

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, 2021

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: 001-36061

Benefitfocus, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

46-2346314
(I.R.S. Employer
Identification No.)

100 Benefitfocus Way
Charleston, South Carolina 29492
(Address of principal executive offices and zip code)

(843) 849-7476
(Registrant's telephone number, including area code)

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

<u>Title of each class</u>	<u>Trading Symbol</u>	<u>Name of each exchange of which registered</u>
Common Stock, \$0.001 Par Value	BNFT	Nasdaq Global Market

Securities registered pursuant to Section 12(g) of the Act: **None**

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 (§ 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 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 Accelerated filer Non-accelerated filer Smaller reporting company Emerging growth company

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

Indicate by check mark whether the registrant 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.

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

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant on June 30, 2021 (based on the closing sale price of \$14.10 on that date), was approximately \$382,868,975. Common stock held by each officer and director and by each person known to the registrant who owned 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.

The number of shares of the registrant's common stock outstanding as of March 1, 2022 was 33,516,732.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive Proxy Statement for its 2022 Annual Meeting of Stockholders are incorporated by reference into Part III hereof.

Benefitfocus, Inc.
Form 10-K
For Year Ended December 31, 2021

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PART I

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains “forward-looking statements” that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward-looking statements. The statements contained in this Annual Report on Form 10-K that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (“Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (“Exchange Act”). Such forward-looking statements include any expectation of earnings, revenue or other financial items; any statements of the plans, strategies and objectives of management for future operations; risks associated with acquisitions; factors that may affect our operating results; statements about our ability to establish and maintain intellectual property rights; statements about our ability to retain and hire necessary associates and temporary staff and appropriately manage our operations; statements related to future capital expenditures; statements related to future economic conditions or performance; statements as to industry trends; and other matters that do not relate strictly to historical facts or statements of assumptions underlying any of the foregoing. Forward-looking statements are often identified by the use of words such as, but not limited to, “anticipate,” “believe,” “can,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “might,” “will,” “plan,” “project,” “seek,” “should,” “target,” “would,” and similar expressions or variations intended to identify forward-looking statements. These statements are based on the beliefs and assumptions of our management based on information currently available to management. Such forward-looking statements are subject to risks, uncertainties and other important factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in the section titled “Risk Factors” included in Item 1A of Part I of this Annual Report on Form 10-K, and the risks discussed in our other Securities and Exchange Commission (“SEC”) filings. Furthermore, such forward-looking statements speak only as of the date of this report. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements.

As used in this report, the terms “Benefitfocus, Inc.,” “Benefitfocus,” “Company,” “company,” “we,” “us,” and “our” mean Benefitfocus, Inc. and its subsidiaries unless the context indicates otherwise.

RISK FACTOR SUMMARY

Our business is subject to significant risks and uncertainties that make an investment in us speculative and risky. Below we summarize what we believe are the principal risk factors, but these risks are not the only ones we face, and you should carefully review and consider the full discussion of our risk factors in the section titled "Risk Factors", together with the other information in this Annual Report on Form 10-K. If any of the following risks actually occurs (or if any of those listed elsewhere in this Annual Report on Form 10-K occur), our business, reputation, financial condition, results of operations, revenue, and future prospects could be seriously harmed. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, may also become important factors that adversely affect our business.

Risks Related to Our Business

- We have had a history of losses, and we might not be able to achieve or sustain profitability;
- Our quarterly operating results have fluctuated in the past and might continue to fluctuate causing the value of our common stock to decline substantially;
- Downturns or upturns in sales are not immediately reflected in full in our operating results;
- The COVID-19 pandemic could have an adverse impact on our business and the duration and extent to which the pandemic will impact our future financial performance remains uncertain;
- Our business could be negatively affected as a result of the actions of activist stockholders;
- We depend on our senior management team, and the loss of one or more key associates or an inability to attract and retain highly skilled associates could adversely affect our business;
- We operate in a highly competitive industry, and if we are not able to compete effectively, our business and operating results will be harmed;
- The market for our products and services is immature and volatile, and if it does not develop or if it develops more slowly than we expect, the growth of our business will be harmed;
- The software as a service ("SaaS") pricing model is evolving and our failure to manage its evolution and demand could lead to lower than expected revenue and profit;
- If we do not continue to innovate and provide products and services, we might not remain competitive, and our revenue and operating results could suffer;
- If we are unable to retain our existing customers, our revenue and results of operations would be adversely affected;
- A significant amount of our revenue is derived from our largest customers, and any reduction in revenue from any of these customers would reduce our revenue and net income;
- Consolidation among our customers and within the IT and healthcare industries may negatively impact our operating results;
- Economic or geopolitical uncertainties, including tensions in Ukraine, or downturns in the general economy or the industries in which our customers operate could affect the demand for our solutions;
- Our growth depends in part on the success of our strategic relationships with third parties;
- If the number of individuals covered by our employer and health plan customers decreases or the number of products or services to which our employer and health plan customers subscribe or their employees purchase decreases, our revenue will decrease;
- Failure to manage our continued growth effectively could increase our expenses, decrease our revenue, and prevent us from implementing our business strategy;
- If we are unable to rely on temporary staff during peak enrollment period, our business might suffer;
- If we fail to maintain awareness of our brand cost-effectively, our business might suffer;
- We might not be able to utilize a significant portion of our net operating loss or other tax credit carryforwards, which could adversely affect our profitability;
- We might be unable to adequately protect, and we might incur significant costs in enforcing, our intellectual property and other proprietary rights;
- Any litigation could be costly and time-consuming to defend;
- Acquisitions could prove difficult to integrate, disrupt our business, dilute stockholder value, and adversely affect our operating results and the value of our common stock; and
- Future sales to customers outside the United States or with international operations might expose us to risks inherent in international sales which, if realized, could adversely affect our business.

Risks Related to Our Products and Services Offerings

- The breach or failure of our security measures, or other incidents may result in our products and services being perceived as unsecure, cause customers and consumers to curtail or stop using our products and services, and cause us to incur significant liabilities;
- Our failure or failure by our customers to obtain proper permissions and waivers might result in claims against us or may limit or prevent our use of data, which could harm our business;
- Our proprietary software might not operate properly, which could damage our reputation, give rise to claims against us, or divert application of our resources from other purposes;
- Various events could interrupt customers' access to the Benefitfocus Platform, exposing us to significant costs;

- We rely on third parties, and our own systems, for providing services to our customers, and any failure or interruption in the services could expose us to litigation and negatively impact our relationships with customers, adversely affecting our brand and our business;
- Interruptions or delays in migrating our service from third-party data center hosting facilities to cloud computing and hosting providers could impair the delivery of our services and harm our business; and
- The use of open source software in our products and solutions may expose us to additional risks and harm our intellectual property rights.

Risks Related to Regulation

- Government regulation of the areas in which we operate creates risks and challenges with respect to our compliance efforts and our business strategies;
- Potential government subsidy of services similar to ours, or creation of a single payor system, might reduce customer demand; and
- Our services present the potential for embezzlement, identity theft, or other similar illegal behavior by our associates with respect to third parties.

Risks Related to Our Indebtedness

- We have incurred substantial indebtedness that may decrease our business flexibility, access to capital and/or increase our borrowing costs, and we may still incur substantially more debt, which may adversely affect our operations and financial results;
- Servicing our debt and preferred dividends requires a significant amount of cash, and we might not have or be able to obtain sufficient cash to pay our substantial debt or required dividends;
- The conditional conversion feature of our outstanding notes, if triggered, and any required repurchase of the notes may adversely affect our financial condition and operating results;
- Our notes are effectively subordinated to our secured debt and any liabilities of our subsidiaries;
- If we fail to meet our current credit facility's financial covenants, our business and financial condition could be adversely affected;
- We may still incur substantially more debt or take other actions that would diminish our ability to make payments on our outstanding notes when due;
- The conversion of our notes will dilute the ownership interest of existing stockholders; and
- The capped call transactions we entered into in connection with the issuance of our notes might not turn out to be effective in reducing dilution, and might adversely affect the value of our common stock.

Risks Related to Ownership of Our Common Stock

- Our stock price may be volatile or may decline regardless of our operating performance;
- Our stock price could decline due to the large number of outstanding shares of our common stock and those underlying our notes eligible for future sale;
- We might require additional capital to support business growth;
- The issuance of shares of our common stock upon conversion of our Series A Preferred Stock may dilute the ownership interest of our existing common stockholders, adversely impact the market price of our common stock and make it more difficult for us to raise funds through future equity offerings;
- Our preferred stockholders have significant rights and preferences over the holders of our common stock that could limit us from taking certain corporate actions;
- Our certificate of incorporation provides that the Court of Chancery of the State of Delaware is, to the fullest extent permitted by applicable law, the sole and exclusive forum for substantially all disputes between us and our stockholders;
- We do not currently intend to pay dividends on our common stock; and
- Provisions in our restated certificate of incorporation, as amended, and amended and restated bylaws and Delaware law might discourage, delay, or prevent a change in control of our company or changes in our management and, therefore, depress the trading price of our common stock.

Item 1. Business.

Overview

Benefitfocus is an industry-leading, cloud-based benefits administration technology company serving employers and health plans. We help organizations simplify the complexity of benefits administration while engaging people in the right healthcare and benefit programs for them and their families. We also deliver insights to employers, health plans and their advisors to help maximize returns on their healthcare investment; and our services help reduce administrative burden and costs for organizations.

Benefitfocus solutions are based on a multi-tenant architecture and has a user-friendly interface designed for people to access all of their benefits in one place. Our comprehensive one-to-many model supports a broad line-up of benefits including core medical benefit plans; ancillary benefits, such as, dental, life, disability insurance, mental health and financial wellness; and a full array of voluntary benefits. Our platform includes functionality designed to help consumers identify and evaluate benefit options available to them. As the number of employer benefits plans has increased, with each plan subject to many different business rules and requirements, demand for Benefitfocus solutions is growing.

Employers use our solutions to streamline benefits processes and control costs, keep up with challenging and ever-changing regulatory requirements, and offer a greater variety of benefit options to attract, retain and motivate employees. The Benefitfocus Platform enables our employer customers to manage complex benefits processes, from enrollment to ongoing administration engagement. It provides their employees with a highly intuitive and personalized user interface for selecting and managing all of their benefits via mobile or desktop device.

Health Plans, also known as health insurers, health insurance carriers or medical insurance carriers, use our solutions to more effectively market offerings to benefits-eligible employees, simplify billing, and improve the enrollment process. We also provide a large network of benefit provider data exchange connections, which facilitates the otherwise highly fragmented interaction among employees, employers, brokers and health plans.

Brokers use our platform to manage employer portfolios and individual clients. This includes delivering strategic, data-driven insights that improve their employer clients' benefit experience while demonstrating greater value. In addition, brokers benefit from access to a larger set of relevant products and coverage for employers, which builds client goodwill and can often yield higher broker commissions and profits.

Since our initial public offering, we have described our target market as comprising two separate but related market segments – employers and health plans. Within the employer market segment, we sell our technology solutions on an annually recurring or multi-year subscription basis to large employers, which we define as those with more than 1,000 employees. Similarly, in our other market segment, we sell our solutions on a subscription basis to health plans, enabling us to expand our overall footprint in the benefits marketplace by aggregating many key constituents, including consumers, employers, and brokers. We believe our presence in both the employer and health plan market segments gives us a strong position at the center of the benefits ecosystem.

Our solution offering includes a robust voluntary benefit solution, known as Benefit Catalog . As the popularity of voluntary benefits has increased rapidly in the past few years, we designed a marketplace to provide brokers, carriers and employers with access to a best-in-class portfolio of benefit designs and options. This marketplace is designed to enable greater access to more benefit options so individual employees and consumers can design and select coverages that are most appropriate for their individual needs. Through this voluntary benefits solution, Benefitfocus delivers employee/consumer education and access, data-driven analysis and modeling tools and operational efficiencies. By driving additional value, Benefitfocus is able to collect carrier commissions and/or fees based on the volume of products and coverages purchased on our platform. Carrier agreements have terms of two to four years and are typically cancellable upon breach of contract or insolvency. Supplier contracts have terms of one year or less and are generally cancellable upon breach of contract, failure to cure, bankruptcy and termination for convenience.

