

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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2023
or

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

For the transition period from _____ to _____
Commission File Number: 001-35628

PERFORMANT FINANCIAL CORPORATION
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

900 South Pine Island Road, Suite 150, Plantation FL
(Address of principal executive offices)

20-0484934
(I.R.S. Employer
Identification No.)

33324
(Zip Code)

Registrant's telephone number, including area code: (925) 960-4800
Securities registered pursuant to Section 12(b) of the Act:

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

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

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 (section 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 type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input checked="" 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 has filed a report on and attestation to its management's assessment of the effectiveness of its internal

control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

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

As of June 30, 2023 (the last business day of the registrant's most recently completed second quarter), the aggregate market value of the common stock held by non-affiliates of the registrant was \$119,717,155. Shares of common stock beneficially held by each officer and director and by each person who owns 10% or more of the outstanding common stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of March 12, 2024, 76,920,460 shares of the registrant's common stock were outstanding.

Documents Incorporated By Reference

Items 10 through 14 in Part III of this Form 10-K are incorporated by reference to the Registrant's definitive proxy statement on Schedule 14A, to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies from the Registrant's 2024 Annual Meeting of Stockholders, referred to in this report as the 2024 Proxy Statement.

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PART I

Cautionary Statement Regarding Forward-Looking Information

This Annual Report on Form 10-K contains, in addition to historical information, certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. All statements other than statements of historical fact contained in this Annual Report on Form 10-K, including statements regarding our future results of operations and financial position, strategy and plans, and our expectations for future operations, are forward-looking statements. The words “believe,” “may,” “will,” “estimate,” “continue,” “anticipate,” “design,” “intend,” “expect” and similar expressions are intended to identify forward-looking statements. We have based these forward-looking statements largely on our current expectations and projections about future events and trends that we believe may affect our financial condition, results of operations, strategy, short-term and long-term business operations and objectives, and financial needs. Forward-looking statements include, but are not limited to, statements about:

- our ability to generate revenue following long implementation periods associated with new customer contracts;
- our client relationships and our ability to maintain such client relationships;
- many of our customer contracts are subject to periodic renewal, are not exclusive, do not provide for committed business volumes;
- anticipated trends and challenges in our business and competition in the markets in which we operate;
- our indebtedness and our compliance, or failure to comply, with restrictive covenants in our credit agreement;
- our opportunities and expectations for growth in the various markets in which we operate;
- our ability to hire and retain employees with specialized skills that are required for our healthcare business;
- downturns in domestic or global economic conditions and other macroeconomic factors;
- our ability to generate sufficient cash flows to fund our ongoing operations and other liquidity needs;
- the impact of public health pandemics, such as COVID-19, on our business and operations, opportunities and expectations for the markets in which we operate;
- the impacts of a failure of our operating systems or technology infrastructure or those of our third-party vendors, service providers or subcontractors;
- the impacts of a cybersecurity breach or related incident to us or any of our third-party vendors, service providers or subcontractors;
- the adaptability of our technology platform to new markets and processes;
- our ability to invest in and utilize our data and analytics capabilities to expand our capabilities;
- our growth strategy of expanding in our existing markets and considering strategic alliances or acquisitions;
- maintaining, protecting and enhancing our intellectual property;
- our expectations regarding future expenses;
- expected future financial performance; and
- our ability to comply with and adapt to industry regulations and compliance demands.

These statements reflect current views with respect to future events and are based on assumptions and are subject to risks and uncertainties. There are a variety of factors that could cause actual results to differ materially from the anticipated results or expectations expressed in our forward-looking statements. There may be other factors of which the Company is not currently aware that may affect matters discussed in the forward-looking statements and may also cause actual results to differ materially from those discussed. These risks and uncertainties include, but are not limited to, those risks discussed in Item 1A of this report. Given these uncertainties, you should not place undue reliance on these forward-looking statements.

Forward-looking statements contained in this report present management’s views only as of the date of this report. We undertake no obligation to publicly update forward-looking statements, whether as a result of new information, future events or otherwise. You are advised, however, to consult any further disclosures we make on related subjects in our quarterly reports on Form 10-Q and current reports on Form 8-K filed with the Securities and Exchange Commission.

ITEM 1. Business

Overview

We support healthcare payers in identifying, preventing, and recovering waste and improper payments by leveraging advanced technology, analytics and proprietary data assets. We work with leading national and regional healthcare payers to provide eligibility-based, also known as coordination-of-benefits (COB) services, as well as claims-based services, which includes the audit and identification of improperly paid claims. We are a leading provider of these services in both government and commercial healthcare markets. We also provide advanced reporting capabilities, support services, customer care, and stakeholder training programs designed to mitigate future instances of improper payments.

We believe we have a leading position in our markets based on our technology-enabled services platform, long-standing client relationships, and the large volume of claims or funds we have audited and recovered for our clients. Further, we believe that our business platforms are adaptable to new markets and new processes and service offerings within our existing markets. We continue to enhance our platforms through investments in new data and analytics capabilities, which we believe will enable us to provide additional services related to the detection of fraud, waste and abuse. We endeavor to automate and optimize what traditionally have been manually intensive processes in order to drive higher workforce productivity. In 2023, we generated approximately \$117,000 of revenue per employee compared to \$110,000 of revenue per employee in 2022, based on the average number of employees during each of the years, respectively.

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

For the year ended December 31, 2023, we generated approximately \$113.7 million in revenues, \$7.5 million in net loss, \$3.4 million in adjusted EBITDA, and \$3.8 million in adjusted net loss. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations - Adjusted EBITDA and Adjusted Net Income (Loss)” in Item 7 below for a definition of adjusted EBITDA and adjusted net income (loss) and reconciliations of adjusted EBITDA and adjusted net loss to net income (loss) determined in accordance with generally accepted accounting principles.

The Healthcare Industry

The healthcare industry represents a significant portion of the U.S. Gross Domestic Product (GDP). According to Center for Medicare and Medicaid Services (CMS) National Health Expenditure (NHE) Projections, U.S. healthcare spending grew 4.1% in 2022, reaching \$4.5 trillion from \$4.3 trillion in 2021. National health spending is projected to grow at an average annual rate of 5.6% for 2024-2031 and to reach nearly \$7.2 trillion by 2031. As a share of the nation's GDP, national healthcare spending accounted for 17.3% in 2022, a decrease from 18.3% in 2021. Federal government-related spending grew 5.9% to \$944.3 billion in 2022 for Medicare, which provides a range of healthcare coverage primarily to elderly and disabled Americans and grew 9.6% to \$805.7 billion in 2022 for Medicaid, which provides federal matching funds for states to finance healthcare for individuals at or below the public assistance level. Over 2025-31, Medicare spending is projected to increase to an average rate of 7.8% per year and Medicaid spending is projected to increase to an average rate of 5.6%.

Medicare was initially established as part of the Social Security Act of 1965 and consists of four parts: Part A covers hospital and other inpatient stays; Part B covers hospital outpatient, physician and other services; Part C is known as Medicare Advantage, under which beneficiaries receive benefits through private health plans; and Part D is the Medicare outpatient prescription drug benefit.

CMS estimated that for Medicare Part A and Part B spending in 2023, approximately \$31.2 billion, or 7.4%, was improper. Medicare improper payments generally involve incorrect coding, procedures performed which were not medically necessary, and incomplete documentation or claims submitted based on outdated fee schedules, among other issues.

In addition to government-related healthcare spending, significant growth in spending is expected in the private healthcare market. According to CMS NHE Projections, the private healthcare market accounted for approximately \$1.3 trillion in spending in 2022. Private healthcare expenditures are projected to grow by 7.6% in 2024, and 5.2% per year on average from 2025 through 2031.

Our Competitive Strengths

We believe that our business is difficult to replicate, as it incorporates a combination of several important and differentiated elements, including:

- **Scalable and flexible technology-enabled services platform.** We have a purpose-built technology platform that is highly flexible, intuitive and easy to use for our audit, eligibility, and claims specialists. Our flexible platform is configurable and deployable across multiple markets and processes. For example, we have successfully implemented our platform across multiple healthcare offerings within claims auditing and other eligibility-based offerings, each having its own process complexities and nuances.
- **Advanced, technology-enabled workflow processes.** Our technology-enabled workflow processes, developed and refined over many years of operational experience enable us to disaggregate otherwise complex audit and recovery processes into a series of simple, efficient and consistent steps that are configurable and applicable to processing different types of services. We believe our workflow software is highly intuitive, which enables our audit and other claims specialists to manage each step of the Performant operational process, while automating a series of otherwise manually intensive and document-intensive steps. We believe our streamlined workflow technology and processes improve audit and eligibility services relative to more labor-intensive outsourcing models.
- **Strong data and analytics capabilities.** Our data and analytics capabilities allow us to achieve strong audit results, eligibility matching, and recovery rates for our clients. We have a proprietary data management and analysis platform which we use throughout our business. We have assembled a large amount of healthcare-related performance data for over a decade, which we combine with large volumes of client and third-party data to effectively analyze our clients' claims and other data for improper payments. We have also developed a number of analytical models for claims auditing, and analytics tools that we use to score our clients' inventory, determine the optimal workflow process and allocation of resources, and achieve higher levels of results for our clients. In addition, we utilize analytics tools to continuously measure and test our workflow processes to drive refinements and further enhance the quality and effectiveness of our capabilities.
- **Long-standing client relationships.** We believe our long-standing focus on achieving superior performance for our clients and the significant value our clients derive from this focus have helped us achieve long-tenured client relationships, strong contract retention and better access to new clients and future growth opportunities. For example, our relationship with CMS spans over fifteen years, and our relationships with our earliest commercial clients in the healthcare industry have been in place for a decade.
- **Extensive domain expertise in complex and regulated markets.** We have extensive experience and domain expertise in providing services for government and private institutions that generally operate in complex and regulated markets. We have demonstrated our ability to develop domain expertise in varied markets such as healthcare and other state and federal level entities. We believe we have the organizational experience that is required to understand and adapt to changes in the regulatory environment and overall objectives of our clients as a result of ongoing changes in public policy. Further, we believe this helps us identify and anticipate growth opportunities. For example, we successfully identified government healthcare as a potential growth opportunity that has thus far led to the award of eight contracts to us by CMS. Within commercial healthcare, we continue to expand the scope of our service with both new and existing clients, as evidenced by the implementation of 41 new commercial contracts in 2023. Together with our flexible technology platform, we have the ability to adapt our business strategy, to allocate resources and to respond to changes in our regulatory environment to capitalize on new growth opportunities.
- **Culture of innovation and client service philosophy enables continuous improvement and expanded value creation.** We have a concerted focus on developing new payment integrity concepts to increase savings for our clients. We have a collaborative approach to identify and resolve client payment integrity needs, with an emphasis on growing our customer pipeline in the healthcare market to serve mid-sized commercial healthcare plans that have historically been underserved by larger platforms. We typically target our client sales efforts into a cross functional matrix of client decision makers across payment integrity, finance, provider network management and clinical policy to drive expansion in our sales efforts.

- ***Proven and experienced management team.*** Our management team has significant industry experience and has demonstrated strong execution capabilities. Our senior management team, led by Simeon Kohl, has successfully grown our revenue base and service offerings, including the successful transition from our original student loan market into healthcare. Our management team's industry experience, combined with deep and specialized understanding of complex and highly regulated industries, has enabled us to maintain long-standing client relationships and strong financial results.

Our Growth Strategy

Key elements of our growth strategy include the following:

- ***Expand our payment integrity services in the healthcare market.*** According to CMS NHE Projections for expenditures in Medicare, Medicaid, and private healthcare will be in the trillions of dollars annually through 2031. As these large markets continue to grow, we expect the need for Performant's offerings to increase in the public and private healthcare markets. We have established relationships and contracts with both CMS and private healthcare plans on a national and regional level. We have a multi-pronged growth strategy for the healthcare market, divided amongst national, mid-tier and smaller health plans. These strategies include a combination of growth within our existing client base, as well as adding new clients. In doing so, we intend to pursue growth opportunities to provide claims-based and eligibility-based services for our clients' both prior to and post payment for healthcare services, including the detection of fraud, waste, and abuse.
- ***Pursue strategic alliances and acquisitions.*** We may selectively consider opportunities to grow through strategic alliances or acquisitions that are complementary to our business. These opportunities may enhance our existing capabilities, enable us to enter new markets, expand our product offerings and allow us to diversify our revenues.

Our Platform

Our data management, analytics, and technology-enabled services platform is proprietary and based on over two decades of experience in auditing and recovering large amounts of funds on behalf of our clients across several markets. The components of our platform include our data management expertise, data analytics capabilities and technology-based workflow processes. Our platform integrates these components to allow us to achieve optimized outcomes for our clients in the form of increased efficiency and productivity and high efficacy rates. Our platform and workflow processes are also intuitive and easy to use for our healthcare claims specialists, which allow us to increase our employee retention and productivity.

The components of our platform include the following:

Data Management Expertise

Our platform manages and stores large amounts of data throughout our workflow process. This data includes a combination of both publicly-available information, as well as proprietary and client specific data, the combination of which creates a robust input for claims review and selections. We are able to integrate these sources efficiently and in real-time to reduce errors, reduce cycle time processing and, ultimately, improve audit finding and recovery rates. The strength of our data management expertise augments our data analytics capabilities and provides our healthcare claims specialists with powerful workflow processes.

Data Analytics Capabilities

Our data analytics capabilities are designed to efficiently screen and allocate massive volumes of claims inventory. For example, we analyze millions of healthcare claims with customized payment integrity algorithms to find potential correlations between claims data and improper payments, which enhance our finding rates. We utilize our proprietary analytics tools across all of our current markets and clients to continuously and rigorously test our workflow processes in real-time in order to drive greater process efficiency and improvement in recoupment rates.

Furthermore, we believe our data analytics capabilities will enable us to extend our potential product offerings within the healthcare market, permitting us to pursue significant new business opportunities.

Workflow Processes

Over many years, we have developed and refined our workflow processes, which we believe drive higher efficiency and productivity and reduce our reliance on labor-intensive methods relative to more traditional outsourcing models. Our technology supports our proprietary workflows to disaggregate otherwise complex processes into a series of simple, efficient and consistent steps that are easily configurable and applicable to different types of applications. These allow subject matter experts to quickly review analytical outputs and achieve targeted audit and recovery outcomes for our clients.

The following diagram illustrates how our technology platform fits into our operational ecosystem:



Our Services

We use our technology-enabled services platform to provide services for the identification and recovery of improper payments, primarily in the healthcare market. The table below summarizes our various service offerings and related analytics capabilities for the markets we serve.

Healthcare	Customer Care / Outsourced Services
<ul style="list-style-type: none">• Provide audit, eligibility, and recovery services to identify improper healthcare payments for government and commercial healthcare clients.• Identify improper payments typically resulting from incorrect coding, procedures that were not medically necessary, incomplete documentation and coverage discrepancies amongst other payment integrity issues.• Utilize our proprietary technology, our history of healthcare-related performance data, and our data analytics capabilities to effectively analyze our clients' claims and other data for improper payments.• Earn contingent, success-based fees based on a percentage of claim amounts recovered.• Apply our enhanced data analytics capabilities, which we refer to as Performant Insight, to offer a variety of services from post- and pre-payment audit of healthcare claims to detection of fraud, waste and abuse of healthcare claims, to coordination of benefits and pharmacy fraud detection.	<ul style="list-style-type: none">• Provide first party call center and other outsourced services.• Earn contingent, success-based fees based on the volume of processed transactions, the quantity of labor hours provided based on dedicated headcount.

Healthcare

We provide payment integrity services related to improper payments in the healthcare market, serving both government and commercial clients. Within the healthcare market, we have strong and established relationships with multiple government agencies across our various product lines.

We currently have three Recovery Audit Contractor (RAC) contracts with CMS. The RAC contracts for both Region 1 and Region 2 cover Parts A and B Medicare payments in each region. The third RAC contract involves post-payment review of Durable Medical Equipment, Prosthetics/Orthotics and Supplies (DMEPOS) and home health and hospice claims across the entire U.S.

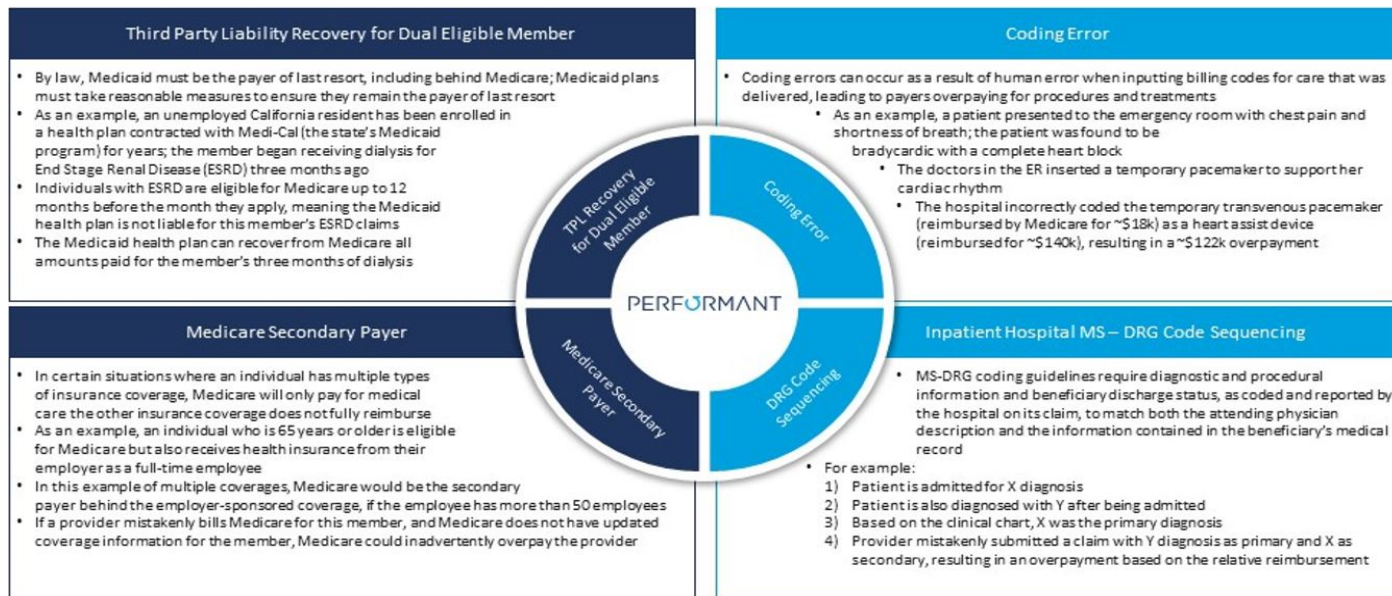
Under our RAC contracts with CMS, we utilize our technology-enabled services platform to screen Medicare claims against several criteria, including coding procedures and medical necessity standards, to determine whether a claim should be further investigated for recoupment or adjustment by CMS. We conduct automated and, where appropriate, detailed medical necessity reviews. If we determine that the likelihood of finding a potential improper payment warrants further investigation, we request and review healthcare provider medical records related to the claim, utilizing experts in Medicare coding and registered nurses. We interact and communicate with healthcare providers and other administrative entities, and ultimately submit the claim to CMS for correction.

We also have the national exclusive Medicare Secondary Payer (MSP) contract with CMS. Under this contract, we are responsible for identifying and recovering payments in situations where Medicare should not be the primary payer of healthcare claims because a beneficiary has other forms of insurance coverage, such as through an employer group health plan or certain other insurance payers.

Further, we have the indefinite delivery, indefinite quantity contract with the U.S. Department of Health and Human Services, Office of the Inspector General (HHS OIG). Under this contract, we provide medical review and consultative services associated with the oversight activities of the HHS OIG, primarily assessing services and claims for Medicare fee-for-service payments for Part A and Part B.

In the commercial healthcare market, we have numerous private insurance payer contracts and are pursuing additional opportunities to provide audit and eligibility services. Our experience from our contracts with CMS has helped establish our presence in the commercial healthcare market resulting in opportunities for us to provide claims-based and eligibility-based services for several national and regional commercial health plans. Our audit and analytics capabilities have allowed us not only to expand our services with these initial commercial healthcare clients, but also gain entry into other related opportunities.

The illustration below provides examples of certain types of improper payments that we audit on behalf of our clients in the healthcare market.



Analytics Capabilities

For several years, we have leveraged our data analytics tools to help filter and identify improper payments as part of our core services platform. Through our data analytics capabilities, which we refer to as Performant Insight, we are able to review, aggregate, and synthesize very large volumes of structured and unstructured data, at high speeds, from the initial intake of disparate data sources to the warehousing of the data, to the analysis and reporting of the data. We believe we have built a differentiated, next-generation “end-to-end” data processing solution that will maximize value for current and future customers.

