officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking (hereinafter an “*undertaking*”), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a “*final adjudication*”) that such indemnitee is not entitled to be indemnified for such expenses under this section or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (d) of this section, no advance shall be made by the corporation to a current or former executive officer of the corporation (except by reason of the fact that such executive officer is or was a director of the corporation in which event this paragraph shall not apply) in any proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to a criminal action or proceeding, that such person had reasonable cause to believe that his or her conduct was unlawful.

(d) Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and executive officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or executive officer. Any right to indemnification

or advances granted by this section to a current or former director or executive officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. To the extent permitted by law, the claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by a current or former executive officer of the corporation (except in any proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such executive officer is or was a director of the corporation) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person had reasonable cause to believe that his or her conduct was unlawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a current or former director or executive officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the current or former director or executive officer is not entitled to be indemnified, or to such advancement of expenses, under this section or otherwise shall be on the corporation.

(e) Non-Exclusivity of Rights. The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL.

(f) Survival of Rights. The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director or executive officer or officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) Insurance. To the fullest extent permitted by the DGCL, the corporation may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this section.

(h) Amendments. Any repeal or modification of this section shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged

occurrence of any action or omission to act that is the cause of any proceeding against any current or former director or executive officer of the corporation.

(i) **Saving Clause.** If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and executive officer to the full extent not prohibited by any applicable portion of this section that shall not have been invalidated. If this section shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and executive officer to the full extent under any other applicable law.

(j) **Certain Definitions.** For the purposes of this Bylaw, the following definitions shall apply:

(i) The term “**proceeding**” shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(ii) The term “**expenses**” shall be broadly construed and shall include, without limitation, court costs, attorneys’ fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(iii) The term the “**corporation**” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(iv) References to a “**director**,” “**executive officer**,” “**officer**,” “**employee**,” or “**agent**” of the corporation shall include, without limitation, situations where such person, while serving the corporation in such capacity, is also serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(v) References to “**other enterprises**” shall include employee benefit plans; references to “**fines**” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “**serving at the request of the corporation**” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an

employee benefit plan shall be deemed to have acted in a manner “*not opposed to the best interests of the corporation*” as referred to in this section.

ARTICLE XII

NOTICES

Section 1. Notices.

(a) **Notice To Stockholders.** Notice to stockholders of stockholder meetings shall be given as provided in Section 7 herein. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by U.S. mail or courier service, or by facsimile, electronic mail or other means of electronic transmission.

(b) **Notice To Directors.** Any notice required to be given to any director may be given by the method stated in subsection (a) or as otherwise provided in these Bylaws, with notice other than one which is delivered personally to be sent to such address or electronic mail address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known address or electronic mail address of such director.

(c) **Affidavit of Mailing.** An affidavit of notice, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

(d) **Methods of Notice.** It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(e) **Notice To Person With Whom Communication Is Unlawful.** Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(f) **Notice to Stockholders Sharing an Address.** Except as otherwise prohibited under DGCL, any notice given under the provisions of DGCL, the Certificate of Incorporation or

the Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the corporation within sixty (60) days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

(g) Waiver. Whenever notice is required to be given under any provision of the DGCL, the Certificate of Incorporation or these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or the Bylaws.

ARTICLE XIII

AMENDMENTS

Section 1.Amendments. Subject to the limitations set forth in Section 44(h) of these Bylaws or the provisions of the Certificate of Incorporation, the Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the corporation. Any adoption, amendment or repeal of the Bylaws of the corporation by the Board of Directors shall require the approval of a majority of the authorized number of directors. The stockholders also shall have power to adopt, amend or repeal the Bylaws of the corporation; *provided, however*, that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of a majority of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE XIV

LOANS TO OFFICERS

Section 1.Loans To Officers. Except as otherwise prohibited by applicable law, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed

to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

CERTIFICATIONS

I, David J. Wagner, certify that:

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

Date: November 9, 2023

By: /s/ David J. Wagner

Name: David J. Wagner

Title: Chief Executive Officer
(Principal Executive Officer)

CERTIFICATIONS

I, Patrick Brickley, certify that:

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

Date: November 9, 2023

By: /s/ Patrick Brickley

Name: Patrick Brickley

Title: Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the “Exchange Act”) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), I, David J. Wagner, Chief Executive Officer of Everbridge, Inc., do hereby certify that, to the best of my knowledge, the Quarterly Report on Form 10-Q of Everbridge, Inc. for the quarter ended September 30, 2023 (the “Report”):

- (1) fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of Everbridge, Inc. for the period presented herein.

Date: November 9, 2023

By: /s/ David J. Wagner

Name: David J. Wagner

Title: Chief Executive Officer
(Principal Executive Officer)

This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Everbridge, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.

CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the “Exchange Act”) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), I, Patrick Brickley, Executive Vice President and Chief Financial Officer of Everbridge, Inc., do hereby certify that, to the best of my knowledge, the Quarterly Report on Form 10-Q of Everbridge, Inc. for the quarter ended September 30, 2023 (the “Report”):

- (1) fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of Everbridge, Inc. for the period presented herein.

Date: November 9, 2023

By: /s/ Patrick Brickley

Name: Patrick Brickley

Title: Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Everbridge, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.