Our hybrid software-as-a-service, or SaaS, and repeatable transaction-based model provides us visibility into our future operating results, which enhances our ability to manage our business. Our company was founded in 2000, and we currently employ approximately 1,100 associates, or employees.

Industry Background

The administration and distribution of benefits to employees is a mainstay of the U.S. economy. Providing these benefits is costly and complex and requires the exchange of data and information, application of rules, and transfer of funds among a wide variety of constituents, including consumers, employers, insurance carriers, suppliers, brokers, benefits outsourcers, payroll processors, and financial institutions. The size of the human resources (“HR”) benefits administration market and the value of benefits transacted are large. According to IBISWorld calculations, the market for HR benefits administration in the United States was \$66.0 billion in 2021. Eastbridge Consulting Group estimates the U.S. in-force premiums were \$46.3 billion in 2020 for employee-paid life, health and disability products sold at the worksite with premiums paid through payroll.

The variety and complexity of medical and non-medical benefits plans continues to grow. The Benefitfocus annual market research report, *The State of Employee Benefits 2021*, our most recent edition, indicates that a higher proportion of benefits offerings are shifting to high-deductible health plans coupled with health savings accounts. This added complexity places greater potential cost burden on employees and consumers and creates a greater need for employers to educate their workforces on becoming more informed health-care consumers. To help employees cover added cost burdens, employers are increasingly offering a wider range of non-medical benefits plans, such as critical illness, supplemental income and financial wellness programs, as well as traditional insurance offerings like dental, life and disability. Current point and legacy systems are inadequate to efficiently manage the complexity, regulation, and involvement of multiple parties. These systems are often incapable or inadequate in enabling the purchase of non-medical benefits. These factors are driving the need for an enterprise benefits management system and a consumer-focused platform to improve operational efficiency along the entire benefits value chain.

Employer Market

A significant and growing portion of employers' costs is non-salary benefits, such as health insurance, that they provide to their employees. With healthcare and other premiums increasing, senior executives are prioritizing benefits administration in their organizations and searching for ways to contain costs without sacrificing benefits. In fact, according to the U.S. Department of Labor and Bureau of Labor Statistics, healthcare and other employee benefits accounted for 29.2% of all employee labor costs in December 2021. In addition, the expense burden continues to shift to employees. Employees' contributions to premiums for health insurance have grown from approximately \$318 per employee in 1999 to approximately \$1,299 per employee in 2021. Employers recognize the importance of offering a greater variety of non-medical benefits as a means to attract, motivate, and retain employees. They must maintain relationships with multiple insurance carriers and many other benefits providers, placing a substantial administrative burden on their organizations.

Employers' distribution, management, and administration of employee benefits has historically consisted of error-prone, paper-based processes, and a patchwork of customized software tools, which are costly to maintain, often lack necessary functionality, and fail to address the increasing complexity of the benefits marketplace. As benefits offerings become more complex and employees bear more of the cost of those benefits, HR software solutions that streamline information, simplify choices, and engage employees are increasingly in demand. Employees desire tailored, dynamic, and interactive communication of critical benefits information, with easy access to purchase benefits, as they become accustomed to receiving personalized content through various consumer applications on a range of devices.

Legacy HR systems were generally designed as extensions of enterprise resource planning ("ERP"), systems, built for back-office responsibilities like finance and accounting. As a result, these systems lack functionality and ease-of-use for employees. Many legacy HR systems were not designed to integrate with the broader benefits ecosystem, including brokers, carriers, and wellness providers, or have the ability to transact non-medical benefits. This results in expensive, error-prone, and incomplete experiences for employers and employees. Benefits outsourcers have attempted to compensate for the shortcomings of legacy HR systems, but they have generally lacked adequate technology solutions necessary to keep up with the rapidly evolving benefits landscape. As a result, employees are often not provided with the appropriate functionality and information required to select and manage their benefits effectively.

Modern technology, changing communication patterns, and a constantly evolving benefits ecosystem have impacted the employee-employer relationship. HR executives continue to search for effective strategies to increase efficiency and contain costs, while increasing employee engagement and being an employer of choice. Employers are increasingly interested in SaaS solutions that can help capture and analyze benefits data and provide more choice for their employees to improve productivity and satisfaction. In order to manage the distribution and administration of benefits effectively, employers need an integrated platform, capable of handling all benefits in one place and providing a highly personalized experience for employees.

Health Plan Market

The employee benefits market consists of a myriad of medical insurance carriers and products. According to the U.S. Bureau of Labor Statistics, the single largest benefit provided to employees in the United States is healthcare insurance, often encompassing more than 90% of all insurance benefits spending by employers.

Large, national health insurance carriers also offer numerous individual health plans of different types, including health maintenance organizations, preferred provider organizations, point-of-service plans, and high deductible health plans, across the 50 states, as well as life and ancillary benefits plans. Each carrier offers a complex variety of medical insurance and non-medical benefits, encompassing life and ancillary plans, with each plan requiring multiple decisions to address the specific needs of employers and their individual employees. Despite widespread carrier consolidation, numerous disparate systems remain in place, with many large health plans operating on multiple IT systems. Health plans often rely on manual processes and siloed software applications to bridge gaps in legacy administration systems. Even as they attempt to modernize and keep up with evolving industry practices and a changing regulatory landscape, health plans have difficulty connecting with the broader healthcare system.

The effective delivery and management of employee benefits depends on the timely, continuous exchange of accurate data among health insurance carriers, their employer customers, broker partners and individual members. Legacy benefits management systems often lack important functionality such as web and mobile self-service capabilities and real-time data exchange. Critical health plan processes, including member enrollment, billing and payments, communications, and retail marketing often have been under-optimized or neglected by legacy systems, and health plans have devoted significant internal resources to cover technology gaps. In addition, healthcare reform mandates and the rise of exchanges have increased focus on carriers' retail distribution capabilities, which require additional investment.

Governmental oversight, punctuated with the Patient Protection and Affordable Care Act ("PPACA" or "ACA"), has led to an increasingly dynamic regulatory framework under which health benefits are delivered, accessed and maintained. Despite efforts to repeal and/or reform part or all of PPACA, we expect digital transformation of healthcare benefits to continue in the form of public and private exchanges – online marketplaces that allow insurance carriers to compete directly for new members. We expect private exchanges will be less rigid, promoting both health and non-health benefits, with substantially fewer rules around the types of benefits

offered. As medical insurance carriers continue to bolster their retail distribution capabilities, we believe they will require consolidation of technology solutions to improve operational efficiency and attract additional members through private exchanges.

Benefitfocus Solutions

We provide a multi-tenant cloud-based benefits enrollment and management platform for employees, employers, health plans, suppliers, and brokers. The Benefitfocus Platform simplifies how organizations and individuals transact benefits.

We believe our solutions help employers and clients of brokers in the following important ways:

Simplify benefits enrollment. Our solutions are designed to reduce the complexity of benefits enrollment by integrating all plan information in one place and presenting it to employees in an organized and easy-to-understand manner. Employees shop and enroll using a highly intuitive and engaging consumer-oriented interface.

Reduce cost and increase return on investment. Our solutions automate the benefits management process and reduce the cost associated with clerical errors and covering ineligible employees and dependents. Our solutions also include advanced analytics and insights that enable employers and employees to quickly gather, report, and forecast benefit costs.

Attract, retain, and motivate employees. Our solutions help employers attract, retain, and motivate top talent by delivering benefits information through a highly intuitive and engaging user interface. We believe that when employees understand the value of their benefits and have easy access to benefits, they are more likely to be satisfied with and engaged in their jobs.

Streamline HR processes. Our solutions eliminate the time-consuming and labor-intensive, often paper-based, processes associated with managing employee benefits plans, making HR professionals more efficient. Employers and HR professionals can efficiently enroll users or update information, and communicate or make changes to plans in real-time.

Integrate seamlessly with related systems. Our solutions can be easily and securely integrated with a variety of related systems, including health plan membership and billing, payroll and HR, banking, and other third-party administration. We provide a network of benefit provider data exchange connections through industry standard interfaces that are configurable to accommodate a variety of needs. Our open architecture further extends our functionality by allowing third parties to develop and offer products and services on our platform. Our human capital management application programming interface, or API, replaces traditional file-based systems with an automated, real-time interface.

Purchase non-medical benefits. Our platform includes a holistic, multidimensional marketplace whereby carriers and suppliers sell non-medical, voluntary and specialty products to employees.

We believe our solutions help insurance health plans and suppliers in the following important ways:

Bolster retail distribution capabilities through marketplaces. Our solutions help health insurance carriers and suppliers respond to an evolving marketplace in which retail distribution capabilities are increasingly important to attracting and retaining new members. Our platform offers health plans a lower cost direct sales channel to employer groups and individuals. We offer the ability to sell both healthcare and non-healthcare benefit products in an online shopping environment that serves as an alternative to government-sponsored public exchanges.

Attract and maintain membership. Our solutions allow carriers to maximize sales capacity and efficiency by communicating directly with their employer customers and individual members.

Reduce administrative costs. The Benefitfocus Platform allows health plans to consolidate IT systems, automate and simplify various aspects of the benefits administration process, such as enrollment, plan changes, eligibility updates, and billing and payments, from one centralized location.

Facilitate real-time data exchange. Our solutions simplify interactions and data exchange, and foster collaboration among carriers, suppliers, brokers, employers, employees and consumers. This allows health plans to rapidly tailor and offer new benefits packages.

Our Growth Strategy

We intend to strengthen our position as a leading cloud-based benefits enrollment and management platform for employers and health plans, working closely with brokers as partners in the ecosystem. Key elements of our growth strategy include the following:

Expand our customer base. We believe that our current customer base represents a small fraction of targeted users that could benefit from our benefit administration solutions. In order to reach new customers in our existing markets, we are methodically investing in our direct sales and marketing resources. In addition, we are extending our channel partnership strategies, including the development and expansion of existing relationships that foster organic growth opportunities through brokers and carrier partners.

Further develop our partner ecosystem. We believe we have a large opportunity to efficiently grow our customer base through our strategic partners. To increase the number of consumers on our platform, we have established strong relationships with key

participants in the benefits market, including, among others, SAP and SuccessFactors and other human capital management (“HCM”) providers, as well as being added to large broker preferred vendor panels.

Deepen our relationships with our existing customer base. We firmly believe that service excellence is key to creating value for our customers, which allows us to deepen our relationship with customers. We are deepening our employer relationships by continuing to provide a growing list of additional solutions to manage increasingly complex benefits processes. We are expanding our customer relationships through the upsell of additional software products and the delivery of new and innovative solutions like Covid tracking capabilities and Rx Insights.

Extend our suite of applications and continue our technology leadership. We are extending the number, range, and functionality of our benefits solutions. We have extended the functionality of our products through mobile solutions. We intend to continue our collaboration with customers and partners so we can respond quickly to evolving market needs with innovative capabilities that support our leadership position.

Facilitate the inclusion and integration of voluntary benefits. We believe we have a significant opportunity to drive higher employer satisfaction via the delivery of Benefit Catalog products. As part of the process, we increase consumer education and engagement and facilitate the purchasing of Benefit Catalog products throughout an entire calendar year. We also believe that our current Benefit Catalog portfolio of products will grow in number as we continue to advance our multidimensional marketplace.

Target new markets. We believe substantial demand for our solutions exists in markets and geographies beyond our current focus. We intend to leverage opportunities we believe will arise from the complexities of changing government regulation and increased enrollment impacting both Medicare and Medicaid.

Selectively pursue strategic acquisitions and investments. We might pursue acquisitions of, or investments in, complementary businesses and technologies that align with our overall growth strategy, and disciplined capital allocation process. We believe that a selective acquisition and investment strategy could enable us to gain new customers, accelerate our expansion into new markets, and enhance our product capabilities.

The Benefitfocus Portfolio of Products

Our portfolio of products and services serve the entire benefits ecosystem; employers, health plans and brokers rely on Benefitfocus to simplify everything about benefits.

- For Employers – our products and services are designed to reduce administrative burden, simplify enrollment, help control costs and increase workforce engagement.
- For Health Plans – we deliver a seamless quote to pay experience that can help increase operational efficiency and improve customer satisfaction.
- For Brokers – we offer an innovative platform designed to provide their clients with a comprehensive set of technology and services that support every aspect of their benefit programs - from plan design to employee engagement.