Performant Insight provides numerous benefits for our audit and recovery services platform. Performant Insight has not only enhanced our existing services under our contracts with CMS and other private healthcare contracts by analyzing significantly higher volumes of healthcare claims at faster rates and reducing our cycle time to review and assess healthcare claims, but it has also enabled us to develop improved and more sophisticated business intelligence rules that can be applied to our audit processes. We believe our analytics capabilities will extend our potential markets, permitting us to pursue significant new business opportunities. We have expanded the use of our data analytics capabilities in the healthcare sector to offer a variety of services from post and pre-payment audit of healthcare claims in both the government and commercial healthcare sectors, to detection of fraud, waste and abuse of healthcare claims, to coordination of benefits and pharmacy fraud detection.

Customer Care / Outsourced Services

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

Our Clients

We provide our services across a range of government and commercial clients.

CMS

Our relationship with CMS extends approximately fifteen years. Under our first RAC contract with CMS, which was initially awarded in 2008 and expired in 2016, we were responsible for identifying and facilitating the recovery of improper Part A and Part B Medicare payments in the Northeast region of the United States.

In 2016, we were awarded two new RAC contracts with CMS. We received the contract to audit improper payments for claims made under Medicare Parts A and B in Region 1, which consists of eleven states (Connecticut, Michigan, Indiana, Maine, Massachusetts, New Hampshire, New York, Ohio, Kentucky, Rhode Island and Vermont), and the contract for Region 5, which involves post-payment review of claims related to DMEPOS and home health and hospice across the U.S. The Region 5 contract has a nine-year term, consisting of one base year and eight additional one-year options. In March 2021, we were re-awarded the CMS Region 1 contract with a term of eight-and-a-half years. The fees that we receive for identifying improper payments from CMS under these contracts are entirely contingency-based, and the contingency-fee percentage depends on the methods of recovery, and, in some cases, the type of improper payment that we identify.

In November 2022, we were awarded the RAC contract to audit improper payments for claims made under Medicare Parts A and B in Region 2, which consists of 14 states (Illinois, Minnesota, Wisconsin, Nebraska, Iowa, Kansas, Missouri, Colorado, New Mexico, Texas, Oklahoma, Arkansas, Louisiana, and Mississippi). Our RAC contract for Region 2 has a term of eight-and-a-half years.

In 2017, we were awarded the national exclusive MSP contract by CMS. Under this MSP contract, we are responsible for coordination-of-benefits claims, which includes identifying and recovering payments in situations where Medicare should not be the primary payer of healthcare claims because a beneficiary has other forms of insurance coverage, such as through an employer group health plan or certain other payers. We were re-awarded this contract in December 2022 and commenced operations in March 2023. This contract has a six-year term, consisting of one base year and five additional one-year options.

Commercial Healthcare

In the commercial healthcare market, we utilize our technology-enabled services platform to provide claims-based and eligibility-based services for commercial healthcare payers. Our experience from our contracts with CMS has helped establish our presence in the commercial healthcare market by providing us the opportunity to provide audit and eligibility services for several national and regional commercial health plans. Our audit and analytics capabilities have allowed us not only to expand our services with these initial commercial healthcare clients, but also gain entry into other related commercial healthcare opportunities with numerous other plans.

Sales and Marketing

Our new business opportunities have historically been driven largely by referrals and natural extensions of our existing client relationships, as well as a targeted outreach by our sales team and senior management. Our sales cycles are often lengthy, and demand high levels of attention from our senior management. At any point in time, we are typically focused on a limited number of potentially significant new business opportunities. As a result, to date, we have operated with a small sales and marketing team of experienced individuals with responsibility for developing new sales working in concert with our executive staff.

Technology Operations

We have primary and redundant datacenters located in Santa Clara, California and Fort Worth, Texas. We have designed our infrastructure for scalability and redundancy, which allows us to continue to operate in the event of an outage at any of our datacenters. We maintain an information systems environment with dedicated information technology and security teams managing an advanced architecture focused on network security intrusion detection, data loss prevention and training of staff with 24x7 monitoring and security incident response capabilities. We utilize encryption technologies certified to FIPS 140-2 to protect sensitive data on our systems, all data during transmission and all data on redundancy or backup solutions. We also maintain a comprehensive enterprise-wide information security program certified by 3rd party auditors that is based on industry standards such as the Health Information Trust Alliance (HITRUST), CMS Acceptable Risk Safeguards (ARS 5.1), National Institute of Standards and Technology (NIST 800-53), and System and Organization Controls (SOC 1 Type II).

Competition

We face significant competition in all aspects of our business.

In the healthcare market, we face competition in the bidding process for commercial healthcare contracts as well as government healthcare contracts, such as the RAC and MSP contracts awarded by CMS. However, based on the effective healthcare solutions that we have provided to CMS and commercial healthcare plans, we believe we are well qualified to compete for new contract awards within the healthcare market. This allows us to compete more effectively for contracts such as the CMS RAC Region 1 contract, which we were re-awarded in March 2021, and the RAC Region 2 contract, which we were awarded in November 2022. In the most recent RAC bidding process, the identified competitive factors were demonstrated experience in effective recovery services in the healthcare market, sufficient capacity to address claims volumes, maintenance of high standards of operational practices, financial capability to perform under the RAC contracts and fee rates. In the commercial healthcare market, these same factors are generally important and applicable. Our competition in the commercial healthcare market includes the other healthcare payment integrity providers (such as Cotiviti, Inc. and HMS Holdings, a subsidiary of Gainwell Technologies LLC), and a variety of healthcare consulting and healthcare information services companies. Many of these companies have greater resources than we do.

Government Regulation

The nature of our current healthcare business and our legacy recovery business requires that we adhere to a complex array of federal and state laws and regulations. These include, but are not limited to, the Health Insurance Portability and Accountability Act (HIPAA), the Health Information Technology for Economic and Clinical Health Act (HITECH), the False Claims Act (FCA), the Anti-Kickback Statute (AKS), the Exclusion Statute, the Privacy Act of 1974, the Fair Debt Collection Practices Act (FDCPA), the Fair Credit Reporting Act (FCRA), the rules and regulations established by the Consumer Financial Protection Bureau (CFPB), and related state laws. We are also governed by a variety of state laws that regulate the collection, use, disclosure and protection of personal information. We have implemented and maintain physical, technical and administrative safeguards intended to protect all personal data and we have processes in place to assist us in complying with applicable laws and regulations regarding the protection of this data. Our compliance efforts include training of personnel and monitoring of our systems and personnel.

HIPAA and Related State Laws

Our healthcare business subjects us to compliance with HIPAA and various related state laws that contain substantial restrictions and requirements with respect to the use and disclosure of an individual's protected health information. HIPAA prohibits us from using or disclosing an individual's protected health information unless the use or disclosure is authorized by the individual or is specifically required or permitted under HIPAA. Under HIPAA, we must establish administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of electronic protected health information maintained or transmitted by us or by others on our behalf. We are required to notify affected individuals and government authorities of data security breaches involving unsecured protected health information. The Department of Health and Human Services Office of Civil Rights enforces HIPAA privacy violations, CMS enforces HIPAA security violations and the Department of Justice enforces criminal violations of HIPAA.

Most states have enacted patient confidentiality laws that protect against the unauthorized disclosure of confidential medical information, and many states have adopted or are considering further legislation in this area, including privacy safeguards, security standards and data security breach notification requirements. These state laws, if more stringent than HIPAA requirements, are not preempted by the federal requirements, and we must comply with them even though they may be subject to different interpretations by various courts and other governmental authorities. In addition, numerous other state laws govern the collection, dissemination, use, access to and confidentiality of individually identifiable health and healthcare provider information.

Our compliance efforts include the encryption of protected health information that we hold and the development of procedures to detect, investigate and provide appropriate notification if protected health information is compromised. Our employees and contractors receive initial and periodic supplemental training and are tested to ensure compliance. Additionally, we undergo regular privacy and security audits by our federal and commercial clients, as well as by third party auditors to maintain our HITRUST certification.

Privacy Act of 1974

The Privacy Act of 1974 governs the collection, use, storage, destruction and disclosure of personal information about individuals by a government agency and extends to government contractors who have access to agency records performing services for government agencies. The Privacy Act requires maintenance of a code of conduct for employees with access to the agency records addressing the obligations under the Privacy Act, training of employees and discipline procedures for noncompliance. The Privacy Act also requires adopting and maintaining appropriate administrative, technical and physical safeguards to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity.

As a contractor to federal government agencies we are required to comply with the Privacy Act of 1974. Our compliance effort includes initial and ongoing training of employees and contractors in their obligations under the Privacy Act. In addition, we have implemented and maintain physical, technical and administrative safeguards and processes intended to protect all personal data consistent with or exceeding our obligations under the Privacy Act.

FDCPA and Related Laws

The FDCPA regulates persons who regularly collect or attempt to collect, directly or indirectly, consumer debts owed or asserted to be owed to another person. Certain of our debt recovery and loan restructuring activities may be subject to the FDCPA. The FDCPA establishes specific guidelines and procedures that debt recovery firms must follow in communicating with consumer debtors, including the time, place and manner of such communications. Further, it prohibits harassment or abuse by debt recovery firms, including the threat of violence or criminal prosecution, obscene language or repeated telephone calls made with the intent to abuse or harass. The FDCPA also places restrictions on communications with individuals other than consumer debtors in connection with the collection of any consumer debt and sets forth specific procedures to be followed when communicating with such third parties for purposes of obtaining location information about the consumer. In addition, the FDCPA contains various notice and disclosure requirements and prohibits unfair or misleading representations by debt recovery firms. Finally, the FDCPA imposes certain limitations on lawsuits to collect debts against consumers.

Pursuant to the Dodd-Frank Act, primary jurisdiction for the FDCPA belongs to the Consumer Financial Protection Bureau, or CFPB. The CFPB has authority to supervise, enforce, and issue interpretative regulations for the FDCPA. The CFPB has issued Regulation F, which went into effect November 30, 2021.

Debt recovery activities are also regulated at the state level. Most states have laws regulating debt recovery activities in ways that are similar to, and in some cases more stringent than, the FDCPA. In addition, some states require debt recovery firms to be licensed.

Our compliance efforts include written procedures for compliance with the FDCPA and related state laws, employee training and monitoring, auditing client calls, periodic review, testing and retraining of employees, and procedures for responding to client complaints. We believe we hold the applicable state licenses in all states in which we perform consumer collections. Violations of the FDCPA may be enforced by the CFPB or the U.S. Federal Trade Commission, or FTC, or by a private action by an individual or class. Violations of the FDCPA are deemed to be an unfair, deceptive, or abusive under the Federal Trade Commission Act or the Dodd-Frank Act, which can be punished by fines for each violation. Class action damages can total up to one percent of the net worth of the entity violating the statute. Attorney fees and costs are also recoverable. In the ordinary course of business, we are sued for alleged violations of the FDCPA and comparable state laws, although the amounts involved in the disposition or settlement of any such claims have not been significant.

TCPA

The Telephone Consumer Protection Act, or TCPA, regulates the initiation of calls (which includes text messages) to residential or cellular telephones, including the use of automatic telephone dialing systems as well as artificial or prerecorded voices. The TCPA requires callers to obtain prior express consent or, in some cases, prior express written consent from individuals before placing restricted calls. Our compliance efforts include confirming a consumer has provided prior express consent consistent with the requirements of the law. Violations of the TCPA may be enforced by the U.S. Federal Communications Commission, or FCC, or by a private action by an individual or class. Violations of the TCPA can be punished by recovery of damages or penalties up to \$1,500 per violation for willful violations. Attorney fees and costs are also recoverable. In the ordinary course of business, we are sued for alleged violations of the TCPA and comparable state laws, although the amounts involved in the disposition or settlement of any such claims have not been significant.

FCRA

We are also subject to the Fair Credit Reporting Act, or FCRA, which regulates consumer credit reporting and which may impose liability on us to the extent that the adverse credit information reported on a consumer to a credit bureau is false or inaccurate. State law, to the extent it is not preempted by the FCRA, may also impose restrictions or liability on us with respect to reporting adverse credit information. Our compliance efforts include initial and ongoing training of employees working with consumer credit reports and the monitoring of usage. Violations of FCRA, which are deemed to be unfair or deceptive acts under the Federal Trade Commission Act, are enforced by the FTC or by a private action by an individual or class. Civil actions by consumers may seek damages per violation, with punitive damages, attorney's fees and costs also recoverable. Under the Federal Trade Commission Act or Dodd-Frank Act, penalties for engaging in unfair or deceptive acts may be levied in the form of fines for each violation.

CFPB

The CFPB was created as part of the Dodd-Frank Act in 2011, with primary implementing and interpretative authority for many federal consumer protection laws, for example the FDCPA, transferred to the CFPB. Among other things, the CFPB was given the authority to issue interpretive regulations for the FDCPA.

In addition to its authority regarding federal consumer protection laws, the CFPB was also provided direct jurisdiction over certain non-bank financial service products and service markets. In October of 2012, the CFPB issued a rule asserting direct jurisdiction over larger participants in certain consumer financial products and service markets, which includes consumer debt collectors with annual receipts of more than \$10 million. In accordance with the calculations included in this rule, we are subject to direct jurisdiction of the CFPB and may be directly examined and supervised by the CFPB. In that regard, the CFPB has also released examination guidance that its examiners will use when reviewing compliance by debt collectors subject to its direct supervision.

The CFPB focuses on non-bank covered persons and service providers involved in collecting debt related to any consumer financial product from committing unfair, deceptive, or abusive acts or practices, or UDAAPs, in violation of the Dodd-Frank Act. UDAAPs include actions that are unfair and likely to cause substantial injury to consumers, deceptive actions that mislead or likely to mislead a consumer and abusive acts that interfere with the ability of a consumer to understand a term or condition of a consumer financial product or takes unreasonable advantage of a consumer's lack of understanding of a consumer financial product. Although abusive acts or practices may also be unfair or deceptive, each of these prohibitions are separate and distinct, and are governed by separate legal standards. Original creditors and other covered persons and service providers involved in collecting debt related to any consumer financial product or service are subject to the prohibition against UDAAPs. The CFPB has indicated that it will continue to review closely the practices of those engaged in the collection of consumer debts for potential UDAAPs in violation of the Dodd-Frank Act.

State Laws

Many states impose an obligation on any entity that holds personally identifiable information or health information to adopt appropriate security to protect such data against unauthorized access, misuse, destruction, or modification. All fifty states and the District of Columbia have enacted laws requiring holders of personal information to take certain actions in response to data breach incidents, such as providing prompt notification of the breach to affected individuals and government authorities, and in some cases offering credit monitoring services.

Certification, Accreditation, and Security

Businesses that collect, store, transmit or process information for United States government agencies and organizations are required to undergo a rigorous certification and accreditation process to ensure that they operate at an acceptable level of security risk. As a government contractor, we currently have Authorization to Operate (ATO) licenses for RAC Regions 1, 2, and 5, and HHS Office of Inspector General (OIG). An ATO license is currently in process for CMS Medicare Secondary Payer (MSP).

We maintain a comprehensive enterprise-wide information security program based on industry standards such as ARS 5.1 and NIST 800-53. In addition, we hold SOC 1 Type II certification, which provides assurance to auditors of third parties that we maintain the necessary controls and procedures to effectively manage third party data. For our healthcare business, we are HITRUST certified, which helps ensure that our policies, procedures, and implementation conform to HIPAA guidelines. We undergo independent audits by our government agency clients upon the award of a contract and annually thereafter. We also conduct periodic self-assessments.

Our regulatory compliance group is charged with the responsibility of ensuring our regulatory compliance and security meets all federal and state regulations. All our facilities have security perimeter controls with segregated access by security clearance level. The information systems environment maintains advanced network security intrusion detection and prevention with 24x7 monitoring and security incident response capabilities. We utilize encryption technologies to protect sensitive data on our systems, stored at rest, all data during transmission and all data on redundancy or backup media. Employees undergo background and security checks appropriate to their position. This can include security clearances by the Federal Bureau of Investigation. We also maintain compliant disaster recovery and business continuity plans with annual tabletop disaster exercises, conduct routine security risk assessments, and maintain a continuous improvement process as part of our security risk mitigation and management activity.

Intellectual Property

Our intellectual property is a significant component of our business, including, most notably, the intellectual property underlying our proprietary technology-enabled services platform through which we provide our client solutions and other services. To protect our intellectual property, we rely on a combination of intellectual property rights, including trade secrets, trademarks and copyrights. We utilize customary confidentiality and other contractual protections, including employee and third-party confidentiality and invention assignment agreements.

We also rely on certain unpatented proprietary expertise and other know-how, licensed and acquired third-party technologies, and continuous improvements and other developments of our various technologies, all intended to maintain our leadership position in the industry.

As of December 31, 2023, we had three trademarks registered with the U.S. Patent and Trademark office: Performant, Performant Insight, and Premiere Credit.

We have registered copyrights covering various copyrighted material relevant to our business. We also have unregistered copyrights in many components of our software systems. We may not be able to use these unregistered copyrights to prevent misappropriation of such content by unauthorized parties in the future; however, we rely on our extensive information technology security measures and contractual arrangements with employees and third-party contractors to minimize the opportunities for any such misuse of this content.

We are not subject to any material intellectual property claims alleging that we infringe, misappropriate or otherwise violate the intellectual property rights of any third party, nor have we asserted any material intellectual property infringement claim against any third party.

Human Capital

As of December 31, 2023, we had 958 employees. None of our employees is a member of a labor union and we consider our employee relations to be good.

We provide our employees with competitive salaries and bonuses, development programs that enable continued learning and growth and an employment package intended to promote well-being across all aspects of their lives, including healthcare, retirement planning and paid time off. Since the onset of the COVID-19 pandemic, we have taken an integrated approach to helping our employees manage their work and personal responsibilities, with a strong focus on employee well-being, health, and safety.

Available Information

The SEC maintains an Internet site at <http://www.sec.gov> that contains our Annual Report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports, if any, or other filings filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, proxy and information statements.

Website

Interested parties may access our periodic and current reports filed with the SEC, at no charge, by visiting our website, www.performantcorp.com. Information on our website are not part of this report.

ITEM 1A. Risk Factors

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

Risks Related to Our Business

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

If we are successful in obtaining an engagement with a new client or a new contract with an existing client, we typically have a long implementation period in which the services are planned in detail and we integrate our technology, processes and resources with the client's operations. If we enter into a contract with a new client, we typically will not receive revenues until implementation is completed and work under the contract actually begins, which can be a substantial period of time. Our clients may also experience delays in obtaining approvals or managing protests from unsuccessful bidders, or delays associated with technology or system implementations, such as the delays experienced with the implementation of our RAC contracts with CMS. Because we operate under a model in which we generally hire employees to provide services to a new client once a contract is signed and otherwise incur significant upfront implementation expenses, we incur significant expenses associated with new contracts before we receive corresponding revenues under any such new contract. Further, we may incur upfront implementation expenses without receiving corresponding revenue under a contract award that is subsequently terminated as a result of a successful protest from an unsuccessful bidder. If we are not able to pay the upfront expenses for commencing new contracts out of cash from operations or availability of cash on hand or borrowings under our lending arrangements, we may be required to scale back our operations or alter our business plans to account for cash shortages, either of which could prevent us from earning future revenues under any such new client or contract engagements. Further, if we are not successful in maintaining contractual commitments after the expenses we incur during our typically long implementation cycle, our cash flows and results of operations could be adversely affected.

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

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

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

Many of our existing contracts enable our clients to terminate their contractual relationship with us at any time without penalty, potentially leading to loss of business or renegotiation of terms. Further, most of our contracts allow our clients to unilaterally change the amount of work available to us or the payment terms at any given time. In addition, many of our contracts are not exclusive, with our clients retaining multiple service providers with whom we must continue to compete for additional work. Therefore, despite our contractual relationships with our clients, our contracts do not provide assurance that we will generate a minimum amount of revenues or that we will receive a specific volume of work. For example, in March 2020, CMS paused medical review activities under our then current RAC contracts related to the COVID-19 pandemic, which were later resumed in August 2020. Further, the Public Health Emergency declared by the U.S. Department of Health and Human Services which recently expired as of May 2023 restricted us from auditing claims which related to COVID-19 or other respiratory designations under our RAC contracts. These pauses in medical review activities under our RAC contracts had a negative impact on our revenues and results of operations. If any of our clients modify terms of service, including the success fees we are able to earn, or any of these clients establish more favorable relationships with our competitors, our future revenues may be adversely affected.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Public health pandemics such as the novel coronavirus (COVID-19) pandemic have adversely affected and could adversely affect our business, results of operations and financial condition.

Our business and the businesses of our customers are exposed to risks associated with public health pandemics, such as the COVID-19 pandemic, which have caused, and may continue to cause, a slowdown in global economic activity. The ultimate impact of any such epidemic or pandemic on our operations and financial performance depends on many factors that are not within our control, including, but not limited to: governmental and business actions taken in response to the pandemic; the impact of the pandemic and actions taken in response on global and regional economies and economic activity; the availability of federal, state or local funding programs; general economic uncertainty and financial market volatility; global economic conditions and levels of economic growth; and the pace of economic recovery when any such pandemic subsides.