Products for Employers

Benefitplace is our solution for employers that helps them optimize the design of benefits plans, reduce healthcare costs, lessen administrative complexity and empower their employees to make better, more confident benefits decisions.

- *Benefitplace* is a cloud-based benefits management portal that streamlines online enrollment, employee communication, and benefits administration.
 - o *Benefitplace* provides a single location for employees to manage and review their benefits and related information quickly and easily at any time. Featuring an intuitive user experience with decision support tools, targeted communications, mobile app and other resources, *Benefitplace* enables employees to:
 - make benefit elections during initial and open enrollment, as well as during important life events;
 - manage dependents and beneficiaries;
 - view account balances and manage contributions;
 - access benefit and coverage details;
 - educate themselves on various employer benefit offerings and policies; and
 - complete required tasks such as submitting verification documentation.

- o Benefitplace also provides a single place for benefit and HR administrators to manage the employer's benefits program—from executing basic approval tasks, to creating educational content and communication campaigns, to getting in-depth insight into participation and engagement trends. Benefitplace has a robust suite of intuitive tools, dashboards and other resources, to help empower administrators to simplify the complex, work more efficiently and create more value for employees.

Additional capabilities and services for employers that complement the core functionality of Benefitplace, include:

- *Health Insights* is our data analytics solution that helps employers make more informed, data-driven decisions about their benefits offerings. This product aggregates benefit cost and claims data from relevant sources and allows customers to analyze, forecast, and monitor costs. Health Insights enables employers and their advisors to identify cost drivers, recognize trends, and predict future risks and costs. Additional capabilities include a plan modeling tool that customers can use to evaluate the impact of plan design changes, creating "what-if" scenarios to model different variables, such as co-pays, deductibles, benefits, inflation, and member populations. Additionally, *Rx Insights* is our cost savings solution for self-funded employer health plans to reduce prescription drug costs through ongoing analysis of prescription claims data and formularies.
- *ACA Management & Reporting* is our solution that helps employers manage ACA compliance by consolidating and automating IRS reporting. Additionally, Benefitfocus is an approved transmitter, allowing us to electronically file required ACA compliance documents with the Internal Revenue Service on behalf of our customers. Additionally, with our recent Tango Health, Inc. acquisition, we have further expanded our administrative service product offering around ACA compliance and reporting.
- *Billing & Payments* is a comprehensive application that synchronizes enrollment and billing information to streamline the monthly billing process, automate adjustments and increase accuracy of payments. Billing & Payments gives employers the ability to automate or schedule single-invoice payments to all of their benefit providers. Employers can drill down by employee to see coverage level and plan, or focus in by vendor, benefit type or internal cost control center to gain more insight into cost drivers.
- *COBRA Administration* is our solution for employers that simplifies management of the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), benefits. COBRA Administration automates required communication, enrollment, fulfillment and payment processing within Benefitplace.
- *Benefit Catalog* is our transaction-oriented, marketplace solution, that allows employers to offer robust portfolio of vetted health, wealth, property and lifestyle benefits integrated into our consumer enrollment experience.

Benefit Catalog partners provide products that fit into four distinct categories:

- *Health.* Products in the health category improve access to affordable, high-quality care and may act as a supplement to the traditional employer-funded health and welfare benefits. Partner-provided products in this category include consumer-directed healthcare accounts, long-term care insurance, prescription drug discount programs, services to help population health and wellness services and enrollment, and guidance services for free state health insurance plans.
- *Wealth.* Products in the wealth category provide options for consumers to protect their income in case of a medical emergency, manage their finances and decrease risk to financial debt. Partner products provided in this category include accident, hospital indemnity and critical illness insurance, short-term and long-term disability, financial wellness services, student loan services, and retirement and savings accounts such as IRA, 401(k), 529 and personal loan services.
- *Property.* Products in the property category provide options for consumers to protect their assets and insure against liabilities associated with their personal property. Partner products provided in this category include personal property protection products, such as renters and auto insurance.
- *Lifestyle.* Products in the lifestyle category provide options that address the individual needs of consumers to improve the quality of their day-to-day life. Partner products provided in this category include identity theft protection, virtual college counseling assistance, pet insurance and savings plans.

Benefit Catalog adds value to all participants that participate on the platform.

- Insurance carriers and specialty providers join Benefit Catalog as sellers. Sellers must meet a standard set of integration, quality, security, and financial standards to participate in Benefit Catalog. This ensures products are composed of marquee, industry-leading products. Sellers can expand their distribution channels and grow their reach to consumers.
- Brokers work with benefit advisors to understand the types of products available through Benefitplace. With the use of data-driven insights, brokers have greater visibility into the status of their customers and participation levels of Benefit Catalog products, thereby helping activate their customers' benefits strategy.
- Employers can design a strategic benefits portfolio, without the traditional constraints of administration and integration inefficiencies. Benefit Catalog products include pre-built integrations, seller-provided content and communication materials, and a consistent set of system configurations and settings within Benefitplace.

- Consumers gain access to Benefit Catalog products through our carrier and employer subscription-based enrollment products, Benefitplace. With an insight-driven, guided consumer retail experience that includes decision-support tools, educational information, and mobile access, consumers can select the best products for their individual needs all year long.

Products for Health Plans

Benefitplace is our single, integrated end-to-end (quote to pay) solution for medical carriers that enables them to automate administration and deliver a seamless benefits experience.

- *Enrollment* provides a single, privately labeled platform for carriers to automate enrollment across all segments of their commercial group business. It includes benefits administration tools for brokers employers, supports complex business rules, such as eligibility and rating criteria and provides operational efficiency by transmitting eligibility and enrollment data to carrier membership systems. Enrollment also offers consumers a retail-like benefit enrollment experience with decision support tools, educational videos and content libraries that help consumers make informed benefit elections year-round.
- *Billing & Payments* is an electronic invoice presentment and payment solution, or EIPP, privately labeled for health plans. It consolidates invoices from multiple insurance products so employers and individuals receive one invoice that can be viewed and paid electronically. Billing & Payments automates the synchronization of billing and membership data to improve the accuracy of billing processes and provides options to simplify bill payment, such as scheduled one-time and/or recurring payments.
- *Exchange* is a solution that bridges the integration gap between health plan and employer systems, allowing a seamless exchange of data between the two. Our customers use Exchange to consume eligibility and enrollment data from multiple, third-party systems, convert data from one format to another, and manage the flow of employee data between carriers and employers.
- *Quoting* gives health plans and brokers tools to organize and proactively manage accounts, track leads, generate quotes, and create proposals for multiple products. Quoting allows health plans to define their own market segments and configure them with unique workflows and business rules. It also enables greater data accuracy by automatically incorporating updated products, options and pricing for the most current rates and quotes. Health plans purchase Quoting to increase productivity in their sales force.

Benefit Catalog is available to health plans to use to grow their business by offering a catalog of industry-leading products integrated into our consumer enrollment experience. We continue to develop and pilot innovating solutions for our Health Plan clients to help drive value and offer industry leading Benefit Catalog products.

Products for Brokers

Brokers use the Benefitfocus Platform to manage the portfolios of their employer clients. This includes delivering strategic insights that improve their employer clients' benefit experience and demonstrating greater value through access to a larger set of relevant products for employers. Brokers use our products to enable their clients to deliver a world-class employee benefits experience with personalized decision support tools and targeted, multi-channel communication that helps employees get the most value from their benefits.

- *Health Insights* aggregates benefit cost and claims data from relevant sources, identifies cost drivers, recognizes trends, and predicts future risks and costs. Brokers use Health Insights to support strategic decisions for their clients with on-demand health plan analytics that provide insight to help control rising healthcare costs, optimize benefit investments and improve employee health outcomes.
- *Benefit Catalog* allows brokers to easily offer new, in-demand products to their clients to fulfill their benefit strategy and help them attract and retain top talent. Benefit Catalog consultative support for brokers through benefit advisors. This helps brokers understand the types of products available and optimize their customers' Benefitplace experience. With the use of data-driven insights, brokers have greater visibility into the status of their customers and participation levels of Benefit Catalog product participation, thereby helping activate their customers' benefits.

Professional Services and Customer Support

- *Implementation Services.* We provide implementation services to our customers in order to help ensure seamless deployment and effective utilization of our solutions. Our carrier and employer implementation teams and third-party system integrators in our Benefitfocus Implementation Program follow an end-to-end approach from project planning to customer training and technical support.
- *Benefits Service Center.* We provide employers with expanded support services where our benefits specialists help customers' employees understand benefit offerings, navigate the enrollment process, and find answers to frequently asked HR questions. Our Benefits Service Center acts as an extension of our customers' benefits team and provides employees with personalized,

guided support. Additional services, such as fulfillment, dependent verification, and HR administration, are available to meet unique organizational needs.

Customers

Our customers include employers of all sizes across a variety of industries and some of the nation's largest insurance carriers and aggregators. The following is a list of some of our significant employer and health plan customers:

Employer Customers

Amerigas Propane, Inc.
Blackbaud, Inc.
Boston Scientific Corporation
Brookdale Senior Living Inc.
Designer Brands Inc.
Fender Musical Instruments Corporation
Nucor Corporation
Owens Corning
Panera Bread Company
Rush University Medical Center
SAP America Inc.
University of Alabama – Birmingham
University of Texas System
Zions Bancorporation

Health Plan Customers

American Heritage Life Insurance Company
BlueChoice HealthPlan of South Carolina, Inc.
Blue Cross of Idaho Health Service, Inc.
Blue Cross and Blue Shield of Kansas City
Blue Cross and Blue Shield of South Carolina, Inc.
Wellmark, Inc.

Our Benefit Catalog partners include some the nation's leading insurance carriers and suppliers to help protect consumers health, wealth, and lifestyle. The following is a list of some of our significant carrier and supplier sellers:

Aetna
Aflac
Allstate Benefits
BrightDime
CIGNA

MetLife
Nationwide Pet Insurance
Pet Benefit Solutions
The Hartford
Transamerica Corporation

No customer accounted for more than 10% of our total revenue during the years ended December 31, 2021, 2020 and 2019, respectively.

Sales and Marketing

We sell our software solutions through our direct sales organization. Our direct sales team comprises employer-focused and health plan-focused field sales professionals who are organized primarily by geography and account size.

We generate customer leads, accelerate sales opportunities and build brand awareness through our marketing programs and strategic relationships. Our marketing programs target HR, benefits, and finance executives, technology professionals, key brokers, and senior business leaders. Our principal marketing programs include:

- use of our website to provide application and company information, as well as learning opportunities for potential customers;
- sales development representatives who respond to incoming leads through digital and advertising programs and convert them into new sales opportunities;
- participation in, and sponsorship of, user conferences, executive events, trade shows and industry events, including our annual user and partner conference, One Place, and our invitation-only event for health insurance carrier executives, Health Plan Place;
- integrated marketing campaigns, including direct email, online web advertising, blogs, webinars and industry reports that include original thought leadership drawn from our unique set of data; and
- public relations, analyst relations and social media initiatives.

We also sell our software solutions through strategic partners such as SAP SE.

Technology Infrastructure and Operations

As an enterprise cloud software vendor, we have always deployed our solutions using a SaaS model. Our customers access our software via application integrations, web browsers, and/or mobile devices, rather than by installing software on their premises. Through our multi-tenant architecture, our customers access a single software instance with multiple possible configurations enabled by our metadata-driven framework. The multi-tenant approach provides significant operating economies through aligned, shared computational services and processes as it helps us to reduce our fixed cost base and minimize unused capacity on our hardware. In addition, our software architecture gives us an advantage over legacy system vendors, who may be using a less flexible architecture that would require significant time and labor expense to address varied capability needs.

We host our applications and serve our customers from multiple, co-located, private cloud data centers in separate locations. We rely on third-party vendors to operate these data centers, which are designed to host mission-critical computer systems and have industry-standard measures in place to minimize service interruptions. Our technical operations staff manages the technology stacks supporting the Benefitfocus Platform and uses automated monitoring tools throughout our system to detect unusual events or malfunctions that could interfere with our customers' or partners' use of the Benefitfocus Platform. We monitor application health by verifying that all applications, interfaces and supporting middleware are operational. If our monitoring detects anomalous situations, our dedicated network operations staff respond immediately to diagnose the situation, communicate status, and resolve the matter. We take the security of our data, systems and operations very seriously, and minimize risk at every level of technology selection through software architecture, systems administration, and operational controls and procedures.