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

Further, regulatory action in response to a public health pandemic may have a material negative impact on the revenues that we receive under existing healthcare contracts. For example, (i) in March 2020, CMS paused medical review activities under our then current RAC contracts related to the COVID-19 pandemic, and (ii) the Public Health Emergency declared by the U.S. Department of Health and Human Services which recently expired as of May 2023 restricted us from auditing claims which related to COVID-19 or other respiratory designations under our RAC contracts.

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

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

- our ability to maintain contractual commitments and generate revenue after the expenses we incur during our typically long implementation cycle for new customer contracts;
- our ability to successfully identify improper claims and the number and type of potentially improper claims that we are authorized to pursue under our healthcare contracts;
- our ability to continue to grow our business and expand revenues under our commercial healthcare contracts;
- our ability to maintain existing client contracts and expand our client base in light of the significant competition we face in the healthcare market;

- the loss or gain of significant clients or changes in the contingency fee rates or other significant terms of our business arrangements with our significant clients;
- technological and operational issues that may affect our clients and regulatory changes in the markets we service;
- government agencies' schedules for awarding contracts; and
- general industry and macroeconomic conditions.

Risks Related to Information Technology, Privacy Matters, and Intellectual Property

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

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

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

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

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

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

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

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

Increasing use of social media and new technology, including artificial intelligence software, could give rise to liability, breaches of data security, or reputational damage.

We and our employees increasingly are utilizing social media tools as a means of communication both internally and externally. We also are using new technology on a daily basis to enhance how we work. Despite our efforts to monitor evolving social media communication, our internal guidelines regarding the appropriate use of new technology and applicable and emerging rules, there is risk that the use of these tools by us or our employees may cause us to be found in violation of applicable requirements. In addition, our employees may knowingly or inadvertently make use of these tools in ways that may not comply with our policies or other legal or contractual requirements, which may give rise to liability, or result in public exposure of personal information of our employees, clients, and others. Furthermore, negative posts or comments about us or our products in social media could seriously damage our reputation, brand image, and goodwill. Additionally, the use of artificial intelligence based software is increasing in the healthcare industry. As with many developing technologies, artificial intelligence based software presents risks and challenges that could affect its further development, adoption, and use, which could affect our business. If the analyses that artificial intelligence applications assist in producing are deficient or inaccurate, we could be subjected to competitive harm, potential legal liability, and brand or reputational harm. Use of artificial intelligence based software may also lead to the release of confidential proprietary information, which may impact our ability to realize the benefit of our intellectual property.

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

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

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

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

Risks Related to Regulations and Legislation

We identified a material weakness in our internal control over financial reporting in the fourth quarter of 2022. If we experience additional material weaknesses or other deficiencies, or if we are unable to remediate material weaknesses or other deficiencies identified in the future, or otherwise fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately or timely report our financial results, which could result in loss of investor confidence and adversely impact our stock price.

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

Internal controls related to the operation of technology systems are critical to maintaining adequate internal control over financial reporting. As disclosed in our Annual Report on Form 10-K for the year ended December 31, 2022, during the fourth quarter of 2022, management identified a material weakness in the design and operation of information technology general controls (ITGCs) related to user access and program change-management over certain information technology systems that support our financial reporting process, which was remediated during 2023 as described in Part II, Item 9A of this Annual Report on Form 10-K. Our ability to comply with the annual internal control report requirements will depend on the effectiveness of our financial reporting and data systems and controls across our company. We expect these systems and controls to involve significant expenditures and may become more complex as our business grows. To effectively manage this complexity, we will need to continue to improve our operational, financial, and management controls, and our reporting systems and procedures. Our inability to successfully remediate any future material weaknesses or other deficiencies in our internal control over financial reporting or any failure to implement required new or improved controls, or difficulties encountered in the implementation or operation of these controls, could harm our operating results and cause us to fail to meet our financial reporting obligations or result in material misstatements in our financial statements, which could limit our liquidity and access to capital markets, adversely affect our business and investor confidence in our financial statements, and adversely impact our stock price.

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

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

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

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

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

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

Risks Related to our Common Stock

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

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

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

Prescott Group Management, L.L.C., First Light Asset Management, LLC, BlackRock Institutional Trust Company, N.A., and Mill Road Capital Management LLC beneficially owned approximately 20.5%, 12.6%, 5.9%, and 4.6% of our common stock, respectively, as of December 31, 2023. As a result of their ownership, these significant stockholders have the ability to influence the outcome of matters submitted to a vote of stockholders and, through our board of directors, the ability to influence decision making with respect to our business direction and policies. Mill Road Capital Management LLC currently has a representative sitting on our Board of Directors. These significant stockholders may have interests different from our other stockholders' interests and may vote in a manner adverse to those interests. Matters over which these significant stockholders can, directly or indirectly, exercise influence include:

- mergers and other business combination transactions, including proposed transactions that would result in our stockholders receiving a premium price for their shares;
- other acquisitions or dispositions of businesses or assets;
- incurrence of indebtedness and the issuance of equity securities;
- repurchase of stock and payment of dividends; and
- the issuance of shares to management under our equity incentive plans.

General Risks

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

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

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

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

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

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

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

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

ITEM 1B. Unresolved Staff Comments

None.

ITEM 1C. Cybersecurity

We are committed to maintaining robust oversight and governance of potential cybersecurity risks and to implementing processes and controls that help us identify, assess, manage, and mitigate such risks. To date, we have not experienced a cybersecurity threat or incident that has resulted in a material adverse impact to our business or operations. However, we cannot guarantee that we will not experience such a threat or incident in the future, given the increasing sophistication of those responsible for cybersecurity incidents. While we seek to detect and investigate unauthorized attempts and attacks against our network and to prevent their occurrence where practicable through our internal processes and tools, we remain potentially vulnerable to known or unknown threats. In some instances, we can be unaware of a threat or incident or its magnitude and effects. Further, there is increasing regulation regarding responses to cybersecurity incidents, including reporting to regulators, which could subject us to additional liability and reputational harm. See "Item 1A. Risk Factors" for more information on our cybersecurity risks.

We aim to incorporate and align with industry best practices throughout our cybersecurity program. Our cybersecurity strategy focuses on implementing effective and efficient controls, technologies and other processes to identify, assess, manage, and mitigate material cybersecurity risks. These include, among other things, having mechanisms in place to detect and monitor unusual network activity, utilizing vulnerability assessment scans and tools, and conducting external and internal penetration tests and security assessments. We engage a third party expert to assist with numerous aspects of our cybersecurity program, including vulnerability assessment scans, penetration tests and security assessments. Additionally, from time to time, our internal audit function reviews and assesses various aspects of our cybersecurity program. We also engage in threat intelligence monitoring, including monitoring the dark web and zero-day vulnerability and attack information, and have processes in place to assess the potential cybersecurity impact or risk of any identified threats on our company, including potential impacts on our business partners and other parties with whom we share information. We actively engage with industry groups for peer benchmarking purposes and to stay current on best practices. We rely heavily on vendors and other third-party service providers in the conduct of our business operations, and a cybersecurity incident at a vendor or other third-party service provider could have a material and adverse impact on our business, results of operations and financial condition. We have further processes in place to assess the cybersecurity risks associated with our vendors and other third-party service providers, and we require such providers to take appropriate precautions to protect our data and to notify us promptly in the event of any known or suspected data breach or cyber incident.

Our cybersecurity program is integrated into our broader approach to risk management, and ultimate oversight for the program sits with our Board of Directors. The Board of Directors is aided by its Audit Committee, which regularly reviews our cybersecurity program with management and reports to the Board of Directors. Review of cybersecurity risks and internal audits regarding information security are conducted by the Audit Committee on a quarterly basis, or more frequently as determined to be necessary or advisable.

Our VP Information Security Officer (VPISO) runs our cybersecurity program. Our VPISO, who holds numerous cybersecurity and related certifications, including Certified Information Systems Security Professional, reports to our Chief Financial Officer (CFO). Our VPISO and CFO have extensive experience assessing and managing cybersecurity programs and cybersecurity risk. They regularly report directly to the Audit Committee or the Board of Directors on our cybersecurity program and our efforts to identify, assess, manage, and mitigate cybersecurity incidents. In addition, we have an escalation process in place to inform senior management and the Board of Directors of any material issues as they arise.

ITEM 2. Properties

Facilities

As of December 31, 2023, we operated four separate office locations throughout the United States. Our Plantation, Florida facility serves as our corporate headquarters.

We believe that our facilities are adequate for current operations and that additional space will be available as required. See Note 4 to our consolidated financial statements included elsewhere in this Annual Report on Form 10-K for information regarding our lease obligations.

ITEM 3. Legal Proceedings

We are involved in various legal proceedings that arise from our normal business operations from time to time. The outcome of any such legal proceedings, regardless of the merits, is inherently unpredictable. Legal proceedings, including litigation, government investigations and enforcement actions, can result in significant costs and occupy significant management resources. We do not expect any such current legal proceedings to have a material adverse impact on our business or financial condition.

ITEM 4. Mine Safety Disclosures

Not applicable.

PART II

ITEM 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Trading Symbol

Shares of Performant currently trade on the NASDAQ under the trading symbol PFMT.

Stockholders

As of December 31, 2023, we had approximately 16 holders of record of our common stock and we believe a greater number of shareholders who hold shares through brokers, banks or other nominees.

Dividends

Our board of directors does not currently intend to pay regular dividends on our common stock. Our Credit Agreement contains a covenant prohibiting the payment of cash dividends.

Securities Authorized for Issuance Under Equity Compensation Plans

Information regarding the securities authorized for issuance under our equity compensation plans can be found under Item 12 of this Annual Report on Form 10-K.

Stock Performance Graph

Our stock performance graph is set forth in our 2023 Proxy Statement, which information is incorporated by reference herein.

Unregistered Sales of Equity Securities

Not applicable.

Use of Proceeds

Not applicable.

Issuer Purchases of Equity Securities

None.

ITEM 6. [Reserved]

ITEM 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations**Overview**

We support healthcare payers in identifying, preventing, and recovering waste and improper payments by leveraging advanced technology, analytics and proprietary data assets. We work with leading national and regional healthcare payers to provide eligibility-based, also known as coordination-of-benefits (COB) services, as well as claims-based services, which includes the audit and identification of improperly paid claims. We are a leading provider of these services in both government and commercial healthcare markets. We also provide advanced reporting capabilities, support services, customer care, and stakeholder training programs designed to mitigate future instances of improper payments.

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

Sources of Revenues

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

	Year Ended December 31,	
	2023	2022
	(in thousands)	
Eligibility-based	\$ 61,179	\$ 53,284
Claims-based	45,265	41,382
Healthcare Total	106,444	94,666
Recovery	33	241
Customer Care / Outsourced Services	7,266	14,277
Total Revenues	\$ 113,743	\$ 109,184

Healthcare

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

For our healthcare business, our business strategy is focused on utilizing our technology-enabled services platform to provide claims-based, eligibility-based, and analytical services for healthcare payers.

In 2016, we were awarded two new RAC contracts with CMS. We received the contract to audit improper payments for claims made under Medicare Parts A and B in Region 1, which consists of eleven states (Connecticut, Michigan, Indiana, Maine, Massachusetts, New Hampshire, New York, Ohio, Kentucky, Rhode Island and Vermont), and the contract for Region 5, which involves post-payment review of claims related to DMEPOS and home health and hospice across the U.S. The Region 5 contract has a nine-year term, consisting of one base year and eight additional one-year options. In March 2021, we were re-awarded the CMS Region 1 contract with a term of eight-and-a-half years. The fees that we receive for identifying improper payments from CMS under these contracts are entirely contingency-based, and the contingency-fee percentage depends on the methods of recovery, and, in some cases, the type of improper payment that we identify.

In November 2022, we were awarded the RAC contract to audit improper payments for claims made under Medicare Parts A and B in Region 2, which consists of 14 states (Illinois, Minnesota, Wisconsin, Nebraska, Iowa, Kansas, Missouri, Colorado, New Mexico, Texas, Oklahoma, Arkansas, Louisiana, and Mississippi). Our RAC contract for Region 2 has a term of eight-and-a-half years.

In 2017, we were awarded the national exclusive MSP contract by CMS. Under this MSP contract, we are responsible for coordination-of-benefits claims, which includes identifying and recovering payments in situations where Medicare should not be the primary payer of healthcare claims because a beneficiary has other forms of insurance coverage, such as through an employer group health plan or certain other payers. We were re-awarded this contract in December 2022 and commenced operations in March 2023. This contract has a six-year term, consisting of one base year and five additional one-year options.

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

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

	Year Ended December 31,		\$ Change	% Change
	2023	2022		
	(in thousands)			
Government	\$ 49,902	\$ 58,155	\$ (8,253)	(14)%
Commercial	56,542	36,511	20,031	55 %
Total Healthcare revenues	<u>\$ 106,444</u>	<u>\$ 94,666</u>	<u>\$ 11,778</u>	<u>12 %</u>

Customer Care / Outsourced Services

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

Costs and Expenses

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

Factors Affecting Our Operating Results

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

Costs Associated with Commencing New Contracts

When we obtain an engagement with a new client or a new contract with an existing client, it typically takes a long period of time to plan our services in detail, which includes integrating our technology, processes and resources with the client's operations and hiring new employees, before we receive any revenues from the new client or new contract. Due to the upfront costs we incur in connection with the implementation of new contracts, which may not be recoverable in the event of contract termination, and the delays we face in recognizing initial revenue from any such new contracts, our profitability can be negatively impacted by any delays associated with new contract implementations. Our clients may also experience delays in obtaining approvals or managing protests from unsuccessful bidders or delays associated with system implementations, as we had experienced before with certain clients. We may incur upfront implementation expenses without receiving corresponding revenue under a contract award that is subsequently terminated as a result of a successful protest from an unsuccessful bidder. If we are not able to pay the upfront expenses out of cash from operations or availability of borrowings under our lending arrangements, we may need to scale back our operations or alter our business plans, either of which could have a negative effect on future revenues that we may earn under any such new client or new contract engagements.

Claims Volume

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

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

Contingency Fees

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

Regulatory Matters

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

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

Client Contract Cancellation or Non-Renewal

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

Macroeconomic Factors

A variety of macroeconomic factors may influence our business and results of operations. These macroeconomic factors include fluctuations in Medicare expenditures or claims made to private healthcare providers resulting from changes in healthcare costs or the healthcare industry taken as a whole, as well as changes to fiscal budgets of federal, state and local governments as a result of general economic weakness and lower tax revenues.

Critical Accounting Policies

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

Revenue Recognition

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

We determine revenue recognition through the following steps:

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

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

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

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

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

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

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

For healthcare claims audit contracts, we may recognize revenue upon delivering our findings from claims audits to our clients, when sufficient reliable information is available for estimating the variable consideration earned.

For eligibility-based or COB contracts, we may recognize revenue upon delivering our findings to our clients or to our client's counterparties (insurance companies or other responsible parties that appear to have primary responsibility to pay the claims).

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

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

For customer care / outsourced services clients, we recognize revenue based on the volume of processed transactions or the quantity of labor hours provided.

Trade accounts receivable are recorded at the invoiced amount and do not bear interest. Amounts collected on trade accounts receivable are included in cash used in operating activities in our consolidated statements of cash flows. We determine the allowance for credit losses for our trade accounts receivables. Account balances are charged off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote. The allowance for credit losses was \$0 at each of December 31, 2023 and 2022, respectively.

Contract assets totaled \$10.9 million and \$11.5 million as of December 31, 2023 and December 31, 2022, respectively. Contract assets relate to our right to consideration for services completed but not invoiced at the reporting date, and receipt of payment is conditional upon factors other than the passage of time.

Contract assets primarily consist of commissions we estimate we have earned from claim audit findings submitted to healthcare clients. Contract assets are recorded to accounts receivable when our right to payment becomes unconditional, which is generally when healthcare providers have paid our clients. There was no impairment loss related to contract assets for the years ended December 31, 2023 and 2022.

Contract liabilities totaled \$0.5 million and \$0.4 million as of December 31, 2023 and 2022, respectively.

Our clients' healthcare providers have the right to appeal claims audit findings and may pursue additional appeals if the initial appeal is found in favor of healthcare clients. For COB contracts, insurance companies or other responsible parties may dispute our findings regarding our clients not being the primary payer of healthcare claims. Total estimated liability for appeals and disputes was \$0.6 million and \$1.1 million as of December 31, 2023 and 2022, respectively. This represents our best estimate of the amount probable of being refunded to our healthcare clients.

We determined that we did not have any material costs related to obtaining or fulfilling a contract that are recoverable and as such, those contract costs were expensed as incurred.

Results of Operations

Year Ended December 31, 2023 compared to the Year Ended December 31, 2022

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

	Year Ended December 31,		\$ Change	% Change
	2023	2022		
(in thousands)				
Consolidated Statements of Operations Data:				
Revenues	\$ 113,743	\$ 109,184	\$ 4,559	4 %
Operating expenses:				
Salaries and benefits	90,447	85,312	(5,135)	(6)%
Other operating expense	29,424	30,772	1,348	4 %
Total operating expenses	\$ 119,871	\$ 116,084	\$ (3,787)	(3)%
Loss from operations	\$ (6,128)	\$ (6,900)	\$ 772	11 %
Gain on sale of certain recovery contracts	3	382	(379)	(99)%
Gain on sale of land and buildings	—	1,120	(1,120)	100 %
Interest expense	(1,974)	(1,007)	(967)	(96)%
Interest income	240	—	240	100 %
Loss before provision for income taxes	\$ (7,859)	\$ (6,405)	\$ (1,454)	(23)%
Provision for income taxes	(340)	132	472	358 %
Net Loss	\$ (7,519)	\$ (6,537)	\$ (982)	(15)%

Revenues

Total revenues were \$113.7 million for the year ended December 31, 2023, an increase of \$4.6 million or 4%, compared to total revenues of \$109.2 million for the year ended December 31, 2022.

Healthcare revenues were \$106.4 million for the year ended December 31, 2023, representing an increase of \$11.8 million, or 12%, compared to the year ended December 31, 2022. This increase in healthcare revenues was primarily attributable to the continued growth from our fully implemented statements of work, as well as numerous new program implementations. Revenues from claims-based services during the year ended December 31, 2023 were \$45.3 million, or 9% higher than the year ended December 31, 2022. Revenues from eligibility-based services during the year ended December 31, 2023 were \$61.2 million, or 15%, higher than the year ended December 31, 2022.

Customer Care / Outsourced Services revenues were \$7.3 million for the year ended December 31, 2023, representing a decrease of \$7.0 million, or 49%, compared to the year ended December 31, 2022. The decrease was primarily due to a decrease in demand for our outsourced services primarily related to reduced call center volumes associated with the paused federal student loan programs.

Salaries and Benefits

Salaries and benefits expense was \$90.4 million for the year ended December 31, 2023, an increase of \$5.1 million, or 6%, compared to salaries and benefits expense of \$85.3 million for the year ended December 31, 2022. The increase in salaries and benefits expense was primarily driven by a change in the composition of our employee base to support the growth in our healthcare services, partially offset by a reduction in headcount for our customer care / outsourced services.

Other Operating Expense

Other operating expense was \$29.4 million for the year ended December 31, 2023, a decrease of \$1.3 million, or 4%, compared to other operating expense of \$30.8 million for the year ended December 31, 2022. The decrease in other operating expenses was primarily due to lower lease expenses as we downsized office facilities during the year.

Gain on Sale of Land and Buildings

Gain from the sale of land and buildings was \$1.1 million for the year ended December 31, 2022. We sold two office buildings and the related land that were previously utilized by employees working on legacy recovery contracts.

Loss from Operations

As a result of the factors described above, loss from operations was \$6.1 million for the year ended December 31, 2023, compared to loss from operations of \$6.9 million for the year ended December 31, 2022, representing a decrease in the loss from operations of \$0.8 million.

Interest Expense

Interest expense was \$2.0 million for the year ended December 31, 2023 compared to \$1.0 million for the year ended December 31, 2022, representing an increase of 96%. This increase was due primarily to the write off of debt issuance costs in connection with the refinancing of our prior credit agreement in October 2023 as well as higher interest rates, partially offset by a lower principal balance.

Income Taxes

The income tax benefit was \$0.3 million for the year ended December 31, 2023 compared to an income tax expense of \$0.1 million for the year ended December 31, 2022. Our effective income tax rate increased to 4% for the year ended December 31, 2023 from (2)% for the year ended December 31, 2022. The increase in the effective tax rate was primarily driven by the change in tax components that were applicable in 2023 and not 2022. These items include benefits realized, related to the recognition of previously unrecognized tax benefits as a result of an audit closing, and receipt of interest on tax refunds during the year.

Net Loss

As a result of the factors described above, net loss was \$7.5 million for the year ended December 31, 2023, which represented an increase in net loss of \$1.0 million compared to net loss of \$6.5 million for the year ended December 31, 2022.

Liquidity and Capital Resources

Our primary sources of liquidity are cash flows from operations and cash and cash equivalents on hand. Cash and cash equivalents, which includes restricted cash and consists primarily of cash on deposit with banks, totaled \$7.3 million as of December 31, 2023, compared to \$23.5 million as of December 31, 2022. The \$16.1 million decrease in the balance of our cash and cash equivalents was primarily due to \$4.1 million used in investing activities and \$15.9 million used in financing activities as a result of the refinancing of our prior credit agreement in October 2023, partially offset by \$3.9 million provided by operating activities during 2023.

On October 27, 2023, we entered into a new credit agreement with Wells Fargo Bank, National Association (the "Credit Agreement"). The Credit Agreement includes a \$25 million revolving loan commitment, subject to borrowing base limitations based on a percentage of applicable eligible receivables and contract assets, of which \$5.0 million was advanced on the closing date of the Credit Agreement. A portion of the revolving loan commitment of up to \$2.5 million is available for the issuance of letters of credit. As of December 31, 2023, \$5.0 million was outstanding under the Credit Agreement and we had \$17.5 million of additional borrowings available under this revolving loan commitment.

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

Our Credit Agreement contains, and any agreements to refinance our debt likely will contain, certain financial covenants, including the maintenance of minimum fixed charge coverage ratio and total debt to EBITDA ratio, as well as restrictive covenants that require us to limit our ability to incur additional debt, including to finance future operations or other capital needs, and to engage in other activities that we may believe are in our long-term best interests, including to dispose of or acquire assets. As of December 31, 2023, we were in compliance with all financial covenants under the Credit Agreement. However, conditions may change for a variety of reasons in the future that may affect our ability to maintain compliance with our financial or restrictive covenants. Our failure to comply with these financial covenants or the restrictive covenants may result in an event of default, which, if not cured or waived, could accelerate the maturity of our indebtedness or result in modifications to our credit terms.

	Year Ended December 31,	
	2023	2022
	(in thousands)	
Net cash provided by (used in) operating activities	\$ 3,860	\$ (2,877)
Net cash (used in) provided by investing activities	(4,140)	1,731
Net cash (used in) provided by financing activities	(15,852)	5,061

Cash flows from operating activities

Cash provided by operating activities was \$3.9 million for the year ended December 31, 2023, and was primarily a result of a decrease in income tax receivable and contract assets, partially offset by an increase in trade accounts receivable.

Cash used in operating activities was \$2.9 million during the year ended December 31, 2022, and was primarily as a result of an increase in contract assets, and changes in other operating assets and liabilities, offset by a reduction in trade accounts receivable.

Cash flows from investing activities

Cash used in investing activities of \$4.1 million for the year ended December 31, 2023 related to cash used in capital expenditures related to information technology software, data storage, hardware, telecommunication systems, and security enhancements to our information technology systems.

Cash provided by investing activities of \$1.7 million during the year ended December 31, 2022 related to proceeds from the sale of land and buildings and the sale of certain recovery contracts, offset by cash used in capital expenditures related to information technology software, data storage, hardware, telecommunication systems, and security enhancements to our information technology systems.

Cash flows from financing activities

Cash used in financing activities of \$15.9 million for the year ended December 31, 2023 was primarily attributable to \$19.5 million in repayments of notes payable under our prior credit agreement and \$1.2 million in debt issuance costs, offset by \$5.0 million in borrowings from our new revolving loan facility.

Cash provided by financing activities of \$5.1 million for the year ended December 31, 2022 was primarily attributable to \$5.6 million of proceeds from exercise of outstanding warrants to purchase shares of our common stock, offset by \$0.5 million in repayments of long-term loan payable.

Restricted Cash

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

Loan Payable

On October 27, 2023, we entered into the Credit Agreement with Wells Fargo Bank, National Association. The Credit Agreement includes a \$25 million revolving loan commitment, subject to borrowing base limitations based on a percentage of applicable eligible receivables and contract assets, of which \$5.0 million was advanced on the closing date of the Credit Agreement. A portion of the revolving loan commitment of up to \$2.5 million is available for the issuance of letters of credit. Subject to certain customary exceptions, our existing and future, direct or indirect, domestic subsidiaries will be jointly and severally obligated as borrowers or guarantors for the obligations under the Credit Agreement. The obligations of the Company under the Credit Agreement are secured by liens on substantially all of our assets and each of our existing subsidiaries (and subject to customary exceptions, will be secured by the assets of future subsidiaries).

The Credit Agreement matures on October 27, 2026. A portion of the proceeds from the initial borrowing under the Credit Agreement were used, together with cash on hand, to repay our outstanding notes payable under our prior credit agreement, and to pay fees and expenses in connection with the Credit Agreement. As a result, all our outstanding obligations under our prior credit agreement have been paid.

We may, at our option, prepay borrowings under the Credit Agreement, in whole or in part, at any time and from time to time without premium or penalty (except in certain circumstances). Borrowings under the Credit Agreement are also subject to mandatory prepayment in the event that outstanding borrowings and letter of credit usage exceed the lesser of the aggregate revolving loan commitments and the borrowing base then in effect.

We may also increase commitments under the Credit Agreement in an aggregate principal amount of up to \$10 million by obtaining additional commitments from lenders, subject to obtaining commitments from any participating lenders and certain other conditions. Under the Credit Agreement, loans generally may bear interest based on term SOFR (the secured overnight financing right) or an annual base rate, as applicable, plus, in each case, an applicable margin based on our average borrowing availability each quarter under the Credit Agreement that may range between 2.50% per annum and 3.00% per annum, in the case of term SOFR loans and between 1.50% per annum and 2.00% per annum in the case of base rate loans. In addition, a commitment fee of 0.50% per annum based on unused availability of the credit facility is also payable.

The Credit Agreement contains certain customary representations, warranties, and affirmative and negative covenants that restrict our ability to take certain actions, including, incurrence of indebtedness, creation of liens, making certain investments, mergers or consolidations, dispositions of assets, assignments, sales or transfers of equity in subsidiaries, repurchase or redemption of capital stock, entering into certain transactions with affiliates, or changing the nature of our business. The Credit Agreement also contains financial covenants, which require us to maintain a minimum amount of liquidity and a consolidated fixed charge coverage ratio of not less than 1.25 to 1.00, provided that the fixed charge coverage ratio is only applicable when borrowing availability falls below a certain threshold. The obligations under the Credit Agreement may be accelerated or the commitments terminated upon the occurrence of events of default under the Credit Agreement, which include payment defaults, defaults in the performance of affirmative and negative covenants, the inaccuracy of representations or warranties, bankruptcy and insolvency related defaults, cross defaults to other material indebtedness, defaults arising in connection with changes in control, and other customary events of default.

As of December 31, 2023, we were in compliance with all financial covenants under the Credit Agreement.

Contractual Obligations

The following summarizes our contractual obligations as of December 31, 2023:

<i>Contractual Obligations</i>	Payments Due by Period				
	<i>Total</i>	<i>Less Than 1 Year</i>	<i>1-3 Years</i>	<i>3-5 Years</i>	<i>More Than 5 Years</i>
Long-term loan payable	\$ 5,000	\$ —	\$ 5,000	\$ —	\$ —
Interest payments	1,434	478	956	—	—
Operating lease obligations	1,188	594	273	270	51
Purchase obligations	17,358	8,679	7,892	787	—
Total	<u>\$ 24,980</u>	<u>\$ 9,751</u>	<u>\$ 14,121</u>	<u>\$ 1,057</u>	<u>\$ 51</u>

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements.

Adjusted EBITDA and Adjusted Net Income (Loss)

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

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

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

- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and adjusted EBITDA does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;
- adjusted EBITDA does not reflect interest expense on our indebtedness;
- adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs;
- adjusted EBITDA does not reflect tax payments;
- adjusted EBITDA and adjusted net income (loss) do not reflect the potentially dilutive impact of equity-based compensation;
- adjusted EBITDA and adjusted net income (loss) do not reflect the impact of certain non-operating expenses resulting from matters we do not consider to be indicative of our core operating performance; and
- other companies may calculate adjusted EBITDA and adjusted net income (loss) differently than we do, which reduces its usefulness as a comparative measure.

Because of these limitations, you should consider adjusted EBITDA and adjusted net income (loss) alongside other financial performance measures, including net income (loss) and our other GAAP results.

The following tables present a reconciliation of adjusted EBITDA and adjusted net income (loss) for the years ended December 31, 2023 and 2022 to actual net income (loss) for these periods:

	Year Ended December 31,	
	2023	2022
	(in thousands)	
Reconciliation of Adjusted EBITDA:		
Net income (loss)	\$ (7,519)	\$ (6,537)
Provision for (benefit from) income taxes	(340)	132
Interest expense ⁽¹⁾	1,974	1,007
Interest income	(240)	—
Stock based compensation	3,936	3,036
Depreciation and amortization	5,187	4,524
Severance expenses ⁽³⁾	346	274
Non-core operating expenses ⁽⁴⁾	52	10
Gain on sale of certain recovery contracts ⁽⁵⁾	(3)	(382)
Gain on sale of land and buildings ⁽⁶⁾	—	(1,120)
Adjusted EBITDA	<u>\$ 3,393</u>	<u>\$ 944</u>

	Year Ended December 31,	
	2023	2022
(in thousands)		
Reconciliation of Adjusted Net Income (Loss):		
Net income (loss)	\$ (7,519)	\$ (6,537)
Stock based compensation	3,936	3,036
Amortization of debt issuance costs ⁽²⁾	857	95
Severance expenses ⁽³⁾	346	274
Non-core operating expenses ⁽⁴⁾	52	10
Gain on sale of certain recovery contracts ⁽⁵⁾	(3)	(382)
Gain on sale of land and buildings ⁽⁶⁾	—	(1,120)
Tax adjustments ⁽⁷⁾	(1,427)	(526)
Adjusted net income (loss)	<u>\$ (3,758)</u>	<u>\$ (5,150)</u>

	Year Ended December 31,	
	2023	2022
Adjusted Earnings (Loss) Per Diluted Share:		
Net income (loss)	\$ (7,519)	\$ (6,537)
Plus: Adjusted items per reconciliation of adjusted net income (loss)	3,761	1,387
Adjusted net income (loss)	<u>\$ (3,758)</u>	<u>\$ (5,150)</u>
Adjusted earnings (loss) per diluted share	(0.05)	(0.07)
Diluted average shares outstanding	76,156	69,873

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

(2) Represents amortization of debt issuance costs related to our Credit Agreement and prior credit agreement.

(3) Represents severance expenses incurred in connection with a reduction in force for our nonhealthcare services.

(4) Represents professional fees related to strategic corporate development activities.

(5) Represents gain on the sale of certain non-healthcare recovery contracts.

(6) Represents gain on the sale of land and buildings in 2022.

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

Recent Accounting Pronouncements

See "New Accounting Pronouncements" in Note 1(s) of the Consolidated Financial Statements included in Part IV - Item 15 of this report.

ITEM 7A. Quantitative and Qualitative Disclosures about Market Risk

We do not hold or issue financial instruments for trading purposes. We conduct all of our business in U.S. currency and therefore do not have any material direct foreign currency risk. We do have exposure to changes in interest rates with respect to the borrowings under our senior secured credit facility, which bear interest at a variable rate based on SOFR. For example, if the interest rate on our borrowings increased 100 basis points (1%) from the credit facility floor of 1.0%, our annual interest expense would increase by approximately \$50 thousand.

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

ITEM 8. Financial Statements and Supplementary Data

Our consolidated financial statements and notes thereto and the report of Baker Tilly US, LLP are set forth in the Index to Financial Statements under Item 15, Exhibits, Financial Statement Schedules, and are incorporated herein by reference.

ITEM 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

ITEM 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

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

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

Management, with the participation of our Chief Executive Officer and our Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures, as defined in Rule 13a-15(e) under the Exchange Act. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level as of December 31, 2023.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) to provide reasonable assurance regarding the reliability of our financial reporting and the preparation of our consolidated financial statements for external purposes in accordance with U.S. GAAP. Under the supervision of, and with the participation of our Chief Executive Officer and Chief Financial Officer, management assessed the effectiveness of internal control over financial reporting based on the criteria established in "Internal Control Integrated Framework (2013)" issued by the Committee of Sponsoring Organizations of the Treadway Commission (the "2013 COSO Framework").

The effectiveness of any system of internal control over financial reporting, including ours, is subject to inherent limitations, including the exercise of judgment in designing, implementing, operating, and evaluating the controls and procedures, and the inability to eliminate misconduct completely. Accordingly, in designing and evaluating the disclosure controls and procedures, management recognizes that any system of internal control over financial reporting, no matter how well designed and operated, can only provide reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints, and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs. Moreover, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

During the course of 2023, our management took steps to remediate the material weakness in the design and operation of internal controls related to ITGCs in the areas of user access and program change-management over certain information technology systems that support our financial reporting processes previously identified in the fourth quarter of 2022. Based on these actions, we have concluded that, as of December 31, 2023, the identified material weakness has been remediated.

Our management assessment concluded that our internal control over financial reporting as of December 31, 2023 was effective.

The effectiveness of our internal control over financial reporting as of December 31, 2023 has been audited by Baker Tilly US, LLP, an independent registered public accounting firm. Their report expresses an unqualified opinion on the effectiveness of the Company's internal control over financial reporting as of December 31, 2023.

Changes in Internal Control over Financial Reporting

Other than the changes described above, there were no changes in our internal control over financial reporting that occurred during the most recent fiscal quarter, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. Other Information

(b) During the three months ended December 31, 2023, no director or officer (as defined in Rule 16a-1(f) under the Securities Exchange Act of 1934) of our Company adopted or terminated any contract, instruction or written plan for the purchase or sale of our securities, whether or not intended to satisfy the affirmative defense conditions of Rule 10b5-1(c).

ITEM 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

Not applicable

PART III

ITEM 10. Information About our Directors, Executive Officers, and Corporate Governance

This Item is incorporated by reference to our definitive proxy statement on Schedule 14A, to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies from the Registrant's 2024 Annual Meeting of Stockholders.

ITEM 11. Executive Compensation

This Item is incorporated by reference to our definitive proxy statement on Schedule 14A, to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies from the Registrant's 2024 Annual Meeting of Stockholders.

ITEM 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

This Item is incorporated by reference to our definitive proxy statement on Schedule 14A, to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies from the Registrant's 2024 Annual Meeting of Stockholders.

ITEM 13. Certain Relationships and Related Transactions, and Director Independence

This Item is incorporated by reference to our definitive proxy statement on Schedule 14A, to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies from the Registrant's 2024 Annual Meeting of Stockholders.

ITEM 14. Principal Accounting Fees and Services

This Item is incorporated by reference to our definitive proxy statement on Schedule 14A, to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies from the Registrant's 2024 Annual Meeting of Stockholders.

PART IV

ITEM 15. Exhibits, Financial Statement Schedules

(a) Financial Statements

(1) *Financial Statements.* The financial statements filed as part of this report are identified in the Index to Consolidated Financial Statements on page F-1.

(2) *Financial Statement Schedules.* See Item 15(c) below.

(3) *Exhibits.* See Item 15(b) below.

(b) Exhibits

The following exhibits are filed herewith or are incorporated by reference to exhibits previously filed with the Securities and Exchange Commission.

Exhibit Number	Description
3.1*	Third Amended and Restated Certificate of Incorporation of Registrant, effective as of August 15, 2012, as filed with the Secretary of State of the State of Delaware
3.2	Amended and Restated Bylaws of Registrant (incorporated by reference to Exhibit 3.2(b) to the Company's Registration Statement on Form S-1/A filed July 23, 2012)
4.1	Amended and Restated Registration Rights Agreement, dated as of August 15, 2012, among the Registrant and the persons listed thereon (incorporated by reference to Exhibit 4.2 to the Company's Registration Statement on Form S-1/A filed July 23, 2012)
4.2*	Description of Registrant's Securities Registered under Section 12 of the Securities Exchange Act of 1934
10.1	Form of Indemnification Agreement between the Registrant and its officers and directors (incorporated by reference to Exhibit 10.1 to the Company's Registration Statement on Form S-1/A filed July 30, 2012)
10.2	Form of Change of Control Agreement, as amended (incorporated by reference to Exhibit 10.7 to the Company's Registration Statement on Form S-1/A filed July 30, 2012)
10.3	Third Amended and Restated 2012 Stock Incentive Plan (incorporated by reference to Appendix A to the Company's Definitive Proxy Statement on Schedule 14A filed April 30, 2021)
10.4	Credit Agreement, dated as of October 27, 2023, among the Company and its subsidiaries party thereto, as borrower, the lenders from time to time party thereto and Wells Fargo Bank, National Association, as administrative agent (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed November 1, 2023)

Exhibit Number	Description
21*	List of Subsidiaries
23.1*	Consent of Baker Tilly US, LLP, Independent Registered Public Accounting Firm
24*	Powers of Attorney (included in the signature page to this report)
31.1*	Rule 13a-14(a)/15d-14(a) Certification, executed by Simeon M. Kohl
31.2*	Rule 13a-14(a)/15d-14(a) Certification, executed by Rohit Ramchandani
32.1*	Furnished Statement of the Chief Executive Officer under 18 U.S.C. Section 1350
32.2*	Furnished Statement of the Chief Financial Officer under 18 U.S.C. Section 1350
97.1*	Performant Financial Corporation Incentive-Based Compensation Recoupment Policy
101.INS*	XBRL Instance Document
101.SCH*	XBRL Taxonomy Extension Scheme
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	XBRL Taxonomy Extension Label Linkbase
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

*Filed herewith

(c) Financial Statements and Schedules

Schedules not listed above have been omitted because they are not applicable or required, or the information required to be set forth therein is included in the Consolidated Financial Statements or Notes hereto.

ITEM 16. Form 10-K Summary

Not applicable

Index to Consolidated Financial Statements

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Consolidated Financial Statements of Performant Financial Corporation and Subsidiaries as of and for the years ended December 31, 2023, and 2022	
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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and Board of Directors of Performant Financial Corporation

Opinions on the Financial Statements and Internal Control over Financial Reporting

We have audited the accompanying consolidated balance sheets of Performant Financial Corporation (the "Company") as of December 31, 2023 and 2022, the related consolidated statements of operations, changes in stockholders' equity, and cash flows, for each of the two years in the period ended December 31, 2023, and the related notes and Schedule II – Valuation and Qualifying Accounts (collectively referred to as the "consolidated financial statements"). We also have audited the Company's internal control over financial reporting as of December 31, 2023, based on criteria established in *Internal Control – Integrated Framework: (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and 2022, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2023, in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2023, based on criteria established in *Internal Control – Integrated Framework: (2013)* issued by COSO.

Basis for Opinions

The Company's management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's consolidated financial statements and an opinion on the Company's internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the financial statements included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of the critical audit matter does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing separate opinions on the critical audit matter or on the accounts or disclosures to which it relates.

Revenue Recognition – Output Method

For the year ended December 31, 2023, the Company recognized revenue related to certain healthcare contracts using an output method based upon the date of delivering the results of claims audits and the expected future collections of such claims submitted.

As described in Note 1(k) of the Company's consolidated financial statements, the Company may recognize revenue upon delivering the results of healthcare claims audits when sufficient reliable information is available to the Company for estimating variable consideration earned based on an output method that reasonably measures the Company's satisfaction of its performance obligation. Recognition of revenue under this output method is highly judgmental as it requires an evaluation of when the Company believes it has enough experience with eligible contracts to recognize revenue under an output method. It also requires an estimate of expected future collections for claims submitted under each eligible contract. These estimates are dependent upon a number of factors, including the Company's historical collections.

Auditing contracts under this output method of revenue recognition is complex and highly judgmental due to the variability and uncertainty associated with assessing eligibility for the output method as well as estimating amounts expected to be recovered for claims submitted. Changes in these estimates could have a significant effect on the amount of revenue recognized.

The primary procedures we performed to address this critical audit matter included:

- We obtained and reviewed contracts for each healthcare claims audit customer utilizing this output method
- We substantively tested management's estimate of the historical collection activity and corresponding revenue recognition and contract asset. This included agreeing the inputs utilized by management to third party sources, testing the mathematical accuracy of management's calculations and assessing the reasonableness of management's revenue constraints and significant assumptions used in developing the constraints.
- For customers whose use of this output method was initiated during the year ended December 31, 2023 we reviewed management's evaluation of the length and reasonableness of historical activity as a predictor of future collections such that the use of this output method was considered appropriate.
- We obtained an understanding, evaluated the design and implementation, and performed testing of operating effectiveness, of certain key controls that address the risks of material misstatements relating to revenue recognition for the healthcare contracts described above.