Compliance and Certifications

We obtain third-party examinations of our controls relating to security. Certain examinations are conducted under Statement on Standards for Attestation Engagements, or SSAE, No. 18 (Reporting on Controls at a Service Organization). In particular, we obtain Service Organization Controls, or SOC, reports known as SOC 1 Type II and SOC 2 Type II audits that test the design and operating effectiveness of controls over a period of time. An independent auditor conducts these examinations annually and addresses, among other areas, our physical and environmental safeguards for production data centers, data availability, confidentiality, privacy, change management, and logical security. On an annual basis, a data security and Health Insurance Portability and Accountability Act of 1996 ("HIPAA") compliance risk assessment are also performed.

On an annual basis, we complete an independent assessment by a qualified security assessor ("QSA") of compliance against the Payment Card Industry Data Security Standards ("PCI-DSS" or "PCI"), applicable to Level 1 service providers. These standards focus on application and network security controls for companies that transmit and store credit card data on behalf of clients. Benefitfocus meets PCI compliance requirements as a Level 1 service provider and submits its Report on Compliance and Attestation of Compliance documenting this assessment to the three major credit card brands annually.

Competition

While we do not believe any single competitor offers similarly expansive benefits administration solutions, we face competition from various sources, many of which have greater resources than us. We have historically described our competition in our two market segments, employer and health plan. We believe that sources of competition encompass:

- ERP software companies offering a cloud-based benefits administration software solution;
- HR outsourcing companies;
- payroll service providers who expanded their core payroll services to include some form of cloud-based benefits administration services;
- insurance carriers that have invested in internally developed benefit management solutions;
- member services companies, including those providing web-based subscriber enrollment and claims adjudication services;
- brokers and consultants who have influence over benefits offerings; and
- various niche software vendors.

We believe that competition for benefits administration solutions is based primarily on the following factors:

- capability for customization through configuration, integration, security, scalability, and reliability of applications;
- competitive and understandable pricing;
- breadth and depth of application functionality;
- access to broad offering of non-medical benefits;
- size of customer base and level of user adoption;
- extensive data exchange network;

- cloud-based delivery model;
- dynamic communication capabilities with contextual media, animation, and acknowledgement tools;
- ability to integrate with legacy enterprise infrastructures and third-party applications;
- domain expertise in benefits and healthcare consumerism;
- extensive base of rules and event-driven benefit eligibility and enrollment;
- accessible on any browser or mobile device;
- modern and adaptive technology platform;
- clearly defined implementation timeline;
- customer-branding and styling;
- delivering to customers service excellence;
- data exchange standardization; and
- ability to innovate and respond to customer and legislative needs rapidly.

We believe that we compete effectively based upon all of these criteria, and that we are likely to continue to retain a high percentage of our customers from year to year. Nonetheless, we believe that the increasing acceptance of automated solutions in the healthcare marketplace and the adoption of more sophisticated technology and continuing legislative reform will result in increased competition, including potentially from large software companies with greater resources than ours. Other companies might develop superior or more economical service offerings that our customers could find more attractive than our offerings. Moreover, the regulatory landscape might shift in a direction that is more strategically advantageous to competitors.

Research and Development

Our ability to compete depends, in large part, on our continuous commitment to rapidly introduce new applications, technologies, features, and functionality. We deliver multiple software releases per year, updating the Benefitfocus Platform to leverage advances in cloud computing, mobile applications, and data management. Our research and development team is responsible for the design and development of our applications. We follow state-of-the-art practices in software development using modern programming languages, agile development methodologies, data storage systems, and other tools. We use both commercial and open source products, following a “best tool for the job” philosophy in product selection. Our software has a multi-tiered architecture that ensures flexibility to add or modify features quickly in response to changing market dynamics, customer needs, or regulatory requirements.

Our research and development expenses were \$44.7 million, \$46.2 million and \$54.7 million for the years December 31, 2021, 2020 and 2019, respectively.

Intellectual Property

We rely on a combination of patent, trade secret, copyright, and trademark laws, license agreements, confidentiality procedures, confidentiality and nondisclosure agreements, and technical measures to protect the intellectual property used in our business. We generally enter into confidentiality and nondisclosure agreements with our associates, consultants, vendors, and customers. We also seek to control access to and distribution of our software, documentation, and other proprietary information.

We use numerous trademarks for our products and services, and “Benefitfocus”, “Benefitfocus BenefitPlace”, “One Place”, “Benefitfocus For Life”, “BenefitPlace”, “All Your Benefits. One Place.”, and “All Your Benefits. In Your Pocket.” are registered marks of Benefitfocus in the United States. Through claimed common law trademark protection, we also protect other Benefitfocus marks which identify our services, and we have reserved numerous domain names, including “benefitfocus.com”. We also have registered trademarks and pending trademark applications in foreign jurisdictions such as Australia, Canada, China, India, Israel, Ireland, New Zealand, Russia, South Africa, Ukraine, and the United Kingdom.

We have been granted seven U.S. patents and all our patents are for utility patents. Our patents provide protections up to 2034. We also have three Chinese, two Australian, two Japanese, two Taiwanese R.O.C., two Hong Kong, and one Canadian patents.

We also rely on certain intellectual property rights that we license from third parties. Although we believe that alternative technologies are generally available to replace such licenses, these third-party technologies may not continue to be available to us on commercially reasonable terms.

Although we rely on intellectual property rights, including trade secrets, patents, copyrights, and trademarks, as well as contractual protections to establish and protect our proprietary rights, we believe that factors such as the technological and creative skills of our personnel, creation of new modules, features and functionality, and frequent enhancements to our applications are more essential to establishing and maintaining our technology leadership position.

The steps we have taken to protect our copyrights, trademarks, and other intellectual property may not be adequate, and the potential exists that third parties could infringe, misappropriate, or misuse our intellectual property. If this were to occur, it could harm our reputation and adversely affect our competitive position or operations. In addition, laws of other jurisdictions may not protect our intellectual property and proprietary rights from unauthorized use or disclosure in the same manner as the United States. The risk of unauthorized use of our proprietary and intellectual property rights may increase as our company expands outside of the United States.

Government Regulation

Introduction

The employee benefits industry is required to comply with extensive and complex U.S. laws and regulations at the federal and state levels. Although many regulatory and governmental requirements do not directly apply to our business, our customers are required to comply with a variety of U.S. laws, and we may be impacted by these laws as a result of our contractual obligations. For some of these laws, there is little history of regulatory or judicial interpretation upon which to rely.

Changes in Healthcare Regulation and Markets

Our business could be affected by changes in healthcare spending. PPACA and subsequent laws and regulations regarding the market for healthcare services have changed how healthcare services are covered, delivered, and reimbursed. PPACA, as enacted, expanded coverage of uninsured individuals by requiring states to expand Medicaid coverage significantly and to establish health insurance exchanges to facilitate the purchase of health insurance policies by individuals and small employers. The law also provided subsidies to states to create non-Medicaid plans for certain low-income residents.

The requirement for states to expand Medicaid was repealed, and insurers initially experienced mixed results providing services through the exchanges, leading many to exit this market. Increased volatility following the repeal of the individual mandate also created uncertainty in the exchange markets. Notwithstanding, the Biden administration has indicated that it intends to build on PPACA, and has repealed many of the executive orders issued under the Trump administration intended to weaken the law and limit its reach. While many of the provisions of PPACA are not directly applicable to us, the law affects the business of many of our customers. Carriers and large employers might experience changes in the numbers of individuals they insure as a result of Medicaid expansion and volatility within state and national exchanges.

A significant goal of PPACA and subsequent reform efforts has been to move away from fee for service payments toward capitated payments to make providers more accountable for the cost and quality of care provided. Following the creation of the Medicare Shared Savings Program, for instance, Medicare and many commercial third party payors began implementing accountable care models in which groups of providers known as Accountable Care Organizations ("ACO") assume some amount of risk for the cost of care provided to certain groups of individuals. Also, the Centers for Medicare and Medicaid Services ("CMS") continues to test demonstration programs to bundle acute care and post-acute care reimbursement to hold providers accountable for costs across a broader continuum of care. These reimbursement methodologies and similar programs are likely to continue and expand, both in public and commercial health plans, and will likely impact the business of our customers.

Requirements Regarding the Confidentiality, Privacy and Security of Personal Information

HIPAA and Other Privacy and Security Requirements. Numerous U.S. federal and state laws and regulations apply to the privacy and security of personal health information. In particular, regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996, or HIPAA, establish privacy and security standards that limit the use and disclosure of protected health information and require the implementation of administrative, physical and technical safeguards to ensure the confidentiality, integrity, availability, and privacy of protected health information. Health plans, healthcare clearinghouses and most healthcare providers are considered "Covered Entities" subject to HIPAA.

With respect to our operations as a healthcare clearinghouse, we are directly subject to the Privacy Rule, the Security Rule and the Breach Notification Rule. In addition, our health plan customers, or payors, are considered to be Covered Entities and are required to enter into written agreements with us, known as Business Associate Agreements, under which we are considered to be a Business Associate and that require us to safeguard protected health information and restrict how we may use and disclose such information. The Privacy Rule extensively regulates the use and disclosure of protected health information by Covered Entities and their Business Associates. For example, the Privacy Rule permits Covered Entities and their Business Associates to use and disclose protected health information for treatment and to process claims for payment, but other uses and disclosures, such as marketing communications, require written authorization from the individual or must meet an exception specified under the Privacy Rule. The Privacy Rule also provides patients with rights related to understanding and controlling how their health information is used and disclosed. To the extent permitted by the Privacy Rule and our contracts with our customers, we may use and disclose protected health information to perform our services and for other limited purposes, such as creating de-identified information. Determining whether data has been sufficiently de-identified to comply with the Privacy Rule and our contractual obligations may require complex factual and statistical analyses and may be subject to interpretation. The Security Rule requires Covered Entities and their Business Associates to implement and maintain administrative, physical and technical safeguards to protect the security of protected health information that is electronically transmitted or electronically stored.

If we are unable to properly protect the privacy and security of health information entrusted to us, we could be found to have breached our contracts with our customers. Further, if we fail to comply with the Privacy Rule, Security Rule, or Breach Notification Rule while acting as a Covered Entity or Business Associate, we could face civil penalties of up to \$60,226 per violation (\$1,806,757 per violation if not timely corrected) and a maximum civil penalty of \$1,806,757 in a calendar year for violations of the same requirement, in addition to criminal penalties. The U.S. Department of Health and Human Services Office for Civil Rights actively enforces the Privacy Rule, Security Rule, and Breach Notification Rule. Additionally, state attorneys general may bring civil actions seeking either injunctions or damages in response to violations of HIPAA that threaten the privacy of state residents.

There are additional privacy and data security legal regimes at the federal and state level. For example, the Federal Trade Commission ("FTC"), regularly brings privacy and data enforcement actions under Section 5 of the Federal Trade Commission Act, alleging that certain activities constitute unfair or deceptive trade practices. The states have similar laws that prohibit unfair or deceptive trade practices. There are also state data security laws and state laws that regulate the use and disclosure of health information, among others. Further, by regulation, the FTC's Red Flags Rule requires some financial institutions and creditors, which may include some of our customers, to implement identity theft prevention programs to detect, prevent and mitigate identity theft in connection with customer accounts. We may be required to apply additional resources to our existing processes to assist our affected customers in complying with this rule.

We have implemented and maintain physical, technical and administrative safeguards, including written policies and procedures, intended to protect personal information, including protected health information, and have processes in place to assist us in complying with all applicable laws and regulations regarding the protection of this data and properly responding to any data breaches or incidents.

Data Breach Notification Laws. There are numerous federal and state laws that generally require notice to affected individuals, regulators, and sometimes the media or credit reporting agencies in the event of a data breach impacting personal information. For example, at the federal level, the HIPAA Breach Notification Rule mandates notification of breaches affecting protected health information to affected individuals and regulators under conditions set forth in the Rule. Covered Entities must report breaches of unsecured protected health information to affected individuals without unreasonable delay, but not to exceed 60 days of discovery of the breach by a Covered Entity or its agents. Notification must also be made to the U.S. Department of Health and Human Services ("HHS") and, in certain circumstances involving large breaches, to the media. Business Associates must report breaches of unsecured protected health information to Covered Entities within 60 days of discovery of the breach by the Business Associate or its agents. All states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands have enacted data breach notification laws. While some of these breach notification laws contain an exception for entities subject to HIPAA, other laws do not, and may impose notification obligations in addition to, or inconsistent with, the HIPAA Breach Notification Rule when a data breach implicates protected health information.

HIPAA Administrative Simplification

HIPAA also mandated a package of interlocking administrative simplification rules to establish standards and requirements for the electronic transmission of certain healthcare claims and payment transactions. These regulations are intended to encourage electronic commerce in the healthcare industry and apply directly to Covered Entities. Some of our businesses, including our healthcare clearinghouse operations, are considered Covered Entities under HIPAA and its implementing regulations.

Transaction Standards. The standard transaction regulations established under HIPAA, or Transaction Standards, mandate certain format and data content standards for the most common electronic healthcare transactions, using technical standards promulgated by recognized standards publishing organizations. These transactions include healthcare claims, enrollment, payment and eligibility. The Transaction Standards are applicable to that portion of our business involving the processing of healthcare transactions among payors, providers, patients and other healthcare industry constituents. Failure to comply with the Transaction Standards may subject us to civil and potentially criminal penalties and breach of contract claims. The CMS is responsible for enforcing the Transaction Standards.

Payors who are unable to exchange data in the required standard formats can achieve Transaction Standards compliance by contracting with a clearinghouse to translate between standard and non-standard formats. As a result, use of a clearinghouse has allowed numerous payors to establish compliance with the Transaction Standards independently and at different times, reducing transition costs and risks. In addition, the standardization of formats and data standards envisioned by the Transaction Standards has only partially occurred. However, PPACA requires HHS to establish operating rules to promote uniformity in the implementation of each standardized electronic transaction. We cannot provide assurance regarding how the CMS will enforce the Transaction Standards. We have modified our systems and processes to implement the Transaction Standards and we continue to work with payors, healthcare information system vendors and other healthcare constituents to maintain our implementation of the Transaction Standards.

Health Plan and Other Entity Identifiers. HHS has promulgated regulations implementing the establishment of a unique health plan identifier ("HPID"). Similar to a provider's national provider identifier, the HPID provides an identification system for health plans to use for electronic transactions. HHS has also promulgated regulations implementing an Other Entity Identifier ("OEID"), that serves as an identifier for entities that are not health plans, healthcare providers or individuals. These other entities, which include third-party administrators, transaction vendors, and clearinghouses, are not required to obtain an OEID, but they could obtain and use one if they

needed to be identified in standardized transactions. The implementation of the enforcement of the HPID and OEID process has been indefinitely delayed by HHS, and if implemented its impact on our business is unclear at this time.

Financial Services Related Laws and Rules

Financial services and electronic payment processing services are subject to numerous laws, regulations and industry standards, some of which might impact our operations and subject us, our vendors and our customers to liability as a result of the payment distribution and processing solutions we offer. Although we do not act as a bank, we offer solutions that involve banks, or vendors who contract with banks and other regulated providers of financial services. As a result, we might be impacted by banking and financial services industry laws, regulations and industry standards, such as licensing requirements, solvency standards, requirements to maintain the privacy and security of nonpublic personal financial information and Federal Deposit Insurance Corporation deposit insurance limits. In addition, our patient billing and payment distribution and processing solutions might be impacted by payment card association operating rules, certification requirements and rules governing electronic funds transfers. If we fail to comply with applicable payment processing rules or requirements, we might be subject to fines and changes in transaction fees and may lose our ability to process credit and debit card transactions or facilitate other types of billing and payment solutions. Moreover, payment transactions processed using the Automated Clearing House Network (“ACH”), are subject to network operating rules promulgated by the National Automated Clearing House Association and to various federal laws regarding such operations, including laws pertaining to electronic funds transfers, and these rules and laws might impact our billing and payment solutions. Further, our solutions might impact the ability of our payor customers to comply with state prompt payment laws. These laws require payors to pay healthcare claims meeting the statutory or regulatory definition of a “clean claim” within a specified time frame.

Human Capital Resources

As of December 31, 2021, we employed approximately 1,100 employees, who we refer to as associates. None of our associates are represented by a labor union or are covered by collective bargaining agreements. We are not involved in any material disputes with any of our associates, and we consider our current relations with our associates to be good. All of our associates are located in the United States.

We believe our associates are our greatest asset. We are committed to designing a culture and environment that empowers our associates to thrive in their professional and personal lives. Our culture is one in which we want everyone to feel as if they belong and can be successful. We believe our corporate culture provides an advantage in recruiting new employees and retaining our best talent, as well as driving behaviors across our entire organization that help us succeed.

Our mission is to improve lives with benefits and starts with our associates. We support the total wellbeing of our associates through targeted programs, products and community initiatives. Our associates have access to an innovative total rewards package, to help them to flourish, thrive and prosper.

We offer a package of benefits to our associates so they can engage with benefits designed to protect and improve their total wellbeing, such as:

- Essential core benefit offering in medical, dental and vision, with an annual contribution to the associate’s health savings account and the opportunity to personalize their benefit options to meet a diverse set of needs;
- Company-sponsored health and wellness programs; and
- A wide variety of curated voluntary benefits that help foster peace of mind.

Associates can develop resiliency and find support that fosters work-life balance through programs, adaptive skill-building and positive experiences, including:

- Company-sponsored emotional health programs with caregiving support, employee assistance program and health advocacy services;
- A paid leave program; and
- Company-sponsored disability benefits;

Associates can build future financial security while being equipped for growth and success, including through our 401(k) Retirement Savings Plan with Company match, an Employee Stock Purchase Plan (“ESPP”), and grants of equity awards to every full-time associate.

In 2020, the COVID-19 pandemic had a significant impact on our workforce. Most of our associates have worked remotely since March 2020. We responded by establishing a team charged with considering and implementing strategies and policies to support our associates in this new environment. We also communicate frequently with associates to share and reinforce governmental recommendations and guidelines for safely navigating the pandemic.

We have a number of resources to support associates to thrive both professionally and personally including training and development programs, leadership programs, performance management, and regular engagement surveys that encourage open-ended feedback.

Benefitfocus is committed to providing a diverse and inclusive workplace in which equality, representation and respect create a culture of belonging. We believe our collective experiences make us stronger. We strive to be a place where everyone respects one another, regardless of national origin, race, color, gender, gender identity or expression, religion, ethnicity, sexual orientation, age or disability. As part of this commitment, we have established a Diversity, Inclusion and Belonging Council with a charter and executive sponsorship. We are committed to our mission to improve lives with benefits, and we are equally committed to embrace the diversity and uniqueness of everyone to move this mission forward.

Corporate Information

We were incorporated in June 2000 as Benefitfocus.com, Inc., a South Carolina corporation. In September 2013, we reincorporated in Delaware as Benefitfocus, Inc. Our principal executive offices are located at 100 Benefitfocus Way, Charleston, South Carolina 29492, and our phone number is (843) 849-7476. Our website address is www.benefitfocus.com. The information on, or that can be accessed through, our website is not part of this report.

Available Information

Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act, are available free of charge on our website at www.benefitfocus.com as soon as reasonably practicable after electronically filing or furnishing such material to the Securities and Exchange Commission. The Securities and Exchange Commission maintains a website (www.sec.gov) that includes our reports, proxy statements and other information.

Executive Officers

The following table sets forth information concerning our executive officers as of March 3, 2022:

<u>Name</u>	<u>Age</u>	<u>Position</u>
Matthew Levin	48	President and Chief Executive Officer, Director
Alpana Wegner	49	Chief Financial Officer, Treasurer

Matthew Levin—President and Chief Executive Officer

Matthew Levin has been our President, Chief Executive Officer and a member of the board of directors since May 2021. Prior to that, since November 2018, he served as the Chief Strategy Officer of Automatic Data Processing, Inc. (“ADP”) (NASDAQ: ADP), a leading provider of human capital management solutions. Prior to joining ADP, Mr. Levin was a Managing Partner of Psilos Group Managers, a growth equity firm where he specialized in technology-enabled services investments, from January 2017 to October 2018. Prior to joining Psilos Group Managers, he was Executive Vice President and Head of Global Strategy of Aon plc (NYSE: AON), a leading professional services firm providing a broad range of risk, retirement and health solutions, from August 2011 to December 2016. Prior to Aon, Mr. Levin served as Senior Vice President of Corporate Development and Strategy for Hewitt Associates, a leader in health, retirement and human capital consulting, and outsourcing services. He was a core member of the team that led the \$4.9 billion merger between Aon Consulting and Hewitt Associates, creating an industry-leading benefits and human resources solutions firm. Earlier in his career, he served as Senior Vice President of Corporate Development and Strategic Planning for IHS Inc. and as Vice President, Global Operations Officer for the human capital solutions business at Hudson Highland Group, Inc. Mr. Levin began his career in the First Scholar Program at First Chicago NBD, now JP Morgan Chase, before serving as a management consultant at Sibson & Company. Mr. Levin holds a master’s degree in business administration from the University of Chicago Booth School of Business and a bachelor’s degree from Northwestern University.

Alpana Wegner – Chief Financial Officer

Alpana Wegner has been our Chief Financial Officer since August 2020. Prior to that Ms. Wegner has served as our Vice President, Corporate Controller since December 2017, having first joined the Company in April 2017 in the carrier business unit as general manager. Previously, Ms. Wegner worked for Blackbaud, Inc. (NASDAQ: BLKB) beginning in October 2008. She served first as director of SEC reporting, then interim Corporate Controller, followed by Vice President roles as the Chief Financial Officer of the enterprise customer business unit, and in sales operations. From May 2001 to August 2004, Ms. Wegner served as the director of external reporting and compliance at Allied Waste Industries, Inc. (which was later purchased by Republic Services, Inc.). She also served in the assurance and business advisory segment of Arthur Andersen LLP. Ms. Wegner has previously served on the board of the non-profit Louie’s Kids, Inc. Ms. Wegner is a Certified Public Accountant and received a B.S. in Accountancy from Arizona State University.

Item 1A. RISK FACTORS.

Investing in our common stock involves a high degree of risk. You should consider carefully the risks and uncertainties described below, together with all of the other information in this Annual Report on Form 10-K, including the consolidated financial statements and the related notes, before deciding to invest in shares of our common stock. If any of the following risks were to materialize, our business, financial condition, results of operations, and future growth prospects could be materially and adversely affected. In that event, the market price of our common stock could decline and you could lose part or all of your investment in our common stock.

Risks Related to Our Business

We have had a history of losses, and we might not be able to achieve or sustain profitability.

We have had a history of net losses, including of \$33.2 million, \$24.3 million, and \$45.5 million, for the years ended December 31, 2021, 2020, and 2019, respectively. We cannot predict if we will achieve sustained profitability in the near future or at all. We expect to make significant future expenditures to develop and expand our business. In addition, as a public company, we incur significant legal, accounting, and other expenses that we would not incur as a private company. These expenditures make it harder for us to achieve and maintain future profitability. We might not achieve sufficient revenue to achieve or maintain profitability. We could incur significant losses in the future for a number of reasons, including the other risks described in this Annual Report on Form 10-K, and we may encounter unforeseen expenses, difficulties, complications and delays and other unknown events. Accordingly, we might not be able to achieve or maintain profitability and we may incur significant losses for the foreseeable future.

Our quarterly operating results have fluctuated in the past and might continue to fluctuate, causing the value of our common stock to decline substantially.

Our quarterly operating results might fluctuate due to a variety of factors, many of which are outside of our control. As a result, comparing our operating results on a period-to-period basis might not be meaningful. You should not rely on our past results as indicative of our future performance. Moreover, our stock price might be based on expectations of future performance that are unrealistic or that we might not meet and, if our revenue or operating results fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. For example, on March 16, 2020, in connection with a widespread market crash triggered by the COVID-19 pandemic, our stock price dropped \$2.25 per share from the previous trading day's close, or approximately 24.4%, to \$6.97. Additionally, our stock traded at a multi-year low in March 2020 of \$6.09 per share.