/s/ Baker Tilly US, LLP

We have served as the Company's auditor since 2018.

Atlanta, Georgia

March 13, 2024

PERFORMANT FINANCIAL CORPORATION AND SUBSIDIARIES

Consolidated Balance Sheets

(In thousands, except per share amounts)

	As of December 31,	
	2023	2022
Assets		
Current assets:		
Cash and cash equivalents	\$ 7,252	\$ 23,384
Restricted cash	81	81
Trade accounts receivable, net of allowance for credit losses	17,584	15,794
Contract assets	10,879	11,460
Prepaid expenses and other current assets	3,651	3,665
Income tax receivable	335	3,123
Total current assets	<u>39,782</u>	<u>57,507</u>
Property, equipment, and leasehold improvements, net	9,724	10,897
Goodwill	47,372	47,372
Debt issuance costs	631	—
Right-of-use assets	531	2,057
Other assets	990	1,000
Total assets	<u>\$ 99,030</u>	<u>\$ 118,833</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Current maturities of long-term loan payable, net of unamortized debt issuance costs of \$0 and \$17, respectively	\$ —	\$ 983
Accrued salaries and benefits	7,924	6,938
Accounts payable	727	1,262
Other current liabilities	2,385	2,252
Contract liabilities	493	438
Estimated liability for appeals and disputes	601	1,106
Lease liabilities	250	1,228
Total current liabilities	<u>12,380</u>	<u>14,207</u>
Long-term loan payable, net of current portion and unamortized debt issuance costs of \$0 and \$316, respectively	5,000	18,184
Lease liabilities	295	1,076
Other liabilities	648	881
Total liabilities	<u>18,323</u>	<u>34,348</u>
Commitments and contingencies		
Stockholders' equity:		
Common stock, \$0.0001 par value. Authorized, 500,000 shares at December 31, 2023 and 2022, respectively; issued and outstanding, 76,920 and 75,505 shares at December 31, 2023 and 2022, respectively	8	7
Additional paid-in capital	146,001	142,261
Accumulated deficit	(65,302)	(57,783)
Total stockholders' equity	<u>80,707</u>	<u>84,485</u>
Total liabilities and stockholders' equity	<u>\$ 99,030</u>	<u>\$ 118,833</u>

See accompanying notes to consolidated financial statements.

PERFORMANT FINANCIAL CORPORATION AND SUBSIDIARIESConsolidated Statements of Operations
(In thousands, except per share amounts)

	For the Years Ended December 31,	
	2023	2022
Revenues	\$ 113,743	\$ 109,184
Operating expenses:		
Salaries and benefits	90,447	85,312
Other operating expenses	29,424	30,772
Total operating expenses	119,871	116,084
Loss from operations	(6,128)	(6,900)
Gain on sale of certain recovery contracts	3	382
Gain on sale of land and buildings	—	1,120
Interest expense	(1,974)	(1,007)
Interest income	240	—
Loss before provision for (benefit from) income taxes	(7,859)	(6,405)
Provision for (benefit from) income taxes	(340)	132
Net loss	\$ (7,519)	\$ (6,537)
Net loss per share attributable to common shareholders (see Note 1)		
Basic	\$ (0.10)	\$ (0.09)
Diluted	\$ (0.10)	\$ (0.09)
Weighted average shares (see Note 1)		
Basic	76,156	72,937
Diluted	76,156	72,937

See accompanying notes to consolidated financial statements.

PERFORMANT FINANCIAL CORPORATION AND SUBSIDIARIES

Consolidated Statements of Changes in Stockholders' Equity

(In thousands)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total
	Shares	Amount			
Balance, January 1, 2022	69,281	\$ 7	\$ 133,662	\$ (51,246)	\$ 82,423
Common stock issued under stock plans	1,173	—	—	—	—
Stock-based compensation expense	—	—	3,036	—	3,036
Proceeds from exercise of stock warrants	5,051	—	5,563	—	5,563
Net loss	—	—	—	(6,537)	(6,537)
Balance, December 31, 2022	75,505	\$ 7	\$ 142,261	\$ (57,783)	\$ 84,485
Common stock issued under stock plans, net of shares withheld for employee taxes	1,415	1	(196)	—	(195)
Stock-based compensation expense	—	—	3,936	—	3,936
Net loss	—	—	—	(7,519)	(7,519)
Balance, December 31, 2023	76,920	\$ 8	\$ 146,001	\$ (65,302)	\$ 80,707

See accompanying notes to consolidated financial statements.

PERFORMANT FINANCIAL CORPORATION AND SUBSIDIARIES
Consolidated Statements of Cash Flows
(In thousands)

	For the Years Ended December 31,	
	2023	2022
Cash flows from operating activities:		
Net loss	\$ (7,519)	\$ (6,537)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Loss on disposal of assets	129	41
Depreciation and amortization	5,187	4,524
Right-of-use assets amortization	1,526	1,178
Stock-based compensation	3,936	3,036
Amortization of debt issuance costs	347	95
Loss on debt extinguishment	510	—
Gain on sale of certain recovery contracts	(3)	(382)
Gain on sale of land and buildings	—	(1,120)
Changes in operating assets and liabilities:		
Trade accounts receivable	(1,790)	5,014
Contract assets	581	(3,347)
Prepaid expenses and other current assets	14	(588)
Income tax receivable	2,788	36
Other assets	10	(37)
Accrued salaries and benefits	986	(1,538)
Accounts payable	(535)	138
Contract liabilities and other current liabilities	188	(1,660)
Estimated liability for appeals and disputes	(505)	(84)
Lease liabilities	(1,759)	(1,361)
Other liabilities	(231)	(285)
Net cash provided by (used in) operating activities	<u>3,860</u>	<u>(2,877)</u>
Cash flows from investing activities:		
Purchase of property, equipment, and leasehold improvements	(4,143)	(3,585)
Proceeds from sale of certain recovery contracts	3	382
Proceeds from sales of property, equipment, and leasehold improvements	—	4,934
Net cash (used in) provided by investing activities	<u>(4,140)</u>	<u>1,731</u>
Cash flows from financing activities:		
Repayment of long-term loan payable	(19,500)	(500)
Debt issuance costs paid	(1,156)	(2)
Taxes paid related to net share settlement of stock awards	(196)	—
Proceeds from exercise of warrants	—	5,563
Borrowings from revolving loan	5,000	—
Net cash (used in) provided by financing activities	<u>(15,852)</u>	<u>5,061</u>
Net (decrease) increase in cash, cash equivalents and restricted cash	<u>(16,132)</u>	<u>3,915</u>
Cash, cash equivalents and restricted cash at beginning of year	23,465	19,550
Cash, cash equivalents and restricted cash at end of year	<u>\$ 7,333</u>	<u>\$ 23,465</u>
Reconciliation of the consolidated statements of cash flows to the consolidated balance sheets:		
Cash and cash equivalents	\$ 7,252	\$ 23,384
Restricted cash	81	81
Total cash, cash equivalents and restricted cash at end of period	<u>\$ 7,333</u>	<u>\$ 23,465</u>
Supplemental disclosures of cash flow information:		
Cash (received) paid for income taxes	\$ (3,052)	\$ 250
Cash paid for interest	\$ 1,291	\$ 702

See accompanying notes to consolidated financial statements.

PERFORMANT FINANCIAL CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements
For the Years Ended December 31, 2023 and 2022

1. Summary of Significant Accounting Policies

(a) Organization and Basis of Presentation

Performant Financial Corporation (the "Company", "we", or "our") supports healthcare payers in identifying, preventing, and recovering waste and improper payments by leveraging advanced technology, analytics and proprietary data assets. The Company works with leading national and regional healthcare payers to provide eligibility-based, also known as coordination-of-benefits (COB) services, as well as claims-based services, which includes the audit and identification of improperly paid claims. The Company is a leading provider of these services in both government and commercial healthcare markets. The Company also provides advanced reporting capabilities, support services, customer care, and stakeholder training programs designed to mitigate future instances of improper payments.

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

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

(b) Principles of Consolidation

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP). The Company consolidates entities in which it has a controlling financial interest, and as of December 31, 2023 and 2022 for the accompanying reporting periods, all of the Company's subsidiaries are 100% owned. All intercompany balances and transactions have been eliminated in consolidation.

(c) Use of Estimates in the Preparation of Consolidated Financial Statements

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

(d) Cash and Cash Equivalents

Cash and cash equivalents include demand deposits. The Company deposits cash and cash equivalents with high credit quality financial institutions and believes that any amounts in excess of insurance limitations to be at minimal risk. Cash and cash equivalents held at these accounts are currently insured by the Federal Deposit Insurance Corporation (FDIC) up to a maximum of \$250,000. The Company's credit loss exposure in the event of failure of these financial institutions is represented by the difference between the FDIC limit and the total amounts on deposit.

The Company collects monies on behalf of certain clients. Cash is often held on behalf of the clients in various trust accounts and is subsequently remitted to the clients based on contractual agreements. Cash held in these trust accounts for contracting agencies is not included in the Company's assets (Note 9(a)).

(e) Restricted Cash

At December 31, 2023 and 2022, restricted cash included in current assets on our consolidated balance sheet was \$0.1 million and \$0.1 million, respectively, held in the form of certificates of deposit, which serve as collateral for letters of credit that were primarily associated with the recovery business. The Company's restricted cash is held with high credit quality financial institutions and believes any amounts in excess of the FDIC limit to be at minimal risk.

(f) Property, Equipment, and Leasehold Improvements

Property, equipment, and leasehold improvements are stated at cost, net of accumulated depreciation. Furniture and equipment are depreciated using the straight-line method over estimated useful lives ranging from 5 to 7 years. Buildings are depreciated using the straight-line method over 31.5 years. Leasehold improvements are amortized using the straight-line method over the shorter of the estimated life of the asset or the remaining term of the lease. Computer software and computer hardware are depreciated using the straight-line method over 3 years and 5 years, respectively.

Maintenance and repairs are charged to expense as incurred. Improvements that extend the useful lives of assets are capitalized.

When property is sold or retired, the cost and the related accumulated depreciation are removed from the consolidated balance sheet and any gain or loss from the transaction is included in the consolidated statements of operations.

(g) Goodwill

The carrying amount of goodwill was \$47.4 million as of December 31, 2023 and 2022, both of which were net of accumulated impairment loss of \$34.2 million. Goodwill represents the excess of purchase price and related costs over the fair value assigned to the net assets of businesses acquired. Goodwill is reviewed for impairment annually in December, or more frequently if certain events or conditions arise during the year. There was no goodwill impairment for the years ended December 31, 2023 and 2022.

The Company may first assess qualitative factors for indicators of impairment to determine whether it is necessary to perform the quantitative goodwill impairment test. In performing the quantitative goodwill test, if the carrying value of the Company, as one reporting unit, exceeds its fair value, goodwill is considered impaired. The amount of impairment loss is measured as the difference between the carrying value and the fair value of the reporting unit. Impairment testing is based upon the best information available including our market capitalization and estimates of fair value which incorporate assumptions marketplace participants would use in making their estimates of fair value. Significant assumptions and estimates are required, including, but not limited to, projecting future cash flows, determining appropriate discount rates and terminal growth rates, and other assumptions, to estimate the fair value of the reporting unit, inclusive of goodwill. Although the Company believes the assumptions and estimates made are reasonable and appropriate, different assumptions and estimates could materially impact the amount of impairment.

(h) Impairment of Long-Lived Assets

Long-lived assets are evaluated for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets or intangibles may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of the assets to future undiscounted net cash flows expected to be generated by the assets. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets.

(i) System Developments

The Company follows the provisions of Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Subtopic 350-40, *Internal-Use Software*, which specifies that costs incurred during the application stage of development should be capitalized. All other costs are expensed as incurred. During 2023 and 2022, costs of \$3.4 million and \$2.3 million, respectively, were capitalized for projects in the application stage of development. Amortization expense for completed projects during 2023 and 2022 were \$4.3 million and \$3.4 million, respectively.

(j) Debt Issuance Costs

Debt issuance costs represent loan and legal fees paid in connection with the issuance of long-term debt. Debt issuance costs associated with the Company's secured revolving loan are deferred and amortized to interest expense over the term of the related loan using the straight-line method and are presented in assets on the Company's consolidated balance sheet. For the term loan, debt issuance costs were deducted from current and long-term loan payable and amortized to interest expense under the effective interest method in accordance with key terms of the credit agreement.

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

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

The Company determines revenue recognition through the following steps:

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

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

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

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

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

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

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

Company believes the estimates made are reasonable and appropriate, different assumptions and estimates could materially impact the amount of variable consideration recognized.

For healthcare claims audit contracts, the Company may recognize revenue upon delivering its findings from claims audits to its clients, when sufficient reliable information is available for estimating the variable consideration earned.

For eligibility-based or COB contracts, the Company may recognize revenue upon delivering its findings to its clients' counterparties (insurance companies or other responsible parties that appear to have primary responsibility to pay the claims).

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

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

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

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

	Years Ended December 31,	
	2023	2022
Eligibility-based	\$ 61,179	\$ 53,284
Claims-based	45,265	41,382
Healthcare Total	\$ 106,444	\$ 94,666
Recovery	33	241
Customer Care / Outsourced Services	7,266	14,277
Total Revenues	\$ 113,743	\$ 109,184

For the years ended December 31, 2023 and 2022, the Company had three and two different clients, respectively, with revenues that exceeded 10% of the Company's total revenues. The dollar amount and percent of total revenue of each of the three clients are summarized in the table below (in thousands):

Year Ended December 31, 2023			Year Ended December 31, 2022		
Rank	Revenue	Percent of total revenue	Rank	Revenue	Percent of total revenue
1	\$49,902	44%	1	\$58,155	53%
2	\$15,718	14%	2	\$12,004	11%
3	\$11,867	10%			

Accounts receivable from the top three clients were 68% of total trade accounts receivable at December 31, 2023, of which these clients comprised 33%, 20%, and 15% of total trade receivables. Accounts receivable from the top two customers were 47% of total trade receivables at December 31, 2022, of which one of these customers comprised 47% of total trade receivables.

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

Contract assets were \$10.9 million and \$11.5 million as of December 31, 2023 and December 31, 2022, respectively. Contract assets relate to the Company's rights to consideration for services completed but not invoiced at the reporting date, and receipt of payment is conditional upon factors other than the passage of time.

Contract assets primarily consist of commissions the Company estimates it has earned from claims audit findings submitted to healthcare clients. Contract assets are recorded to accounts receivable when the Company's right to payment becomes unconditional, which is generally when healthcare providers have paid our clients. There was no impairment loss related to contract assets for the years ended December 31, 2023 and 2022.

The Company had contract liabilities of \$0.5 million as of December 31, 2023 and \$0.4 million as of December 31, 2022.

Healthcare providers of our clients have the right to appeal claims audit findings and may pursue additional appeals if the initial appeal is found in favor of healthcare clients. For coordination-of-benefits, insurance companies or other responsible parties may dispute the Company's findings regarding our clients not being the primary payer of healthcare claims. Total estimated liability for appeals and disputes was \$0.6 million and \$1.1 million as of December 31, 2023 and 2022, respectively. This represents the Company's best estimate of the amount probable of being refunded to the Company's healthcare clients.

The Company determined that it did not have any material costs related to obtaining or fulfilling a contract that are recoverable and as such, those contract costs were expensed as incurred.

(l) Prepaid Expenses and Other Current Assets

At December 31, 2023, prepaid expenses and other current assets were \$3.7 million and included approximately \$1.8 million related to prepaid software licenses and maintenance agreements, and \$1.3 million for prepaid insurance. At December 31, 2022, prepaid expenses and other current assets were \$3.7 million and included approximately \$1.5 million related to prepaid software licenses and maintenance agreements, \$1.8 million for prepaid insurance, and \$0.4 million for various other prepaid expenses.

(m) Other Current Liabilities

At December 31, 2023, other current liabilities were \$2.4 million and primarily included \$2.1 million for services received for which we have not received an invoice. At December 31, 2022, other current liabilities were \$2.3 million and primarily included \$1.8 million for services received for which we have not received an invoice and, \$0.5 million for accrued interest under the Company's prior credit agreement, estimated workers' compensation claims incurred but not reported, and third party fees and equipment financing payables.

(n) Legal Expenses

The Company recognizes legal fees related to litigation as they are incurred.

(o) Fair Value Measurements

The Company uses a fair value hierarchy based on the level of independent, objective evidence surrounding the inputs used when required to measure assets or liabilities at fair value. The Company determines the level within the fair value hierarchy in which the fair value measurements in their entirety fall. The categorization within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement.

- Level 1 uses quoted prices in active markets for identical assets or liabilities.
- Level 2 uses quoted prices for similar assets and liabilities in active markets, and inputs that are observable for the assets or liability, either directly or indirectly, for substantially the full term of the financial instruments.
- Level 3 uses significant unobservable inputs, which include management's own assumption about the assumptions market participants would use in pricing the asset or liability. The amount of the total gains or losses for the period are included in earnings that are attributable to the change in unrealized gains or losses relating to those assets and liabilities still held at the reporting date.

At December 31, 2023 and 2022, the Company had no assets or liabilities subject to fair value measurements on a recurring basis.

The following tables provide the carrying value and the estimated fair value of financial instruments that are not reported at fair value (in thousands):

	December 31, 2023				
	Carrying	Level 1	Level 2	Level 3	Fair Value
Assets:					
Cash and cash equivalents	\$ 7,252	\$ 7,252	—	—	\$ 7,252
Restricted cash	81	81	—	—	81
Liabilities:					
Long term debt	\$ 5,000	—	5,000	—	\$ 5,000

	December 31, 2022				
	Carrying	Level 1	Level 2	Level 3	Fair Value
Assets:					
Cash and cash equivalents	\$ 23,384	\$ 23,384	—	—	\$ 23,384
Restricted cash	81	81	—	—	81
Liabilities:					
Long term debt	\$ 19,500	—	\$ 19,500	—	\$ 19,500

(p) Income Taxes

The Company accounts for income taxes under the asset-and-liability method. Deferred income tax assets and liabilities are recognized for future tax consequences attributable to differences between the carrying value of assets and liabilities for financial reporting purposes and taxation purposes. Deferred income tax assets and liabilities are measured using the enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The state and local tax jurisdictions in which the Company operates may change resulting in changes to the state tax rates and apportionment allocations used in calculating the tax rate applied to deferred income tax assets and liabilities. The effect of a change in tax rates on deferred income tax assets and liabilities is recognized in income in the period that includes the enactment date. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized.

The Company recognizes the effect of income tax positions only if those positions are more likely than not of being sustained. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs. Interest expense and penalties related to unrecognized tax benefits are recorded in income tax expense.

(q) Stock-based Compensation

The Company accounts for its employee stock-based compensation awards in accordance with FASB ASC Topic 718, *Compensation – Stock Compensation*. FASB ASC Topic 718 requires that all employee stock-based compensation is recognized as a cost in the consolidated financial statements and that for equity-classified awards, such cost is measured at the grant date fair value of the award.

FASB ASC Topic 718 also requires that excess tax benefits recognized in equity related to stock option exercises are reflected as financing cash inflows. There was no income tax benefit resulting from the exercise of stock options in both 2023 and 2022.

(r) Loss per Share

For the years ended December 31, 2023 and 2022, basic loss per share is calculated by dividing net loss attributable to common shareholders by the sum of the weighted average number of common shares outstanding during the year. Diluted earnings per share is calculated by dividing net income available to common shareholders by the weighted average number of common shares and dilutive common shares equivalents outstanding during the period. The Company's common share equivalents consist of stock options, restricted stock units (RSUs), performance stock units, and warrants. When there is a loss in the period, dilutive common share equivalents are excluded from the calculation of diluted earnings per share, as their effect would be anti-dilutive.

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

	Years Ended December 31,	
	2023	2022
Weighted average shares outstanding – basic	76,156	72,937
Dilutive effect of common share equivalents	—	—
Weighted average shares outstanding – diluted	76,156	72,937

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

	Years Ended December 31,	
	2023	2022
Options to purchase common stock	72	250
RSUs	4,508	3,905
Total	4,580	4,155

(s) New Accounting Pronouncements

In February 2020, the Financial Accounting Standards Board (FASB) issued ASU 2020-02, “Financial Instruments - Credit Losses (Topic 326) and Leases (Topic 842) – Amendments to SEC Paragraphs Pursuant to SEC Staff Accounting Bulletin No. 119 and Update to SEC Section on Effective Date Related to Accounting Standards Update No. 2016-02, Leases (Topic 842).” This ASU provides updated guidance on how an entity should measure credit losses on financial instruments, including trade receivables, held at the reporting date. The amendments make each Topic easier to understand and easier to apply by eliminating inconsistencies and providing clarifications. It also addresses transition and open effective date information for Topic 842. ASU 2016-13, ASU 2018-19, ASU 2019-04, ASU 2019-05, ASU 2019-11 and ASU 2020-02 (collectively, “ASC 326”) are effective for public entities for fiscal years beginning after December 15, 2019, except for Smaller Reporting Companies. This ASU is effective for the Company for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2022. The Company's adoption of this ASU on January 1, 2023, had no impact on our financial position, results of operations, or cash flows.