Our operating results have varied in the past. In addition to other risk factors listed in this section, some of the important factors that may cause fluctuations in our quarterly operating results include:

- the potential economic impact of COVID-19 on our products and services;
- the extent to which our products and services achieve or maintain market acceptance, including through brokers;
- our ability to hire and retain qualified personnel, including the rate of expansion of our sales force;
- changes in the regulatory environment related to benefits and healthcare, including any changes that may result from the upcoming Congressional midterm elections;
- our ability to introduce new products and services and enhancements to our existing products and services on a timely basis;
- new competitors and the introduction of enhanced products and services from competitors;
- the financial condition of our current and potential customers;
- changes in customer budgets and procurement policies;
- the amount and timing of our investment in research and development activities;
- technical difficulties with our products or interruptions in our services;
- regulatory compliance costs;
- the timing, size, and integration success of recent and potential future acquisitions; and
- unforeseen expenses, including stockholder activist, litigation, and settlement costs.

In addition, a significant portion of our operating expense is relatively fixed in nature, and planned expenditures are based in part on expectations regarding future revenue. Accordingly, unexpected revenue shortfalls might decrease our gross margins and could cause significant changes in our operating results from quarter to quarter. If this occurs, the trading price of our common stock could fall substantially, either suddenly or over time.

Because we recognize revenue and expense relating to monthly subscriptions and professional services over varying periods, downturns or upturns in sales are not immediately reflected in full in our operating results.

As a SaaS company, under Accounting Standards Codification (“ASC”) 606, we recognize our subscription revenue monthly for the term of our contracts and therefore a shortfall in demand for our software solutions and professional services or a decline in new or renewed contracts in any one quarter might not significantly reduce our revenue for that quarter, but could negatively affect our revenue in future quarters. Accordingly, the effect of significant downturns in new or renewed sales of our products and services might not be reflected in full in our results of operations until future periods.

Our revenue recognition model also makes it difficult for us to rapidly increase our revenue through additional sales in any period, because revenue from new customers has to be recognized over the applicable term of the contracts.

The COVID-19 pandemic could have an adverse impact on our business and the duration and extent to which the pandemic will impact our future financial performance remains uncertain.

In March 2020, the World Health Organization classified the COVID-19 outbreak as a pandemic, which rapidly spread across the globe and resulted in authorities implementing numerous measures to contain the virus, including travel bans and restrictions, quarantines, shelter-in-place orders, and business limitations and shutdowns. While vaccinations became widely available in the United States in 2021 and allowed for the partial reopening of the economy, the recent “Delta” and “Omicron” variants as well as possibility of any future variants of the virus, and reduced efficacy of vaccines over time and the possibility that a large number of people decline to get vaccinated or receive booster shots, create inherent uncertainty as to the future of our business and the economy in general in light of the pandemic.

The COVID-19 pandemic could have a continued adverse impact on our business and future financial performance. In response, in 2020, we took several measures to contain costs and preserve our liquidity profile, including, among other things, implementing our previously reported restructuring plan and executive compensation and Board of Director compensation reductions. We also took precautionary measures to help ensure the safety and mental and physical well-being of our associates and customers, including implementing a mandatory work-from-home policy, and establishing a COVID-19 Resource Center for our customers and funds to help support our own at-risk employees and their families. We have shifted to a permanent hybrid workforce that combines remote work with traditional in-office resources.

The ultimate impact of the COVID-19 pandemic on our business and financial results remains uncertain and depends on future developments, including, among other things, the duration and spread of the outbreak, its severity, the actions taken by governments and authorities to contain the virus or treat its impact, how quickly and to what extent normal economic and operating conditions can resume, the impact of the pandemic on our associates, including key personnel, the impact of business disruptions on our customers and the resulting impact on their demand for our products and services, layoffs by our employer customers, our customers’ ability to pay for our products and services, and our ability to provide services to individuals. Even after the COVID-19 pandemic has subsided, we may continue to experience materially adverse impacts to our business as a result of its global economic impact, including as a result of any recession that might occur. If we are unable to successfully respond to and manage the ultimate impact of the COVID-19 pandemic, and the resulting responses to it, our business, financial condition, and results of operation could continue to be adversely impacted.

Our business could be negatively affected as a result of the actions of activist stockholders.

Proxy contests and other actions by activist stockholders have been waged against many companies in our industry over the last several years, including our Company in 2021. Activist stockholders might agitate, either publicly or privately, for changes to a company’s board of directors, management, structure, spend or strategic direction, among other things. Such actions might cause significant disruption to a company’s operations and cause a company to expend a significant amount of time and resources in responding to their requests.

If faced with a proxy contest or other activist stockholder request or action in the future, we might not be able or willing to respond successfully to the contest, action, or request, which could be significantly disruptive to our business. Even if we are successful, our business could be adversely affected by any proxy contest or activist stockholder request or action involving us because:

- responding to proxy contests and other actions by activist stockholders can be costly and time-consuming, disrupting operations and diverting the attention of management and associates, and can lead to uncertainty;
- perceived uncertainties as to the future direction of the Company or its business might result in the loss of potential acquisitions, collaborations or in-licensing opportunities, and might make it more difficult to attract and retain qualified personnel and business partners; and
- if individuals are elected to our Board of Directors with a specific agenda, it might adversely affect our ability to effectively implement our strategic plan in a timely manner and create additional value for our stockholders.

Any such activist stockholder contests, actions or requests, or the mere public presence of activist stockholders among our stockholder base, could cause the market price for our ordinary shares to experience periods of significant volatility.

We depend on our senior management team, and the loss of one or more key associates or an inability to attract and retain highly skilled associates could adversely affect our business.

Our success depends largely upon the continued services of our key executive officers and other associates. We also rely on our leadership team in the areas of research and development, marketing, services, finance, and general and administrative functions, and on mission-critical individual contributors in sales and research and development. From time to time, there may be changes in our executive management team resulting from the hiring or departure of executives, which could disrupt our business. For example: in 2021, Stephen Swad stepped down as president and chief executive officer and was replaced by Matthew Levin. Additionally, Mason Holland stepped down from his position as Executive Chairman and a member of the Board, effective at the Company's 2021 annual stockholders meeting. The loss of one or more of our executive officers or key associates could have a serious adverse effect on our business.

To continue to execute our growth strategy, we also must attract and retain highly skilled personnel. Competition is intense for salespeople and for engineers with high levels of experience in designing and developing software and Internet-related services. We might not be successful in maintaining our unique culture and continuing to attract and retain qualified personnel. We have from time to time in the past experienced, and we expect to continue to experience in the future, difficulty in hiring and retaining highly skilled personnel with appropriate qualifications. The pool of qualified personnel with SaaS experience and/or experience working with the benefits market is limited and many of the companies with which we compete for experienced personnel have greater resources than we have.

In addition, in making employment decisions, particularly in the Internet and high-technology industries, job candidates often consider the value of the equity awards they are to receive in connection with their employment. Volatility in the price of our stock might, therefore, adversely affect our ability to attract or retain highly skilled personnel. Furthermore, the requirement to expense certain stock awards might discourage us from granting the size or type of stock awards that job candidates require to join our company. If we fail to attract new personnel or fail to retain and motivate our current personnel, our business and future growth prospects could be severely harmed.

We operate in a highly competitive industry, and if we are not able to compete effectively, our business and operating results will be harmed.

The benefits management software market is highly competitive and is likely to attract increased competition, which could make it hard for us to succeed. Small, specialized providers continue to become more sophisticated and effective. In addition, large, well-financed, and technologically sophisticated software companies might focus more on our market. The size and financial strength of these entities is increasing as a result of continued consolidation in both the IT and healthcare industries. We expect large integrated software companies to become more active in our market, both through acquisitions and internal investment. In addition, insurance carriers may seek to bring certain of their benefits software solutions in-house, whether through acquisitions or internal investment. For example, Aetna, a customer of ours, owns bswift, a provider of insurance exchange technology solutions and benefits administration technology solutions and services. If Aetna were to decide to use bswift's solution in place of any portion of the solutions we currently provide to them, then our business and operating results could be materially and adversely affected. As costs fall and technology improves, increased market saturation might change the competitive landscape in favor of our competitors.

Some of our current large competitors have greater name recognition, longer operating histories, and significantly greater resources than we do. As a result, our competitors might be able to respond more quickly and effectively than we can to new or changing opportunities, technologies, standards, or customer requirements. In addition, current and potential competitors have established, and might in the future establish, cooperative relationships with vendors of complementary products, technologies, or services to increase the availability of their products in the marketplace. Accordingly, new competitors or alliances might emerge that have greater market share, a larger customer base, more widely adopted proprietary technologies, greater marketing expertise, greater financial resources, and larger sales forces than we have, which could put us at a competitive disadvantage. Further, in light of these advantages, even if our products and services are more effective than those of our competitors, current or potential customers might accept competitive offerings in lieu of purchasing our offerings. Increased competition is likely to result in pricing pressures, which could negatively impact our sales, profitability, or market share. In addition to new niche vendors, who offer standalone products and services, we face competition from existing enterprise vendors, including those currently focused on software solutions that have information systems in place with potential customers in our target market. These existing enterprise vendors might promise products or services that offer ease of integration with existing systems and which leverage existing vendor relationships. In addition, large insurance carriers often have internal technology staffs and proprietary software for benefits management, making them less likely to buy our solutions.

The market for our products and services is immature and volatile, and if it does not develop or if it develops more slowly than we expect, the growth of our business will be harmed.

The cloud-based benefits management software market is relatively new and unproven, and it is uncertain whether it will achieve and sustain high levels of demand and market acceptance. Our success will depend to a substantial extent on the willingness of employers, carriers, consumers and brokers to increase their use of benefits management software. Many employers and carriers have invested substantial personnel and financial resources to integrate internally developed solutions or traditional enterprise software into

their businesses for benefits management, and therefore might be reluctant or unwilling to migrate to our cloud-based solutions, including Benefit Catalog. Furthermore, some businesses might be reluctant to use cloud-based solutions because they have concerns about the security of their data and the reliability of the technology delivery model associated with these solutions. If employers, carriers, consumers and brokers do not perceive the benefits of our solutions, then our market might not develop at all, or it might develop more slowly than we expect, either of which could significantly adversely affect our operating results. In addition, we might make errors in predicting and reacting to relevant business trends, which could harm our business. If any of these risks occur, it could materially adversely affect our business, financial condition or results of operations.

The SaaS pricing model is evolving and our failure to manage its evolution and demand could lead to lower than expected revenue and profit.

We derive most of our revenue growth from subscription offerings and, specifically, SaaS offerings. This business model depends heavily on achieving economies of scale because the initial upfront investment is costly and the associated revenue is recognized on a ratable basis. If we fail to achieve appropriate economies of scale or if we fail to manage or anticipate the evolution and demand of the SaaS pricing model, then our business and operating results could be adversely affected.

If we do not continue to innovate and provide products and services that are useful to consumers, employers, insurance carriers, and brokers and provide high quality support services, we might not remain competitive, and our revenue and operating results could suffer.

Our success depends in part on providing products and services that consumers, employers, insurance carriers, and brokers will use to manage benefits. We have refocused on customer-driven innovation and must continue to invest significant resources in research and development in order to enhance our existing products and services and introduce new high-quality products and services that customers will want. If we are unable to predict user preferences or industry changes, or if we are unable to modify our products and services on a timely basis, we might lose customers. Our operating results would also suffer if our innovations are not responsive to the needs of our customers, are not appropriately timed with market opportunity, or are not effectively brought to market. As technology continues to develop, our competitors might be able to offer results that are, or that are perceived to be, substantially similar to or better than those generated by us. This would force us to compete on additional product and service attributes and to expend significant resources in order to remain competitive.

In addition, we may experience difficulties with software development, industry standards, design, or marketing that could delay or prevent our development, introduction, or implementation of new solutions and enhancements. The introduction of new solutions by competitors, the emergence of new industry standards, or the development of entirely new technologies to replace existing offerings could render our existing or future solutions obsolete.

Our success also depends on providing high quality support services to resolve any issues related to our products and services. High quality education and customer support is important for the successful marketing and sale of our products and services and for the renewal of existing customers. If we do not help our customers quickly resolve issues and provide effective ongoing support, our ability to sell additional products and services to existing customers would suffer and our reputation with existing or potential customers would be harmed.