In December 2023, the FASB issued ASU 2023-09, "Improvements to Income Tax Disclosures", which enhances income tax disclosure requirements for all entities by requiring specified categories and greater disaggregation within the rate reconciliation table, disclosure of income taxes paid by jurisdiction, and providing clarification on uncertain tax positions and related financial statement impacts. ASU 2023-09 is effective for annual periods beginning after December 15, 2024. Early adoption is permitted. The Company is assessing the impact of this ASU, and upon adoption, may be required to include certain additional disclosures in the notes to its financial statements.

2. Property, Equipment, and Leasehold Improvements

Property, equipment, and leasehold improvements consist of the following (in thousands):

	<u>December 31, 2023</u>	<u>December 31, 2022</u>
Building and leasehold improvements	2,412	3,785
Furniture and equipment	1,659	3,094
Computer hardware and software	70,257	76,906
	<u>74,328</u>	<u>83,785</u>
Less accumulated depreciation and amortization	(64,604)	(72,888)
Property, equipment and leasehold improvements, net	<u>\$ 9,724</u>	<u>\$ 10,897</u>

Depreciation and amortization expense was \$5.2 million and \$4.5 million for the years ended December 31, 2023 and 2022, respectively.

The Company sold two buildings and related land in September of 2022, which resulted in a gain of \$1.1 million.

3. Credit Agreement

As of December 31, 2023, \$5.0 million was outstanding under the Credit Agreement (see below) and the Company had \$17.5 million of additional borrowings available under this revolving loan commitment. As of December 31, 2022, \$19.5 million was outstanding under the credit agreement with MUFG Union Bank, N.A. (the "MUFG Credit Agreement"). The Company's annual interest rate at December 31, 2023 and 2022, was 8.1% and 5.6%, respectively.

On October 27, 2023, the Company entered into a new credit agreement with Wells Fargo Bank, National Association (the "Credit Agreement"). The Credit Agreement includes a \$25 million revolving loan commitment, subject to borrowing base limitations based on a percentage of applicable eligible receivables and contract assets, of which \$5.0 million was advanced on the closing date. A portion of the revolving loan commitment of up to \$2.5 million is available for the issuance of letters of credit. Subject to certain customary exceptions, the Company's existing and future, direct or indirect, domestic subsidiaries will be jointly and severally obligated as borrowers or guarantors for the obligations under the Credit Agreement. The obligations of the Company under the Credit Agreement are secured by liens on substantially all of the assets of the Company and each of its existing subsidiaries (and subject to customary exceptions, will be secured by the assets of future subsidiaries).

The Credit Agreement matures on October 27, 2026. A portion of the proceeds from the initial borrowing under the Credit Agreement were used by the Company, together with cash on hand, to repay the MUFG Credit Agreement, and to pay fees and expenses in connection with the Credit Agreement. As a result, all outstanding obligations of the Company under the MUFG Credit Agreement have been paid.

The Company may, at its option, prepay borrowings under the Credit Agreement, in whole or in part, at any time and from time to time without premium or penalty (except in certain circumstances). Borrowings under the Credit Agreement are also subject to mandatory prepayment in the event that outstanding borrowings and letter of credit usage exceed the lesser of the aggregate revolving loan commitments and the borrowing base then in effect.

The Company may also increase commitments under the Credit Agreement in an aggregate principal amount of up to \$10 million by obtaining additional commitments from lenders, subject to obtaining commitments from any participating lenders and certain other conditions. Under the Credit Agreement, loans generally may bear interest based on term SOFR (the secured overnight financing right) or an annual base rate, as applicable, plus, in each case, an applicable margin based on the Company's average borrowing availability each quarter under the Credit Agreement that may range between 2.50% per annum and 3.00% per annum, in the case of term SOFR loans and between 1.50% per annum and 2.00% per annum in the case of base rate loans. In addition, a commitment fee of 0.50% per annum based on unused availability of the credit facility is also payable.

The Credit Agreement contains certain customary representations, warranties, and affirmative and negative covenants of the Company and its subsidiaries that restrict the Company's and its subsidiaries' ability to take certain actions, including, incurrence of indebtedness, creation of liens, making certain investments, mergers or consolidations, dispositions of assets, assignments, sales or transfers of equity in subsidiaries, repurchase or redemption of capital stock, entering into certain transactions with affiliates, or changing the nature of the Company's business. The Credit Agreement also contains financial covenants, which require the Company to maintain a minimum amount of liquidity and a consolidated fixed charge coverage ratio of not less than 1.25 to 1.00, provided that the fixed charge coverage ratio is only applicable when borrowing availability falls below a certain threshold. The obligations under the Credit Agreement may be accelerated or the commitments terminated upon the occurrence of events of default under the Credit Agreement, which include payment defaults, defaults in the performance of affirmative and negative covenants, the inaccuracy of representations or warranties, bankruptcy and insolvency related defaults, cross defaults to other material indebtedness, defaults arising in connection with changes in control, and other customary events of default. The Company was in compliance with all covenants as of December 31, 2023.

The MUFG Credit Agreement was entered into on December 17, 2021 with MUFG Union Bank, N.A. The MUFG Credit Agreement originally included a \$20 million term loan commitment and a \$15 million revolving loan commitment. On March 13, 2023, the Company entered into a First Amendment to the MUFG Credit Agreement which, among other things, terminated the revolving loan commitment in full and established a new maturity date for the term loan of December 31, 2024.

Under the MUFG Credit Agreement, after giving effect to the First Amendment, the term loan generally may bear interest based on term SOFR (the secured overnight financing right) or an annual base rate, as applicable, plus an applicable margin based on the Company's leverage ratio each quarter that may range between 2.50% per annum and 4.00% per annum, in the case of term SOFR loans and between 1.50% per annum and 3.00% per annum in the case of base rate loans.

The MUFG Credit Agreement after giving effect to the First Amendment, also contained financial covenants, which required the Company to maintain, as of the last day of each fiscal quarter commencing (a) as of September 30, 2023, a total leverage ratio of not greater than (i) 10.00 to 1.00, (b) as of December 31, 2023 and as of the last day of each fiscal quarter thereafter, (i) a total leverage ratio of not greater than 2.50 to 1.00, and (ii) a fixed charge coverage ratio of not less than 1.20 to 1.00 and (c) prior to the earlier December 31, 2023 and the date that the Company's leverage ratio is not greater than 2.50 to 1.00 and its fixed charge coverage ratio is not less than 1.20 to 1.00, a minimum amount of unrestricted cash subject to a perfected security interest in favor of MUFG Union Bank more specifically set forth in the MUFG Credit Agreement. Since all outstanding borrowings under the MUFG Credit Agreement have been paid, there were no financial covenants required to be met.

Outstanding debt obligations were as follows (in thousands):

	December 31, 2023	December 31, 2022
Term loan principal amount	\$ —	\$ 19,500
Less: unamortized debt issuance costs	—	(333)
Term loan payable less unamortized debt issuance costs	—	19,167
Less: current maturities	—	(983)
Long-term term loan, net of current maturities	\$ —	\$ 18,184
Borrowings under revolving loan	\$ 5,000	\$ —
Long-term loan payable, net of current maturities	\$ 5,000	\$ 18,184

Debt issuance costs represent loan and legal fees paid in connection with the issuance of long-term debt. Debt issuance costs associated with the Company's secured revolving loan are deferred and amortized to interest expense over the term of the related loan using the straight-line method and are presented in assets on the Company's consolidated balance sheet. For the term loan, debt issuance costs were deducted from current and long-term loan payable and amortized to interest expense under the effective interest method in accordance with key terms of the credit agreement.

4. Leases

The Company has entered into various non-cancelable operating lease agreements for office facilities and equipment with lease periods expiring between 2023 and 2028. Certain of these arrangements have free rent periods and/or escalating rent payment provisions. As such, the Company recognizes rent expense under such arrangements on a straight-line basis. Some leases include options to renew. The Company does not assume renewals in its determination of the lease term unless the renewals are deemed to be reasonably assured at lease commencement. The lease agreements do not contain any material residual value guarantees or material restrictive covenants. Leases with an initial term of twelve months or less are not recorded on the balance sheet.

Operating lease expense was \$0.9 million and \$1.9 million for the years ended December 31, 2023 and 2022, respectively.

Cash paid for amounts included in the measurement of operating lease liabilities included in operating cash flows were \$0.9 million and \$2.1 million for the years ended December 31, 2023 and 2022, respectively.

Supplemental other information related to operating leases were as follows:

	2023	2022
Weighted Average Remaining Lease Term	3.0 years	2.2 years
Weighted Average Discount Rate	5.7 %	6.2 %

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

<u>Year Ending December 31,</u>	<u>Amount</u>
2024	\$ 273
2025	144
2026	66
2027	60
2028	51
Total undiscounted cash flows	594
Less imputed interest	(49)
Total	<u>\$ 545</u>

5. Capital Stock

Since August 15, 2012, the authorized common stock has been 500,000,000 shares and the authorized preferred stock has been 50,000,000 shares.

6. Stock-based Compensation

(a) Stock Options

The terms of the Performant Financial Corporation 2012 Stock Incentive Plan (2012 Plan) provide for the granting of incentive stock options within the meaning of Section 422 of the Internal Revenue Code (the Code) to employees and the granting of nonstatutory stock options, restricted stock, stock appreciation rights, stock unit awards and cash-based awards to employees, non-employee directors and consultants. The Company has reserved 14,550,000 shares of common stock under the Third Amended and Restated 2012 Stock Incentive Plan. Options granted under the 2012 Plan generally vest over four years.

The exercise price of incentive stock options shall generally not be less than 100% of the fair market value of the common stock subject to the option on the date that the option is granted. The exercise price of nonqualified stock options shall generally not be less than 85% of the fair market value of the common stock subject to the option on the date that the option is granted. Options issued under the 2012 Plan have a maximum term of 10 years and vest over schedules determined by the Company's Board of Directors.

Total stock-based compensation expense charged as salaries and benefits expense in the consolidated statements of operations was \$3.9 million and \$3.0 million for the years ended December 31, 2023 and 2022, respectively. The following table sets forth a summary of the Company's stock option activity for the years ended December 31, 2023 and 2022:

	Outstanding Options	Weighted average exercise price per share	Weighted average remaining contractual life (Years)	Aggregate Intrinsic Value (in thousands)
Outstanding at January 1, 2022	1,593,101	\$ 10.51	0.8	\$ 7
Granted	—	—	—	—
Forfeited	(1,343,101)	10.55	—	—
Exercised	—	—	—	\$ —
Outstanding at December 31, 2022	250,000	\$ 10.31	0.9	\$ 20
Granted	—	—	—	—
Forfeited/expired	(178,000)	12.16	—	—
Exercised	—	—	—	—
Outstanding December 31, 2023	72,000	\$ 5.74	1.0	\$ 14
Vested, exercisable, and expected to vest ⁽¹⁾ at December 31, 2023	72,000	\$ 5.74	1.0	\$ 14
Exercisable at December 31, 2023	72,000	\$ 5.74	1.0	\$ 14

⁽¹⁾ Options expected to vest reflect an estimated forfeiture rate.

The Company recognizes share-based compensation costs as expense on a straight-line basis over the option vesting period, which generally is four years.

There were no stock options granted during the years ended December 31, 2023 and December 31, 2022. The aggregate intrinsic value of our stock options (the amount by which the market price of the stock on the date of exercise exceeded the exercise price of the option) exercised during the years ended December 31, 2023 and 2022 was \$0 for both years. At December 31, 2023 and 2022, there was no unrecognized stock-based compensation expense related to non-vested stock options.

There were no net cash proceeds from the exercise of stock options during 2023 and 2022.

If stock options had been granted during the years ended December 31, 2023 and December 31, 2022, the fair value of each option grant would have been estimated using the Black-Scholes-Merton option pricing model. Expected volatilities are calculated based on the historical volatility data of the Company over a term comparable to the expected term of the options issued. The expected term of the award is determined based on the average of the vesting term and the contractual term. Management monitors share option exercise and employee termination patterns to estimate forfeiture rates within the valuation model.

(b) Restricted Stock Units

The following table summarizes restricted stock unit activity for the years ended December 31, 2023 and 2022:

	Number of Awards	Weighted average grant date fair value
Outstanding at January 1, 2022	2,935,351	\$ 2.85
Granted	2,412,906	2.66
Forfeited	(270,674)	2.70
Vested and converted to shares	(1,172,977)	2.49
Outstanding at December 31, 2022	3,904,606	\$ 2.85
Granted	2,260,707	2.50
Forfeited	(159,216)	3.29
Vested and converted to shares	(1,415,352)	2.44
Units withheld for taxes	(82,991)	2.26
Outstanding at December 31, 2023	4,507,754	\$ 2.79
Expected to vest at December 31, 2023	3,966,824	\$ 2.79

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

Share-based compensation cost for restricted stock units (RSUs) is measured based on the closing fair market value of the Company's common stock on the date of grant. The Company recognizes share-based compensation cost over the award's requisite service period on a straight-line basis for time-based RSUs and on a graded basis for RSUs that are contingent on the achievement of performance conditions.

Certain of the RSUs that vested in 2023 were net-share settled such that the Company withheld shares with value equivalent to the employees' minimum statutory obligation for the applicable income and other employment taxes and remitted the cash to the appropriate taxing authorities. The total shares withheld were approximately 83,000 shares for 2023 and were based on the value of the RSUs on their respective vesting dates as determined by the Company's closing stock price. These net-share settlements had the effect of share repurchases by the Company as they reduced the number of shares that would have otherwise been issued as a result of the vesting and did not represent an expense to the Company.

At December 31, 2023 and 2022, there was \$9.5 million and \$8.4 million of compensation expense yet to be recognized related to non-vested restricted stock units. The unrecognized expense as of December 31, 2023 is expected to be recognized over the remaining weighted-average vesting period of 2.8 years. Restricted stock units vested during the years ended December 31, 2023 and 2022 were approximately 1,498,000 and 1,173,000 shares, respectively. Restricted stock units granted under the 2012 Plan generally vest over periods between one year and four years.

7. Employee Benefit Plan

The Company has a 401(k) Salary Deferral Plan (the Plan) covering all full-time employees who have met certain service requirements. Employees may contribute a portion of their salary up to the maximum limit established by the Code for such plans. Employer contributions are discretionary. No matching contributions were made during 2023 and 2022.

8. Income Taxes

The Company's income tax (benefit) expense consists of the following (in thousands):

	<u>December 31, 2023</u>	<u>December 31, 2022</u>
Current:		
Federal	\$ (433)	\$ 163
State	93	4
	<u>(340)</u>	<u>167</u>
Deferred:		
Federal	\$ —	\$ (15)
State	—	(20)
	<u>—</u>	<u>(35)</u>
Total income statement (benefit) expense	<u>\$ (340)</u>	<u>\$ 132</u>

The reconciliation between the amount computed by applying the U.S. federal statutory rate of 21% for 2023 and 2022 to income before taxes and the Company's tax provision for 2023 and 2022 is as follows:

	<u>For the Years Ended December 31,</u>	
	<u>2023</u>	<u>2022</u>
Federal income at the statutory rate	21 %	21 %
State income tax, net of federal benefit	(1)	—
Permanent differences	—	(1)
Work opportunity credit	—	2
Return to provision true-up	—	3
Stock-based compensation	(3)	(24)
Valuation allowance	(18)	—
Change in uncertain tax positions	2	(3)
Interest received on tax refund	3	—
Effective tax rate	<u>4 %</u>	<u>(2)%</u>

The following table summarized the components of the Company's deferred tax assets and liabilities as of December 31, 2023 and 2022 (in thousands):

	2023	2022
Deferred tax assets		
Vacation accrual	\$ 475	\$ 542
Non qualified stock options	469	725
State tax deferral	135	137
State tax credits	8	79
Net operating loss	7,172	6,148
Interest expense limitation	3,199	2,968
Lease liability	148	610
Appeals reserve	152	289
Federal tax credits	167	145
Other	374	507
Total deferred tax assets	12,299	12,150
Valuation allowance	\$ (11,619)	\$ (9,404)
Total deferred tax assets net of valuation allowance	680	2,746
Deferred tax liabilities:		
Fixed assets	\$ (65)	\$ (1,577)
Right of use asset	(144)	(545)
Other	(471)	(624)
Total deferred tax liabilities	(680)	(2,746)
Net deferred tax liabilities	\$ —	\$ —

As of December 31, 2023, and 2022, the Company recorded a valuation allowance against deferred tax assets that are not more likely than not realizable based upon the assessment of all positive and negative evidence. The total amount of the valuation allowance at December 31, 2023 is \$11.6 million, which is an increase of \$2.2 million from the amount recorded as of December 31, 2022.

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the reversal of deferred tax liabilities (including the impact of available carryback and carryforward periods), projected future taxable income and tax-planning strategies in making this assessment. Based upon the Company's cumulative three-year loss position and projections for future taxable income over the periods in which the deferred tax assets are deductible, management believes it is more likely than not that the Company will be unable to realize the benefits of these deductible differences. The amount of the deferred tax asset considered realizable, however, could change in the near term if estimates of future taxable income during the carryforward period change.

The Company has state tax credits of \$8 thousand, which will begin to expire in 2024 and federal tax credits of \$0.2 million. The Company has state net operating loss carryforwards of \$54.9 million which will start to expire in 2024 and a federal net operating loss carryforward of \$16.4 million which will be carried forward indefinitely.

The following table reconciles the Company's unrecognized tax benefits as of December 31, 2023 from its unrecognized tax benefits as of December 31, 2022 (in thousands):

Unrecognized tax benefits balance at January 1, 2022	\$	397
Increase related to prior year tax positions		157
Increase related to current year tax positions		6
Lapse of statute of limitations		(51)
Unrecognized tax benefits balance at December 31, 2022	\$	509
Decrease related to prior year tax positions		(157)
Lapse of statute of limitations		(31)
Unrecognized tax benefits balance at December 31, 2023	\$	321

At December 31, 2023 and 2022, the Company had approximately \$0.3 million and \$0.5 million of unrecognized tax benefits, respectively. The Company released \$0.2 million of unrecognized tax benefits after the Company received a tax authority final determination following the completion of an examination of the tax position. The Company records interest expense and penalties related to unrecognized tax benefits in income tax expense. The amount of accrued interest was \$0.1 million and \$0.1 million at December 31, 2023 and 2022, respectively. No penalties were recognized in 2023 or accrued at December 31, 2023, and 2022, respectively. The Company has unrecognized tax benefits of approximately \$0.3 million which, if recognized, would favorably affect the Company's effective income tax rate.

The Company files income tax returns with the U.S. federal government and various state jurisdictions. The Company is subject to federal income tax examinations based upon statute of limitations for tax years 2019 forward. The Company operates in a number of state and local jurisdictions, most of which have never audited the Company's records. Accordingly, the Company is subject to state and local income tax examinations based upon the various statutes of limitations in each jurisdiction. For tax years before 2019, the Company is no longer subject to Federal and certain other state tax examinations. The Company is not currently under examination in any jurisdiction.

9. Other Commitments and Contingencies

(a) Trust Funds

The Company collects payments from counterparties on behalf of certain of our COB clients, where our client is owed a refund because they are not the primary payer for a healthcare claim as the covered member has other forms of insurance coverage. These cash collections are held in trust in bank accounts controlled by the Company. The Company remits trust funds to the clients on a regular basis. The amount of cash held in trust and the related liability are separated from and not included in the Company's consolidated financial statements. Cash held in trust for customers totaled \$1.2 million and \$1.7 million at December 31, 2023 and 2022, respectively.

(b) Litigation

The Company, during the ordinary course of its operations, has been named in various legal suits and claims, several of which are still pending. In the opinion of management and the Company's legal counsel, such legal actions are not expected to have a material effect on the Company's consolidated financial position or results of operations or cash flows.

10. Subsequent Events

The Company has evaluated subsequent events through the date these consolidated financial statements were issued and did not identify any events which require adjustments to the consolidated financial statements.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

PERFORMANT FINANCIAL CORPORATION

By: _____ /s/ Simeon M. Kohl
Simeon M. Kohl
Chief Executive Officer

Date: March 13, 2024

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Simeon M. Kohl and Rohit Ramchandani, and each of them, his or her true and lawful attorneys-in-fact, each with full power of substitution, for him or her in any and all capacities, to sign any amendments to this report on Form 10-K and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact or their substitute or substitutes may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Simeon M. Kohl</u> Simeon M. Kohl	Chief Executive Officer (Principal Executive Officer)	March 13, 2024
<u>/s/ Rohit Ramchandani</u> Rohit Ramchandani	Chief Financial Officer	March 13, 2024
<u>/s/ James LaCamp</u> James LaCamp	Director	March 13, 2024
<u>/s/ Bradley M. Fluegel</u> Bradley M. Fluegel	Director	March 13, 2024
<u>/s/ William D. Hansen</u> William D. Hansen	Director	March 13, 2024
<u>/s/ Eric Yanagi</u> Eric Yanagi	Director	March 13, 2024
<u>/s/ Shantanu Agrawal</u> Shantanu Agrawal	Director	March 13, 2024

SCHEDULE II – VALUATION AND QUALIFYING ACCOUNTS

For the years ended December 31, 2023 and 2022

Estimated allowance and liability for appeals and disputes (in thousands):

Description	Balance at Beginning of Period	Additions to (Reductions in) Appeals Reserve	Appeals Found in Providers Favor	Balance at End of Period
2023	\$ 1,106	548	(1,053)	\$ 601
2022	\$ 1,190	1,296	(1,380)	\$ 1,106

Deferred tax asset valuation allowance (in thousands):

Description	Balance at Beginning of Period	Additions	Releases	Balance at End of Period
2023	\$ 9,404	2,215	—	\$ 11,619
2022	\$ 10,727	—	1,323	\$ 9,404

**THIRD AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
PERFORMANT FINANCIAL CORPORATION**

Performant Financial Corporation, a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

FIRST: The name of the corporation is Performant Financial Corporation.

SECOND: The original Certificate of Incorporation of the corporation was filed with the Secretary of State of the State of Delaware on October 8, 2003 under the name DCS Holdings, Inc.

THIRD: Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Third Amended and Restated Certificate of Incorporation restates, integrates and further amends the provisions of the Amended and Restated Certificate of Incorporation of the corporation, as amended.

FOURTH: The Certificate of Incorporation of the corporation shall be amended and restated to read in full as follows:

article I

The name of the corporation is Performant Financial Corporation (the “*Corporation*”).

article II

The registered agent and the address of the registered offices in the State of Delaware are:

Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, Delaware 19808
County of New Castle

article III

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law (the “*DGCL*”).

article IV

A. Classes of Stock. The total number of shares of all classes of capital stock that the Corporation shall have authority to issue is 550,000,000, of which 500,000,000 shares shall be Common Stock, \$0.0001 par value per share (the “*Common Stock*”), and of which 50,000,000 shares shall be Preferred Stock, \$0.0001 par value per share (the “*Preferred Stock*”). The number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the then outstanding shares of Common Stock, without a vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such Preferred Stock holders is required pursuant to the provisions established by the Board of Directors of the

Corporation (the “*Board of Directors*”) in the resolution or resolutions providing for the issue of such Preferred Stock, and if such holders of such Preferred Stock are so entitled to vote thereon, then, except as may otherwise be set forth in the certificate of incorporation of the Corporation, the only stockholder approval required shall be the affirmative vote of a majority of the voting power of the Common Stock and the Preferred Stock so entitled to vote, voting as one class.

B. Preferred Stock. The Preferred Stock may be issued from time to time in one or more series, as determined by the Board of Directors. The Board of Directors is expressly authorized to provide for the issue, in one or more series, of all or any of the remaining shares of Preferred Stock and, in the resolution or resolutions providing for such issue, to establish for each such series the number of its shares, the voting powers, full or limited, of the shares of such series, or that such shares shall have no voting powers, and the designations, preferences and relative, participating, optional or other special rights of the shares of such series, and the qualifications, limitations or restrictions thereof. The Board of Directors is also expressly authorized (unless forbidden in the resolution or resolutions providing for such issue) to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series subsequent to the issuance of shares of that series. In case the number of shares of any such series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

C. Common Stock.

1. Relative Rights of Preferred Stock and Common Stock. All preferences, voting powers, relative, participating, optional or other special rights and privileges, and qualifications, limitations, or restrictions of the Common Stock are expressly made subject and subordinate to those that may be fixed with respect to any shares of the Preferred Stock.

2. Voting Rights. Except as otherwise required by law or the certificate of incorporation of the Corporation, each holder of Common Stock shall have one vote in respect of each share of stock held by such holder of record on the books of the Corporation for the election of directors and on all matters submitted to a vote of stockholders of the Corporation.

3. Dividends. Subject to the preferential rights of the Preferred Stock, the holders of shares of Common Stock shall be entitled to receive, when and if declared by the Board of Directors, out of the assets of the Corporation which are by law available therefor, dividends payable either in cash, in property or in shares of capital stock.

4. Dissolution, Liquidation or Winding Up. In the event of any dissolution, liquidation or winding up of the affairs of the Corporation, after distribution in full of the preferential amounts, if any, to be distributed to the holders of shares of the Preferred Stock, holders of Common Stock shall be entitled, unless otherwise provided by law or the certificate of incorporation of the Corporation, to receive all of the remaining assets of the Corporation of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively.

article V

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware:

A. The Board of Directors is expressly authorized to adopt, amend or repeal the bylaws of the Corporation, without any action on the part of the stockholders, by the vote of

at least a majority of the directors of the Corporation then in office. In addition to any vote of the holders of any class or series of stock of the Corporation required by law or the certificate of incorporation of the Corporation, the bylaws may also be adopted, amended or repealed by the affirmative vote of the holders of a majority of the voting power of the shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting as one class; *provided, however*, that, with respect to the power of stockholders to adopt, amend or repeal the bylaws, from and after the Trigger Date (as defined in Article XII below), the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of the shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting as one class, shall be required to adopt, amend or repeal the bylaws.

B. Elections of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.

C. The books of the Corporation may be kept at such place within or without the State of Delaware as the bylaws of the Corporation may provide or as may be designated from time to time by the Board of Directors.

article VI

A. The business and affairs of the Corporation shall be managed by a Board of Directors consisting of not less than five (5) nor more than fifteen (15) members. The exact number of directors within the minimum and maximum limitations specified in the preceding sentence shall be fixed from time to time by the Board of Directors pursuant to a resolution adopted by the affirmative vote of a majority of the directors of the Corporation then in office. The Board of Directors, other than those directors elected by the holders of any series of Preferred Stock as provided for or fixed pursuant to the provisions of Article IV hereof, shall be divided into three classes, designated Class I, Class II and Class III, as nearly equal in number as possible, and the term of office of directors of one class shall expire at each annual meeting of stockholders, and in all cases as to each director until his successor shall be duly elected and qualified or until his earlier resignation, removal from office, death or incapacity. Upon the effectiveness of this Third Amended and Restated Certificate of Incorporation (the “*Effective Time*”), the Board of Directors shall assign all members of the Board of Directors then in office to a class and those directors assigned to Class I shall hold office for a term expiring at the first regularly scheduled annual meeting of stockholders following the Effective Time, those directors assigned to Class II shall hold office for a term expiring at the second annual meeting of stockholders following the Effective Time, and those directors assigned to Class III shall hold office for a term expiring at the third annual meeting of stockholders following the Effective Time. At each succeeding annual meeting of stockholders, a number of directors equal to the number of directors whose term expires at the time of such meeting (or, if less, the number of directors properly nominated and qualified for election) shall be elected to hold office until the third succeeding annual meeting of stockholders after their election.

B. Subject to the rights of the holders of any series of preferred stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled by vote of the holders of the outstanding capital stock entitled to vote in the election of directors or by a majority vote of the directors then in office, although less than a quorum, or by a sole remaining director, provided that that from and after the Trigger Date any such newly created directorship or vacancy shall be filled solely by a majority vote of the directors then in office, although less than a quorum, or by a sole remaining director; and provided, further, that in filling any such newly created directorship or vacancy before or after the Trigger Date the Board of Directors shall comply with

the Director Nomination Agreement, dated as of July 20, 2012, by and between the Corporation and Parthenon DCS Holdings, LLC. If there are no directors in office, then an election of directors may be held in the manner provided by statute. Directors chosen pursuant to any of the foregoing provisions shall hold office for a term expiring at the Annual Meeting of Stockholders at which the term of the class to which they have been elected expires and until their successors are duly elected and have qualified or until their earlier resignation or removal. Additional directorships resulting from an increase in the number of directors pursuant to paragraph A of this Article VI shall be apportioned among the three classes as equally as possible. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director. In the event of a vacancy in the Board of Directors, the remaining directors, except as otherwise provided by law, or by the certificate of incorporation or the bylaws of the Corporation, may exercise the powers of the full board until the vacancy is filled.

C. Any director or the entire Board of Directors may be removed with or without cause by the vote of the holders of a majority of the voting power of the shares of capital stock entitled to vote generally in the election of directors; *provided, however*, that from and after the Trigger Date stockholders may effect such removal only for cause.

article VII

A. From and after the Trigger Date, any action required or permitted to be taken at any annual or special meeting of the stockholders may be taken only at a duly called annual or special meeting of stockholders and may not be taken by any consent in writing by the stockholders without a meeting.

B. Subject to any special rights of the holders of any series of Preferred Stock, and to the requirements of applicable law, special meetings of stockholders of the Corporation may be called only (i) by or at the direction of the Board of Directors pursuant to a written resolution adopted by the affirmative vote of a majority of the Board of Directors, or (ii) prior to the Trigger Date, by the Secretary of the Corporation at the request of the holders of more than fifty percent (50%) of the outstanding shares of Common Stock. Any business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

C. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner and to the extent provided in the bylaws of the Corporation.

D. A state or federal court located within the State of Delaware shall, to the fullest extent permitted by applicable law, be the sole and exclusive forums for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation arising pursuant to any provision of the DGCL or the Corporation's certificate of incorporation or bylaws or (iv) any action asserting a claim against the Corporation governed by the internal affairs doctrine, in each such case subject to said state or federal court having personal jurisdiction over the indispensable parties named as defendants therein. Any Person (as defined in Article XII below) purchasing or otherwise acquiring any interest in the shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article VII, paragraph D.

article VIII

A. Opt Out of DGCL 203. The Corporation shall not be governed by Section 203 of the DGCL.

B. Limitations on Business Combinations. Notwithstanding the foregoing, the Corporation shall not engage in any business combination (as defined below), at any point in time at which the Corporation's Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act (as defined in Article XII below), with any interested stockholder (as defined below) for a period of three (3) years following the time that such stockholder became an interested stockholder, unless:

1. prior to such time, the Board of Directors approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder, or

2. upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock (as defined below) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (a) persons who are directors and also officers or (b) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer, or

3. at or subsequent to such time, the business combination is approved by the Board of Directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least two-thirds of the outstanding voting stock of the Corporation which is not owned by the interested stockholder; or

4. the stockholder became an interested stockholder inadvertently and (a) as soon as practicable divests itself of ownership of sufficient shares so that the stockholder ceases to be an interested stockholder; and (b) would not, at any time within the three (3) year period immediately prior to a business combination between the corporation and such stockholder, have been an interested stockholder but for the inadvertent acquisition of ownership; or

5. the business combination is proposed prior to the consummation or abandonment of, and subsequent to the earlier of the public announcement or the notice required hereunder of, a proposed transaction which (a) constitutes one (1) of the transactions described in the second sentence of this paragraph, (b) is with or by a person who either was not an interested stockholder during the previous three (3) years or who became an interested stockholder with the approval of the Board of Directors, and (c) is approved or not opposed by a majority of the members of the Board of Directors then in office (but not less than one (1)) who were directors prior to any person becoming an interested stockholder during the previous three (3) years or were recommended for election or elected to succeed such directors by a majority of such directors. The proposed transactions referred to in the preceding sentence are limited to (x) a merger or consolidation of the Corporation (except for a merger in respect of which, pursuant to Section 251(f) of the DGCL, no vote of the stockholders of the Corporation is required), (y) a sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one (1) transaction or a series of transactions), whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation (other than to any direct or indirect wholly-owned subsidiary or to the Corporation) having an aggregate market value equal to fifty percent (50%) or more of either that aggregate market value of all of the assets of

the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Corporation, or (z) a proposed tender or exchange offer for fifty percent (50%) or more of the outstanding voting stock of the Corporation. The Corporation shall give not less than twenty (20) days' notice to all interested stockholders prior to the consummation of any of the transactions described in clause (x) or (y) of the second sentence of this paragraph.

C. Definitions. For purposes of this Article VIII, references to:

1. **“affiliate”** means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

2. **“associate,”** when used to indicate a relationship with any person, means: (a) any corporation, partnership, unincorporated association or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of 20% or more of any class of voting stock; (b) any trust or other estate in which such person has at least a 20% beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (c) any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person.

3. **“business combination,”** when used in reference to the Corporation and any interested stockholder of the Corporation, means:

a. any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation (i) with the interested stockholder, or (ii) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the interested stockholder and as a result of such merger or consolidation paragraph B of this Article VIII is not applicable to the surviving entity.

b. Any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the interested stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Corporation;

c. Any transaction which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any stock of the Corporation or of such subsidiary to the interested stockholder, except: (i) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which securities were outstanding prior to the time that the interested stockholder became such; (ii) pursuant to a merger under Section 251(g) of the DGCL; (iii) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the Corporation subsequent to the time the interested stockholder became such; (iv) pursuant to an exchange offer by the Corporation to purchase stock made on the same terms to all holders of said stock; or (v) any issuance or transfer of stock by the Corporation; *provided, however,* that in no case under items (iii)-(v) of this subsection shall there be an increase in the interested stockholder's proportionate share of the stock of any class or series of the Corporation or of the voting stock of the

Corporation (except as a result of immaterial changes due to fractional share adjustments);

d. Any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the Corporation or of any such subsidiary which is owned by the interested stockholder, except as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested stockholder; or

e. Any receipt by the interested stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges, or other financial benefits (other than those expressly permitted in subsections a-d above) provided by or through the Corporation or any direct or indirect majority-owned subsidiary.

4. “**control**,” including the terms “**controlling**,” “**controlled by**” and “**under common control with**,” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of 20% or more of the outstanding voting stock of the Corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds voting stock, in good faith and not for the purpose of circumventing this Article VIII, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.

5. “**interested stockholder**” means any person (other than the Corporation or any direct or indirect majority-owned subsidiary of the Corporation) that (a) is the owner of 15% or more of the outstanding voting stock of the Corporation, or (b) is an affiliate or associate of the Corporation and was the owner of 15% or more of the outstanding voting stock of the Corporation at any time within the three (3) year period immediately prior to the date on which it is sought to be determined whether such person is an interested stockholder, and the affiliates and associates of such person; *provided, however*, that the term “interested stockholder” shall not include (i) the Parthenon Entities (as defined in Article XII below), or (ii) any person whose ownership of shares in excess of the 15% limitation set forth herein is the result of any action taken solely by the Corporation; provided that such person specified in this clause (ii) shall be an interested stockholder if thereafter such person acquires additional shares of voting stock of the Corporation, except as a result of further corporate action not caused, directly or indirectly, by such person. For the purpose of determining whether a person is an interested stockholder, the voting stock of the Corporation deemed to be outstanding shall include stock deemed to be owned by the person through application of the definition of “owner” below but shall not include any other unissued stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

6. “**owner**,” including the terms “**own**” and “**owned**,” when used with respect to any stock, means a person that individually or with or through any of its affiliates or associates:

a. beneficially owns such stock, directly or indirectly; or

b. has (i) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; *provided, however*, that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered stock is accepted for purchase or exchange; or (ii) the right to vote such stock pursuant to any agreement, arrangement or understanding; *provided, however*, that a person shall not be deemed the owner of any stock because of such person's right to vote such stock if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten (10) or more persons; or

c. has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in item (ii) of the immediately preceding subsection, or disposing of such stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock.

7. "**person**" means any individual, corporation, partnership, unincorporated association or other entity.

8. "**stock**" means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

9. "**voting stock**" means stock of any class or series entitled to vote generally in the election of directors.

article IX

A. Scope. The provisions of the Article IX are set forth to define, to the extent permitted by applicable law, the duties of Exempted Persons (as defined below) to the Corporation with respect to certain classes or categories of business opportunities. "**Exempted Persons**" means each of the Parthenon Entities (other than the Corporation and its subsidiaries) and all of their respective partners, principals, directors, officers, members, managers and/or employees, including any of the foregoing who serve as officers or directors of the Corporation.

B. Competition and Allocation of Corporate Opportunities. The Exempted Persons shall not have any fiduciary duty to refrain from engaging directly or indirectly in the same or similar business activities or lines of business as the Corporation or any of its subsidiaries. To the fullest extent permitted by applicable law, the Corporation, on behalf of itself and its subsidiaries, renounces any interest or expectancy of the Corporation and its subsidiaries in, or in being offered an opportunity to participate in, business opportunities that are from time to time presented to the Exempted Persons, even if the opportunity is one that the Corporation or its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so, and each such Exempted Person shall have no duty to communicate or offer such business opportunity to the Corporation and, to the fullest extent permitted by applicable law, shall not be liable to the Corporation or any of its subsidiaries for breach of any fiduciary or other duty, as director or officer or otherwise, by reason of the fact that such Exempted Person pursues or acquires such business opportunity, directs such business opportunity to another Person or fails to present such business opportunity, or information regarding such business opportunity, to the Corporation or its subsidiaries.

C. Amendment of this Article. No amendment or repeal of this Article IX in accordance with the provisions of Article XI shall apply to or have any effect on the liability or alleged liability of any Exempted Person for or with respect to any activities or opportunities of which such Exempted Person becomes aware prior to such amendment or repeal.

article X

A. Limitation on Liability. To the fullest extent permitted by the DGCL, as the same exists or as may hereafter be amended (including, but not limited to Section 102(b)(7) of the DGCL), a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the DGCL hereafter is amended to further eliminate or limit the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended DGCL. Any repeal or modification of this paragraph by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

B. Indemnification. The Corporation shall have the power to indemnify to the fullest extent permitted by law any individual made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, any predecessor of the corporation or any subsidiary or Affiliate of the Corporation, or serves or served at any other enterprise as a director, officer, employee or agent at the request of the Corporation or any predecessor to the Corporation (including the heirs, executors, administrators or estate of such individual). The Corporation shall indemnify any individual made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director, officer, employee or agent at the request of the Corporation, any predecessor to the Corporation or any subsidiary or Affiliate of the Corporation (including the heirs, executors, administrators or estate of such individual), as and to the extent (and on the terms and subject to the conditions) set forth in the bylaws of the Corporation or in any contract of indemnification entered into by the Corporation and any such individual.

C. Insurance. The Corporation may, to the fullest extent permitted by law, purchase and maintain insurance on behalf of any individual who is or was a director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any expense, liability or loss incurred by such individual in any such capacity or arising out of such individual's status as such, whether or not the Corporation would have the power to indemnify such individual against such expense, liability or loss under the DGCL.

D. Repeal and Modification. Any repeal or modification of the foregoing provisions of this Article X shall not adversely affect any right or protection existing hereunder immediately prior to such repeal or modification.

article XI

The Corporation reserves the right to amend, alter, change or repeal any provision contained in the certificate of incorporation, in the manner now or hereafter prescribed by the DGCL, and all rights conferred upon stockholders herein are granted subject to this reservation. Notwithstanding anything to the contrary contained in the certificate of incorporation, and

notwithstanding that a lesser percentage may be permitted from time to time by applicable law, no provisions of paragraph A of Article V, Article VI, Article VII, Article VIII, Article IX, Article X, Article XI and Article XII may be altered, amended or repealed in any respect, nor may any provision or bylaw inconsistent therewith be adopted, unless in addition to any other vote required by the certificate of incorporation or otherwise required by law, (i) prior to the Trigger Date, such alteration, amendment, repeal or adoption is approved by, in addition to any other vote otherwise required by law, the affirmative vote of the holders of a majority of the voting power of the shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting as one class, and (ii) from and after the Trigger Date, such alteration, amendment, repeal or adoption is approved by, in addition to any other vote otherwise required by law, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of the shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting as one class, at a meeting of the stockholders called for that purpose.

article XII

For purposes of this certificate of incorporation, the following capitalized terms shall have the meaning set forth below:

A. “**Affiliate**” means, respect to any Person, any other Person that controls, is controlled by, or is under common control with, such Person; the term “**control**” as used in this definition, means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and “**controlled**,” “**controlling**” and “**Affiliated**” shall have meanings correlative to the foregoing.

B. “**Beneficially Own**” means that a specified Person has or shares the right, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, to vote shares of capital stock of the Corporation.

C. “**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

D. “**Parthenon Entities**” means PCP Managers, LLC and its successors and Affiliates.

E. “**Person**” means an individual, any general partnership, limited partnership, limited liability company, corporation, trust, joint stock company, joint venture, unincorporated association, cooperative or association or any other legal entity or organization of whatever nature, and shall include any successor (by merger or otherwise) of such entity.

F. “**Trigger Date**” means the first date on which the Parthenon Entities cease, collectively, to Beneficially Own more than fifty percent (50%) of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors.