If we are unable to retain our existing customers, our revenue and results of operations would be adversely affected.

We sell our products and services pursuant to agreements that are generally one to three years for employers and three to five years for health plans. While our employer contracts generally automatically renew, our health plan customers have no obligation to renew their contracts after their contract period expires, and these contracts might not be renewed on the same or on more profitable terms if at all. Additionally, some of our health plan customers are able to terminate their respective contracts without cause or for convenience, although generally our health plan contracts are only cancellable by the health plan in an instance of our uncured breach. As a result, our ability to grow depends in part on the continuance and renewal of our health plan contracts. We have experienced increased customer non-renewal over the past year or so. We cannot accurately predict future trends in customer renewals, and our customers' renewal rates may decline or fluctuate because of several factors, including their level of satisfaction or dissatisfaction with our services, the cost of our services, the cost of services offered by our competitors, consolidations or reductions in our customers' spending levels. If our health plan customers terminate or do not renew their contracts for our services, renew on less favorable terms, or do not purchase additional functionality or products, our revenue may grow more slowly than expected or decline, and our profitability and gross margins may be harmed.

A significant amount of our revenue is derived from our largest customers, and any reduction in revenue from any of these customers would reduce our revenue and net income.

Our ten largest customers by revenue accounted for approximately 32%, 34% and 37% of our consolidated revenue in each of 2021, 2020 and 2019, respectively. No customer accounted for more than 10% of our revenue in 2021, 2020 or 2019. If any of our large customers or strategic partners decides not to renew its contracts with us, or to renew on less favorable terms, our business, revenue, reputation, and our ability to obtain new customers could be materially and adversely affected.

Consolidation among our customers and within the IT and healthcare industries may negatively impact our operating results.

A number of business combinations, including mergers, asset acquisitions and strategic partnerships, among our customers have occurred over the last several years, and more could occur in the future. Consolidation among our customers could lead to fewer customers or the loss of customers, increased customer bargaining power or reduced customer spending on software and services. Consolidation among our customers could also reduce the demand for our products and services if customers streamline their operations, reduce purchases or delay purchasing decisions.

In addition, we and our competitors from time to time acquire businesses and technologies to complement and expand our respective product offerings. Consolidated competitors could have considerable financial resources, channel influence, and broad geographic reach; thus, they can engage in competition on the basis of product differentiation, pricing, marketing, services, support and more. If any of our competitors consolidate or acquire businesses and services that we do not offer, they may be able to offer a larger portfolio of products and services, or lower prices, which could negatively impact our business and operating results.

Economic or geopolitical uncertainties or downturns in the general economy or the industries in which our customers operate could disproportionately affect the demand for our solutions and negatively impact our results of operations.

General worldwide economic and geopolitical conditions have experienced significant downturns in the past, and market volatility and uncertainty remain widespread, including as a result of the ongoing COVID-19 pandemic and tension in Ukraine. This makes it extremely difficult for our customers and us to accurately forecast and plan future business activities. In addition, these conditions could cause our customers or prospective customers to decrease headcount, benefits, or HR budgets, which could decrease corporate spending on our products and services, resulting in delayed and lengthened sales cycles, a decrease in new customer acquisition, and/or loss of customers. Furthermore, during challenging economic times, our customers may have difficulty gaining timely access to sufficient credit or obtaining credit on reasonable terms, which could impair their ability to make timely payments to us and adversely affect our revenue. If that were to occur, our financial results could be harmed. Further, challenging economic conditions might impair the ability of our customers to pay for the products and services they already have purchased from us and, as a result, our write-offs of accounts receivable could increase. For example, during 2020 we experienced an increase in early termination and credit requests from our customers. We cannot predict the timing, strength, or duration of any economic slowdown or recovery. If the condition of the general economy or markets in which we operate worsens, our business could be harmed.

Failure to adequately and effectively expand our direct sales force will impede our growth.

We believe that our future growth will in part depend on the development of our direct sales force and its ability to obtain new customers and to expand and further develop our existing customer base. Identifying and recruiting qualified personnel and training them in the use of our software requires significant time, expense, and attention. It can take six months or longer before a new sales representative is fully trained and productive. Our business may be adversely affected if our efforts to expand, train and retrain our direct sales force do not generate a corresponding increase in revenue. For example, reductions of our salesforce in 2016, 2018 and 2020, among other factors, negatively impacted sales, and as a result, revenue going forward. In particular, if we are unable to hire, develop and retrain sufficient numbers of productive direct sales personnel or if new direct sales personnel are unable to achieve desired productivity levels in a reasonable period of time, sales of our products and services will suffer and our growth will be impeded.

Our growth depends in part on the success of our strategic relationships with third parties, including brokers.

In order to grow our business, we anticipate that we will continue to depend on our relationships with third parties including resellers such as SAP SE, and other referral sources such as brokers, consultants, specialty benefits providers, insurance carriers, technology and content providers, administrative service providers and third-party system integrators. Identifying partners, negotiating and documenting relationships with them, and developing referral sources requires significant time and resources. In the first quarter of 2019, Mercer sold all of its Benefitfocus stock and we amended our commercial relationship with Mercer to better align with our strategic priorities and current trends in the marketplace. Our revised commercial agreement with them led to a reduction in our revenue from the relationship in 2019, 2020 and 2021 and believe this trend will continue in 2022. Our competitors might be effective in providing incentives to third parties to favor their products or services or to prevent or reduce subscriptions to our products and services. Acquisitions of our partners by our competitors could result in a decrease in the number of our current and potential customers, as our partners may no longer facilitate the adoption of our applications by potential customers. If we are unsuccessful in establishing or maintaining our relationships with third parties, our ability to compete in the marketplace or to grow our revenue could be impaired and our operating results may suffer. Even if we are successful, we cannot assure you that these relationships will result in increased customer use of our applications or increased revenue.

If the number of individuals covered by our employer and health plan customers decreases or the number of products or services to which our employer and health plan customers subscribe or their employees purchase decreases, our revenue will decrease.

Under most of our customer contracts, we base our fees on the number of individuals to whom our customers provide benefits and the number of products or services subscribed to by our customers or purchased by their employees. Many factors may lead to a

decrease in the number of individuals covered by our customers and the number of products or services subscribed to by our customers, including:

- layoffs by our customers or affecting our customers, in response to the COVID pandemic or otherwise;
- failure of our customers to adopt or maintain effective business practices;
- changes in the nature or operations of our customers;
- government regulations; and
- increased competition or other changes in the benefits marketplace.

If the number of individuals covered by our customers or the number of products or services subscribed to by our customers decreases for any reason, our revenue will likely decrease and could affect the contractual minimums for renewals in future periods.

Failure to manage our continued growth effectively could increase our expenses, decrease our revenue, and prevent us from implementing our business strategy.

We have experienced growth in the past and anticipate future growth, which could put a strain on our business. To manage our anticipated future growth effectively, we must continue to maintain and enhance our IT infrastructure, financial and accounting systems, and controls. We also must attract, train, and retain a significant number of qualified sales and marketing personnel, customer support personnel, professional services personnel, software engineers, technical personnel, and management personnel. Failure to effectively manage our anticipated future growth could lead us to over-invest or under-invest in development and operations, result in weaknesses in our infrastructure, systems, or controls, give rise to operational mistakes, losses, loss of productivity or business opportunities, and result in loss of associates and reduced productivity of remaining associates. Our anticipated future growth could require significant capital expenditures and might divert financial resources from other projects such as the development of new products and services. If our management is unable to effectively manage our anticipated future growth, our expenses might increase more than expected, our revenue could decline or might grow more slowly than expected, and we might be unable to implement our business strategy. The quality of our products and services might suffer, which could negatively affect our reputation and harm our ability to retain and attract customers.

If we fail to maintain awareness of our brand cost-effectively, our business might suffer.

We believe that maintaining awareness of our brand in a cost-effective manner is critical to continuing the widespread acceptance of our existing solutions and is an important element in attracting new customers. Furthermore, we believe that the importance of brand recognition will increase as competition in our market increases. Successful promotion of our brand will depend largely on the effectiveness of our marketing efforts and on our ability to provide reliable and useful services at competitive prices. Our efforts to build, maintain and market changes to our brand nationally have involved significant expenses. Brand promotion activities may not yield increased revenue, and even if they do, any increased revenue may not offset the expenses we incur in maintaining our brand. If we fail to successfully maintain our brand, or incur substantial expenses in an unsuccessful attempt to maintain our brand, we may fail to attract enough new customers or retain our existing customers to the extent necessary to realize a sufficient return on our brand-building efforts, and our business could suffer.

We might not be able to utilize a significant portion of our net operating loss or other tax credit carryforwards, which could adversely affect our profitability.

As of December 31, 2021, we had federal and state net operating loss carryforwards due to prior period losses, which began expiring unutilized in 2020 and will continue expiring through 2039 if not utilized. We also have South Carolina jobs tax credit and headquarters tax credit carryforwards, some of which have expired unutilized. The tax credit carryforwards that expire unused are unavailable to offset future income tax liabilities, which could adversely affect our profitability.

In addition, under Section 382 of the Internal Revenue Code of 1986, as amended (the "Code"), our ability to utilize net operating loss carryforwards or other tax attributes in any taxable year may be limited if we experience an "ownership change". A Section 382 "ownership change" generally occurs if one or more stockholders or groups of stockholders who own at least 5% of our stock increase their ownership by more than 50 percentage points over their lowest ownership percentage within a rolling three-year period. Similar rules might apply under state tax laws. Future issuances of our stock could cause an "ownership change". It is possible that an ownership change, or any future ownership change, could have a material effect on the use of our net operating loss carryforwards or other tax attributes, which could adversely affect our profitability.

We might be unable to adequately protect, and we might incur significant costs in enforcing, our intellectual property and other proprietary rights.

Our success depends in part on our ability to enforce our intellectual property and other proprietary rights. We rely on a combination of trademark, trade secret, copyright, patent, and unfair competition laws, as well as license and access agreements and

other contractual provisions, to protect our intellectual property and other proprietary rights. In addition, we attempt to protect our intellectual property and proprietary information by requiring associates and consultants to enter into confidentiality, noncompetition, and assignment of inventions agreements. Our attempts to protect our intellectual property might be challenged by others or invalidated through administrative process or litigation. While we have a number of patents granted in the United States and other jurisdictions including China, Japan, Australia, Taiwan, Hong Kong and Canada, we might not be able to obtain meaningful patent protection for our software. In addition, if any patents are issued in the future, they might not provide us with any competitive advantages, or might be successfully challenged by third parties. Agreement terms that address non-competition are difficult to enforce in many jurisdictions and might not be enforceable in certain cases. To the extent that our intellectual property and other proprietary rights are not adequately protected, third parties might gain access to our proprietary information, develop and market products or services similar to ours, or use trademarks similar to ours, each of which could materially harm our business. Existing U.S. federal and state intellectual property laws offer only limited protection. Moreover, the laws of other countries in which we might in the future conduct operations or contract for services might afford little or no effective protection of our intellectual property. The failure to adequately protect our intellectual property and other proprietary rights could materially harm our business.

In addition, if we resort to legal proceedings to enforce our intellectual property rights or to determine the validity and scope of the intellectual property or other proprietary rights of others, the proceedings could be burdensome and expensive, even if we were to prevail. Any litigation that is necessary in the future could result in substantial costs and diversion of resources and could have a material adverse effect on our business, operating results or financial condition.

We might be sued by third parties for alleged infringement of their proprietary rights.

The software and Internet industries are characterized by the existence of a large number of patents, trademarks, and copyrights and by frequent litigation based on allegations of infringement or other violations of intellectual property rights. We have received in the past, and might receive in the future, communications from third parties claiming that we have infringed the intellectual property rights of others. Our technologies might not be able to withstand any third-party claims or rights against their use. Any intellectual property claims, with or without merit, could be time-consuming and expensive to resolve, divert management attention from executing our business plan, and require us to pay monetary damages or enter into royalty or licensing agreements. In addition, many of our contracts contain warranties with respect to intellectual property rights, and most require us to indemnify our clients for third-party intellectual property infringement claims, which would increase the cost to us of an adverse ruling on such a claim.