FIFTH: This Third Amended and Restated Certificate of Incorporation was duly adopted by the Board of Directors of the Corporation.

SIXTH: This Third Amended and Restated Certificate of Incorporation was duly adopted by the stockholders in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware. Written consent of the stockholders has been given with respect to this Third Amended and Restated Certificate of Incorporation in

accordance with Section 228 of the General Corporation Law of the State of Delaware, and written notice of the amendments reflected herein has been given to all stockholders who did not consent in writing to such amendments, as provided in Section 228.

IN WITNESS WHEREOF, the Corporation has caused this Third Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer this 14th day of August, 2012.

PERFORMANT FINANCIAL CORPORATION

By: /s/ Lisa C. Im
Lisa C. Im
Chief Executive Officer

DESCRIPTION OF SECURITIES REGISTERED UNDER SECTION 12 OF THE EXCHANGE ACT

Performant Financial Corporation (“Performant” or “our”) has one class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”): our Common Stock.

Description of Common Stock

The following description of our Common Stock is a summary and does not purport to be complete. It is subject to and qualified in its entirety by reference to our Restated Certificate of Incorporation (the “Certificate of Incorporation”) and our Amended and Restated Bylaws (the “Bylaws”), each of which is incorporated by reference as an exhibit to the Annual Report on Form 10-K, of which this Exhibit is a part. We encourage you to read our Certificate of Incorporation, our Bylaws and the applicable provisions of the Delaware General Corporation Law, or the DGCL, for additional information.

Authorized Shares of Capital Stock

Our authorized capital stock consists of 500,000,000 shares of common stock, \$0.0001 par value per share (“Common Stock”), and 50,000,000 shares of preferred stock, \$0.0001 par value per share (“Preferred Stock”). The outstanding shares of our Common Stock are duly authorized, validly issued, fully paid, and nonassessable.

Voting Rights

Pursuant to the Certificate of Incorporation, the holders of Common Stock are entitled to one vote per share for the election of directors and on all matters submitted to a vote of stockholders. The vote of the holders of a majority of the shares present in person or by proxy at a meeting of stockholders and entitled to vote shall decide any question submitted to a vote, except as otherwise required by law or provided for in the Certificate of Incorporation or Bylaws. The Certificate of Incorporation does not provide for cumulative voting in the election of directors.

Dividend Rights

Subject to the rights, if any, of the holders of any outstanding series of Preferred Stock, the holders of Common Stock are entitled to receive such dividends, if any, as may be declared by the board of directors out of legally available funds, payable either in cash, property or shares of capital stock.

Liquidation Rights

Upon liquidation, dissolution or winding-up of Performant, subject to the rights, if any of the holders of our Preferred Stock, the holders of Common Stock are entitled to receive all of the remaining assets of Performant of whatever kind available for distribution ratable in proportion to the number of shares held by them respectively.

Other Rights and Preferences

Our Common Stock has no preemptive, subscription, redemption or conversion rights. The Certificate of Incorporation provides that stockholder action can be taken only at an annual or special meeting of stockholders and cannot be taken by written consent in lieu of a meeting. The Certificate of Incorporation and Bylaws also provide that, except as otherwise required by law, special meetings of the stockholders can only be called pursuant to a resolution adopted by a majority of the board of directors or at the request of holders of 50% or more of our

outstanding shares. Except as described above, stockholders are not permitted to call a special meeting or to require the board of directors to call a special meeting.

Certain Anti-Takeover Effects

Certain provisions of the Certificate of Incorporation and Bylaws contain provisions that could have the effect of delaying, deferring or discouraging another party from acquiring control of Performant. These provisions, which are summarized below, are expected to discourage certain types of coercive takeover practices and inadequate takeover bids. These provisions include:

Classified Board. The Certificate of Incorporation provides that our board of directors shall be divided into three classes of directors, with the classes as nearly equal in number as possible. As a result, approximately one-third of our board of directors is elected each year. We believe that the classification of our board of directors facilitates the continuity and stability of our business strategies and policies. However, our classified board could have the effect of making the replacement of incumbent directors more time consuming and difficult. At least two annual meetings of stockholders, instead of one, will generally be required to effect a change in a majority of our board of directors.

Number of Directors; Removal of Directors and Filling of Vacancies. The Certificate of Incorporation provides that our board of directors has the authority to determine the number of directors within a range of between five and 15 directors. It also provides that (i) vacancies in our board of directors, including vacancies created by an increase in the number of directors, shall be filled solely by a majority vote of the directors then in office, and (ii) directors or the entire board may be removed only for cause.

Action by Written Consent; Special Meetings of Stockholders. The Certificate of Incorporation provides that stockholder action can be taken only at an annual or special meeting of stockholders and cannot be taken by written consent in lieu of a meeting. The Certificate of Incorporation and the Bylaws also provide that, except as otherwise required by law, special meetings of the stockholders can only be called pursuant to a resolution adopted by a majority of the board of directors or at the request of holders of 50% or more of our outstanding shares. Except as described above, stockholders are not permitted to call a special meeting or to require the board of directors to call a special meeting.

Advance Notice Procedures. The Bylaws require an advance notice procedure for stockholder proposals to be brought before an annual meeting of our stockholders, including proposed nominations of persons for election to the board of directors. Stockholders at an annual meeting are only able to consider proposals or nominations specified in the notice of meeting or brought before the meeting by or at the direction of the board of directors or by a stockholder who was a stockholder of record on the record date for the meeting, who is entitled to vote at the meeting and who has given our Secretary timely written notice, in proper form, of the stockholder's intention to bring that business before the meeting. Although the Bylaws do not give the board of directors the power to approve or disapprove stockholder nominations of candidates or proposals regarding other business to be conducted at a special or annual meeting, the Bylaws may have the effect of precluding the conduct of certain business at a meeting if the proper procedures are not followed or may discourage or deter a potential acquiror from conducting a solicitation of proxies to elect its own slate of directors or otherwise attempting to obtain control of the Company.

Super Majority Approval Requirements. The DGCL generally provides that the affirmative vote of a majority of the shares entitled to vote on any matter is required to amend a corporation's certificate of incorporation or bylaws, unless either a corporation's certificate of incorporation or bylaws require a greater percentage. The Certificate of Incorporation and Bylaws provide that the affirmative vote of holders of at least 66 2/3% of the total votes eligible to be cast in the election of directors will be required to amend, alter, change or repeal the Bylaws or specified provisions of the Certificate of Incorporation. This requirement of a super majority vote to approve amendments to the Bylaws and certain provisions of the Certificate of Incorporation could enable a minority of our stockholders to exercise veto power over any such amendments.

Authorized but Unissued Shares. Our authorized but unissued shares of Common Stock and Preferred Stock are available for future issuance without stockholder approval. These additional shares may be utilized for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. In addition, Preferred Stock could be issued with voting, liquidation, dividend and other rights superior to our Common Stock. The existence of authorized but unissued shares of Common Stock and Preferred Stock could render more difficult or discourage an attempt to obtain control of a majority of our Common Stock by means of a proxy contest, tender offer, merger or otherwise.

Business Combinations with Interested Stockholders. We have elected in the Certificate of Incorporation not to be subject to Section 203 of the DGCL, an anti-takeover law. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a business combination, such as a merger, with a person or group owning 15% or more of the corporation's voting stock for a period of three years following the date the person became an interested stockholder, unless (with certain exceptions) the business combination or the transaction in which the person became an interested stockholder is approved in a prescribed manner. Accordingly, we are not subject to any anti-takeover effects of Section 203. However, the Certificate of Incorporation contains provisions that have the same effect as Section 203, except that they provide that certain of our stockholders shall not be deemed to be an "interested stockholder," regardless of the percentage of our voting stock owned by such stockholders and accordingly such stockholders not subject to such restrictions.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, LLC. The transfer agent's address is 6201 15th Avenue, Brooklyn, New York 11219.

Listing

The shares of our common stock are listed on the NASDAQ Global Select Market under the symbol "PFMT."

SUBSIDIARIES

Company Name	State of Incorporation
Performant Business Services, Inc.	Nevada
Performant Recovery, Inc.	California
Performant Technologies, LLC.	California

Consent of Independent Registered Public Accounting Firm

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (File No. 333-220423 and 333-235660) and Form S-8 (File No. 333-220426 and 333-206295) of Performant Financial Corporation of our report dated March 13, 2024, relating to the consolidated financial statements, the financial statement schedule and the effectiveness of internal control over financial reporting, which appear in this annual report on Form 10-K for the year ended December 31, 2023.

/s/ Baker Tilly US, LLP

Atlanta, Georgia
March 13, 2024

CERTIFICATION

I, Simeon M. Kohl, certify that:

1. I have reviewed this annual report on Form 10-K of Performant Financial Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(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.

Dated: March 13, 2024

/s/ Simeon M. Kohl

Simeon M. Kohl
Chief Executive Officer

CERTIFICATION

I, Rohit Ramchandani, certify that:

1. I have reviewed this annual report on Form 10-K of Performant Financial Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(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.

Dated: March 13, 2024

/s/ Rohit Ramchandani

Rohit Ramchandani
Chief Financial Officer

SECTION 1350 CERTIFICATIONS

I, Simeon M. Kohl, Chief Executive Officer of Performant Financial Corporation (the “Company”), certify, for the purposes of 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- (1) the Annual Report of the Company on Form 10-K for the year ended December 31, 2023 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), which accompanies this Certificate, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 13, 2024

/s/ Simeon M. Kohl

Simeon M. Kohl
Chief Executive Officer

SECTION 1350 CERTIFICATIONS

I, Rohit Ramchandani, Chief Financial Officer of Performant Financial Corporation (the “Company”), certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- (1) the Annual Report of the Company on Form 10-K for the year ended December 31, 2023 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), which accompanies this Certificate, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 13, 2024

/s/Rohit Ramchandani

Rohit Ramchandani
Chief Financial Officer

**PERFORMANT FINANCIAL CORPORATION
INCENTIVE-BASED COMPENSATION RECOUPMENT POLICY**

1. Purpose

The Board of Directors (the “**Board**”) of Performant Financial Corporation, a Delaware corporation (the “**Company**”), has adopted this Incentive-Based Compensation Recoupment Policy (this “**Policy**”) to comply with Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as codified by Section 10D of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), and Nasdaq Listing Rule 5608. This Policy provides for the Company’s recoupment of Incentive-Based Compensation paid erroneously to Covered Executives in the event of a Restatement. Capitalized terms not otherwise defined herein will have the meanings set forth in Section 11.

2. Administration

This Policy will be administered by the Board or, if so designated by the Board, the Compensation Committee of the Board, in which case references herein to the Board will be deemed references to the Compensation Committee of the Board.

The Board is authorized to interpret and construe this Policy and to make all determinations necessary, appropriate, or advisable for the administration of this Policy. Subject to any limitation under applicable law, the Board may authorize and empower any officer or employee of the Company to take any and all actions necessary or appropriate to carry out the purpose and intent of this Policy (other than with respect to any recovery under this Policy involving such officer or employee). This Policy will be interpreted in a manner that is consistent with the requirements of Section 10D of the Exchange Act, any applicable rules or standards adopted by the Securities and Exchange Commission (the “**SEC**”), and any national securities exchange on which the Company’s securities are listed. Any determinations made by the Board will be final and binding on all affected individuals.

3. Recoupment of Incentive-Based Compensation

In the event the Company is required to prepare a Restatement, the Company will require that the Covered Executive forfeit, promptly repay to the Company, or offset, on a pre-tax basis, the full amount of the excess of: (a) the amount of any Incentive-Based Compensation received by the Covered Executive during the Clawback Period that was calculated based on the erroneous data in the original financial statements that were subsequently restated over (b) the amount of such Incentive-Based Compensation to which the Covered Executive would have been entitled to receive based on the restated financial statements (such excess amount, the “**Recoverable Incentive-Based Compensation**”).

In the case of compensation based on stock price or total shareholder return, the amount subject to recoupment will be based on a reasonable estimate of the effect of the Restatement on the Company’s stock price or total shareholder return upon which the Incentive-Based Compensation was received.

Such recoupment will apply on a “no-fault” basis—that is, regardless of whether a Covered Executive engaged in misconduct or was directly or indirectly responsible for the Restatement. In addition, the Company’s obligation to recoup Recoverable Incentive-Based Compensation is not dependent on if or when restated financial statements are filed with the SEC.

4. Recoupment Methods

Subject to Section 3, the Board will determine, in its sole discretion, the timing and method or methods for recouping Recoverable Incentive-Based Compensation pursuant to this Policy. The Board will have no obligation to apply the same method of recoupment to each affected Covered Employee in connection with any Restatement.

Except as provided in Section 5, in no event may the Company accept an amount that is less than the amount of Recoverable Incentive-Based Compensation in satisfaction of the Covered Executive's obligations under this Policy. To the extent that a Covered Executive fails to repay all Recoverable Incentive-Based Compensation to the Company when due, the Company will take all actions reasonable and appropriate to recover such amounts.

5. Exceptions to Recovery for Impracticability

The Company will recover any Recoverable Incentive-Based Compensation unless such recovery would be impracticable, as determined in good faith by either the Compensation Committee of the Board or a majority of the independent directors serving on the Board in accordance with Rule 10D-1 of the Exchange Act and applicable securities exchange rules.

Specifically, no recovery will be required pursuant to this Policy if: (a) the direct expense paid to a third-party to assist in enforcing this Policy would exceed the amount of the Recoverable Incentive-Based Compensation and the Company (i) makes a reasonable attempt to recover the Recoverable Incentive-Based Compensation and (ii) documents such reasonable attempts, which documentation will be provided to the national securities exchange on which the Company's securities are then listed, or (b) recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees, to fail to meet the requirements of Section 401(a)(13) or Section 411(a) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

6. Notice and Acknowledgment

The Company will provide notice of this Policy to each Covered Executive and shall solicit from each Covered Executive signed acknowledgment of, and agreement to, this Policy in substantially the form attached hereto as Exhibit A. In addition, before the Company takes any action to seek recovery of Recoverable Incentive-Based Compensation pursuant to this Policy or any other action provided for hereunder against a Covered Executive, the Company will provide notice of such clawback or other action to the Covered Executive. Notwithstanding anything to the contrary contained herein, the Company's failure to provide notice to or receive acknowledgment from a Covered Executive will have no impact on the applicability or enforceability of this Policy against such Covered Executive.

7. Other Recoupment Rights

Any rights or remedies under this Policy are in addition to, and not in lieu of, any other rights or remedies that the Company may have pursuant to the terms of any other policy of the Company or any provision in any compensatory plan or arrangement, employment agreement, equity award agreement, or similar plan, agreement or arrangement, and any other legal rights and remedies available to the Company, or any actions that may be imposed by law enforcement agencies, regulators, administrative bodies, or other authorities.

8. Amendment

The Board may amend this Policy from time to time in its discretion, and will amend this Policy as it deems necessary to reflect the regulations adopted by the SEC under Section 10D of the Exchange Act and to comply with any rules or standards adopted by a national securities exchange on which the Company's securities are then listed.

9. No Indemnification or Reimbursement

Neither the Company nor any of its affiliates will: (a) indemnify any Covered Executive against the loss of any incorrectly awarded Incentive-Based Compensation or (b) pay or reimburse any Covered Executive for premiums incurred or paid for any insurance policy to fund such Covered Executive's potential recovery obligations.

10. Effective Date

This Policy was adopted by the Company on November 2, 2023, and applies to Incentive-Based Compensation that is granted, earned, or vested by Covered Executives on or after October 2, 2023 (the "**Effective Date**").

11. Definitions

For purposes of this Policy:

(a) "**Covered Executive**" means current and former executive officers who are, or were at any time, during an applicable Covered Period, executive officers as defined in Rule 10D-1(d) of the Exchange Act. Subsequent changes in a Covered Executive's employment status, including retirement or termination of employment (including after serving in an interim capacity), do not affect the Company's rights to recover Incentive-Based Compensation pursuant to this Policy.

(b) "**Covered Period**" means the three (3) completed fiscal years immediately preceding the Restatement Date. The Covered Period also includes any transition period that results from a change in the Company's fiscal year of less than nine (9) months within or immediately following such three (3) completed fiscal years.

(c) A "**financial reporting measure**" means any measure that is determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measures that are derived wholly or in part from such measures, including, but not limited to, stock price and total shareholder return. For the avoidance of doubt, (i) financial reporting measures include non-GAAP financial measures for purposes of Regulation G of the Exchange Act, as well other measures, metrics and ratios that are not non-GAAP measures, and (ii) financial reporting measures may or may not be included in a filing with the SEC, and may be presented outside the financial statements.

(d) "**GAAP**" means U.S. Generally Accepted Accounting Principles.

(e) **“Incentive-Based Compensation”** means any compensation that is granted, earned, or vested on or after the Effective Date based wholly or in part upon the attainment of a financial reporting measure based on or derived from financial information for any fiscal period ending on or after the Effective Date. For the avoidance of doubt, examples of compensation that is not Incentive-Based Compensation include, but are not limited to: (i) salary (except to the extent that a Covered Executive receives a salary increase earned wholly or in part based on the attainment of a financial reporting measure performance goal, such a salary increase is Incentive-Based Compensation), (ii) bonuses paid solely at the discretion of the Board or the Compensation Committee of the Board that are not paid from a “bonus pool” that is determined by satisfying a financial reporting measure performance goal, (iii) bonuses awarded based solely on completion of a specified period of service, (iv) bonuses awarded based solely on subjective standards, strategic measures, or operational measures, or (v) equity awards for which the grant is not contingent upon achieving any financial reporting measure performance goal and vesting is contingent solely upon completion of a specified service period and/or attaining one or more nonfinancial reporting measures.

(f) Incentive-Based Compensation will be deemed to have been **“received”** during the fiscal period during which the financial reporting measure specified in the compensation award is attained, even if the grant or payment of such Incentive-Based Compensation occurs after the end of such fiscal period.

(g) **“Restatement”** means an accounting restatement of the Company’s financial statements due to the Company’s material non-compliance with any financial reporting requirement under the U.S. federal securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements (often referred to as a “Big R” restatement), or that would result in a material misstatement if the correction of the error was recognized in the current period or left uncorrected in the current period (often referred to as a “little r” restatement).

(h) **“Restatement Date”** means earlier of: (i) the date the Board, a Board committee (e.g., the Audit Committee of the Board), or officer(s) authorized to take such action if Board action is not required, concludes, or reasonably should have concluded, that a Restatement is required, or (ii) the date a court, regulator, or other legally authorized body directs the Company to undertake a Restatement. For purposes of clause (ii), the date of the initial court order or other regulatory agency action would be the measurement date for the Covered Period, but the application of this Policy would occur only after such order is final and non-appealable.

EXHIBIT A

**ACKNOWLEDGMENT OF AND AGREEMENT TO THE
INCENTIVE-BASED COMPENSATION RECOUPMENT POLICY**

THIS ACKNOWLEDGEMENT OF AND AGREEMENT TO THE INCENTIVE-BASED COMPENSATION RECOUPMENT POLICY is entered into between Performant Financial Corporation, a Delaware corporation (the “**Company**”), and the undersigned (the “**Executive**”) as of the date of the Executive’s signature below. Capitalized terms used herein but not defined shall have the meanings assigned to such terms in the Company’s Incentive-Based Compensation Recoupment Policy (the “**Policy**”).

The Executive acknowledges and agrees that the Company has provided the Executive with a copy of the Policy, attached hereto as Annex A, and that the Executive has had the opportunity to review the Policy. The Executive further acknowledges and agrees that the Executive accepts the provisions of the Policy and will abide by all of the terms of the Policy both during and after the Executive’s employment with the Company, including, without limitation, by forfeiting, promptly repaying to the Company and/or offsetting, on a pre-tax basis, any Recoverable Incentive-Based Compensation, and hereby agrees to waive the assertion or application of any rights under federal, state, local or foreign law or in contract or equity that would otherwise conflict with or narrow the Company’s authority to interpret, apply and enforce the Policy to its fullest extent, including but not limited to, the Company’s authority to withhold or divert the Executive’s wages pursuant to the Policy.

The Executive further acknowledges and agrees that all Incentive-Based Compensation granted, earned or vested on or after October 2, 2023 (the “**Effective Date**”) will be subject to the provisions of the Policy, and that agreement to the Policy is a condition to the receipt and retention of such compensation. The Executive acknowledges and agrees that the Executive’s acceptance of the Policy is in consideration of Incentive-Based Compensation that is granted, earned or vested on or after the later of the Effective Date or the date of the Executive’s signature below.

[Signature Page Follows]

AGREED AND ACKNOWLEDGED:

EXECUTIVE

Signature

Name

Date

*[Signature Page to Acknowledgment of And Agreement to the
Performant Financial Corporation Incentive-Based Compensation Recoupment Policy]*

ANNEX A
PERFORMANT FINANCIAL CORPORATION
INCENTIVE-BASED COMPENSATION RECOUPMENT POLICY

[See attached]