Moreover, any settlement or adverse judgment resulting from such a claim could require us to pay substantial amounts of money or obtain a license to continue to use the software or information that is the subject of the claim, or otherwise restrict or prohibit our use of it. We might not be able to obtain a license on commercially reasonable terms, if at all, from third parties asserting an infringement claim; we might not be able to develop alternative technology on a timely basis, if at all; and we might not be able to obtain a license to use a suitable alternative technology to permit us to continue offering, and our clients to continue using, our affected services. Accordingly, an adverse determination could prevent us from offering our services to others.

Any litigation could be costly and time-consuming to defend.

We may become subject, from time to time, to legal proceedings and claims that arise in the ordinary course of business such as claims brought by our clients in connection with commercial disputes, employment claims made by our current or former associates or their prior employers, or purported securities class actions. For example, in March 2021, the Company was included as a defendant in a class-action lawsuit filed on behalf of a class of persons who acquired our common stock in or traceable to our March 2019 secondary public offering. The complaint alleges that defendants violated the federal securities laws by, among other things, making misrepresentations about our commercial relationships and failing to disclose certain material adverse facts, trends or uncertainties or significant risks that made the secondary public offering speculative and risky. Litigation might result in substantial costs and may divert management's attention and resources, which might seriously harm our business, overall financial condition, and operating results. Insurance might not cover such claims, might not provide sufficient payments to cover all the costs to resolve one or more such claims, and might not continue to be available on terms acceptable to us. A claim brought against us that is uninsured or underinsured could result in unanticipated costs, thereby reducing our operating results and leading analysts or potential investors to reduce their expectations of our performance, which could reduce the trading price of our stock.

Acquisitions could prove difficult to integrate, disrupt our business, dilute stockholder value, and adversely affect our operating results and the value of our common stock.

As part of our business strategy, we might acquire, enter into joint ventures with, or make investments in complementary companies, services, and technologies in the future. For example, in November 2021, we acquired Tango Health, Inc. We spent considerable time, effort, and money pursuing this acquisition and need now to continue to successfully integrate it into our business. Acquisitions and investments involve numerous risks, including:

- difficulties in identifying and acquiring products, technologies or businesses that will help our business;
- difficulties in integrating operations, technologies, services and personnel;

- diversion of financial and managerial resources from existing operations;
- risk of entering new markets in which we have little to no experience; and
- delays in customer purchases due to uncertainty and the inability to maintain relationships with customers of the acquired businesses.

If we fail to properly evaluate acquisitions or investments, we might not achieve the anticipated benefits of any such acquisitions, we might incur costs in excess of what we anticipate, and management resources and attention might be diverted from other necessary or valuable activities.

Future sales to customers outside the United States or with international operations might expose us to risks inherent in international sales which, if realized, could adversely affect our business.

An element of our growth strategy is to expand internationally. Operating in international markets requires significant resources and management attention and will subject us to regulatory, economic, and political risks that are different from those in the United States. Because of our limited experience with international operations, our international expansion efforts might not be successful in creating demand for our products and services outside of the United States or in effectively selling our solutions in the international markets we enter. In addition, we will face risks in doing business internationally that could adversely affect our business, including:

- unstable regional political and economic conditions, such as those caused by the ongoing COVID-19 pandemic or tensions in Ukraine;
- the need to localize and adapt our solutions for specific countries, including translation into foreign languages and associated expenses;
- data privacy and security laws, such as the European General Data Protection Regulation and data localization laws that require data to be stored and processed in a designated territory;
- difficulties in staffing and managing foreign operations;
- different pricing environments, longer sales cycles and longer accounts receivable payment cycles and collections issues;
- new and different sources of competition;
- weaker protection for intellectual property and other legal rights than in the United States and practical difficulties in enforcing intellectual property and other rights outside of the United States;
- laws and business practices favoring local competitors;
- compliance challenges related to the complexity of multiple, conflicting and changing governmental laws and regulations, including employment, tax, privacy, and data protection laws and regulations;
- increased financial accounting and reporting burdens and complexities;
- restrictions on the transfer of funds; and
- adverse tax consequences.

If we denominate our international contracts in local currencies, fluctuations in the value of the U.S. dollar and foreign currencies might impact our operating results when translated into U.S. dollars.

Changes in and interpretations of accounting principles and their implementation could have an adverse impact on our reported financial results.

We prepare our financial statements in accordance with Generally Accepted Accounting Principles (“GAAP”). These rules are subject to interpretation by the SEC and various bodies formed to interpret and create appropriate accounting principles. Changes in these rules or their interpretation could have a negative impact on our reported financial results and may retroactively affect previously reported transactions. For example, we incurred considerable cost and effort to implement the new lease standard in 2019.

Implementation of these new standards, and any future accounting pronouncements, implementation guidelines, or interpretations, could have an adverse impact on our reported financial results, require that we make significant changes to our systems, processes and controls, or the way we conduct our business. In addition, we have expended and might in the future expend considerable effort and resources implementing accounting updates, which in and of itself could have negative impact on our results of operations.

Risks Related to Our Products and Services Offerings

The breach or failure of our security measures, unauthorized access to or disclosure of customers' or consumers' data, or disruption of our products or services caused by security breaches or other incidents may result in our products and services being perceived as unsecure, cause customers and consumers to curtail or stop using our products and services, and cause us to incur significant liabilities.

Our products and services involve the storage and transmission of customers' and consumers' confidential information, which may include sensitive individually identifiable information that is subject to stringent legal, regulatory, or contractual obligations. Because of the sensitivity of this information, our privacy and security measures related to our products and service offerings, including the security features of our software, are very important. Although we have privacy and security measures in place designed to protect customers' and consumers' data and our systems, techniques used to obtain unauthorized access or to sabotage systems and data change frequently and often are not recognized until launched against a target. It is also possible that, due to the surreptitious nature of certain data breaches and other incidents, they may remain undetected for an extended period, which may exacerbate harm to the company. We cannot ensure that our measures will not be breached or otherwise fail to protect confidential information or prevent disruption of our products and services, including as a result of inadvertent disclosures through technological or human error (including associates or service provider error), malfeasance, hacking, ransomware, social engineering (including phishing schemes), computer viruses, malware, or otherwise. Unauthorized individuals may acquire or obtain unauthorized access to our customers' or consumers' confidential information (including medical, financial or other personal information). Data breaches, failures of our privacy or security measures, inadvertent disclosures, disruptions of our products and services, and other incidents could result in serious harm to our reputation, our business could suffer, and we could incur serious liability and other expenses related to litigation (including damages associated with breach-of-contract claims and consumer litigation), penalties for violation of applicable laws or regulations, costly litigation or government investigations, and remediation efforts to prevent future occurrences.

We rely on various parties (including as users of our products, services, and systems), such as employers' HR departments, carriers, service providers, and consumers themselves for key services and activities that impact the security of our products, services, and systems and the privacy and security of data and information accessible within them. These key services and activities include data hosting and administration of enrollment, consumer status changes, claims, and billing. These individuals and organizations may, for example, experience data breaches or cause unauthorized access to or disclosure of information. Our customers may authorize or enable third parties to access their information and data that is stored on our systems. Because we do not determine such access, we cannot ensure the complete security, confidentiality, integrity, or availability of such data in our systems.

Privacy and security incidents are not uncommon in our industry due to the nature of our industry's services, the high volume of sensitive information involved, and the desirability of that information to bad actors. Incidents involving phishing, hacking, and misdirected communications containing sensitive information can and do occur. Customers and end-users of our industry's products and services are also the source of privacy and security incidents, sometimes due to failures to adhere to appropriate privacy and data security practices. For example, employers sometimes fail to terminate the account credentials of former employees or permit current employees to share account credentials.

Like others in our industry, we experience cyber-attacks and other attempts to disrupt or gain unauthorized access to our systems on a regular basis. When we become aware of privacy or security incidents, we work diligently to address them, including by working to terminate unauthorized or inappropriate access and implementing additional measures, training, and providing guidance to customers and end users in order to avoid the reoccurrence and future incidents. Although to date privacy and security incidents have not been material, they could expose us to significant expense, legal liability, and harm to our reputation, which might result in loss of business.

Our failure or failure by our customers to obtain proper permissions and waivers might result in claims against us or may limit or prevent our use of data, which could harm our business.

We require our customers to provide necessary notices and to obtain necessary permissions and waivers for use and disclosure of information on the Benefitfocus Platform, and we require contractual assurances from them that they have done so and will do so. If, however, despite these requirements and contractual obligations, our customers or consumers do not obtain necessary permissions and waivers, then our use and disclosure of information that we receive from them or on their behalf might be limited or prohibited by state or federal privacy laws or other laws. This could impair our functions, processes and databases that reflect, contain, or are based upon such data and might prevent use of such data. In addition, this could interfere with, or prevent creation or use of, rules, analyses, or other data-driven activities that benefit us and our business. Moreover, we might be subject to claims or liability for use or disclosure of information by reason of lack of valid notices, agreements, permissions or waivers. These claims or liabilities could subject us to unexpected costs and adversely affect our operating results.

Our proprietary software might not operate properly, which could damage our reputation, give rise to claims against us, or divert application of our resources from other purposes, any of which could harm our business and operating results.

Proprietary software development is time-consuming, expensive, and complex. Unforeseen difficulties can arise. We might encounter technical obstacles, and it is possible that we discover problems that prevent our proprietary applications from operating

properly. If they do not function reliably or fail to achieve customer expectations in terms of performance, customers could assert liability claims against us and/or attempt to cancel their contracts with us. This could damage our reputation and impair our ability to attract or maintain customers.

Moreover, benefits management software as complex as ours has in the past contained, and may in the future contain, or develop, undetected defects or errors. Material performance problems or defects in our products and services might arise in the future. Errors might result from the interface of our services with legacy systems and data, which we did not develop and the function of which is outside of our control. Defects or errors might arise in our existing or new software or service processes. Because changes in employer, carrier, and legal requirements and practices relating to benefits are frequent, we are continuously discovering defects and errors in our software and service processes compared against these requirements and practices. Undiscovered vulnerabilities could expose our software to unscrupulous third parties who develop and deploy software programs that could attack our software or result in unauthorized access to, acquisition of, or disclosure of customer data. Defects and errors and any failure by us to identify and address them could result in loss of revenue or market share, liability to customers or others, failure to achieve market acceptance or expansion, diversion of development and other resources, injury to our reputation, and increased service and maintenance costs. Defects or errors in our product or service processes might discourage existing or potential customers from purchasing services from us. Correction of defects or errors could prove to be impossible or impracticable. The costs incurred in correcting any defects or errors or in responding to resulting claims or liability might be substantial and could adversely affect our operating results.

In addition, customers that rely on our products and services to collect, manage, and report benefits data might have a greater sensitivity to service errors and security vulnerabilities than customers of software products in general. We market and sell services that, among other things, provide information to assist care providers in tracking and treating ill patients. Any operational delay in or failure of our software service processes might result in the disruption of patient care and could cause harm to our business and operating results.

Our customers might assert claims against us in the future alleging that they suffered damages due to a defect, error, or other failure of our product or service processes. A product liability claim or errors or omissions claim could subject us to significant legal defense costs and adverse publicity regardless of the merits or eventual outcome of such a claim.

Various events could interrupt customers' access to the Benefitfocus Platform, exposing us to significant costs.

The ability to access the Benefitfocus Platform is critical to our customers. Our operations and facilities are vulnerable to interruption and/or damage from a number of sources, many of which are beyond our control, including, without limitation: (i) power loss and telecommunications failures, (ii) fire, flood, hurricane, and other natural disasters, (iii) software and hardware errors, failures or crashes in our own systems or in other systems, (iv) computer viruses, denial-of-service attacks, hacking and similar disruptive problems in our own systems and in other systems, and (v) civil unrest, war, and/or terrorism. We have implemented various measures to protect against interruptions of customers' access to our platform. If customers' access is interrupted because of problems in the operation of our facilities, we could be exposed to significant claims by customers, particularly if the access interruption is associated with problems in the timely delivery of funds due to customers or medical information relevant to patient care. Our plans for disaster recovery and business continuity rely on third-party providers of related services. If those vendors fail us at a time when our systems are not operating correctly, we could incur a loss of revenue and liability for failure to fulfill our obligations. Any significant instances of system downtime could negatively affect our reputation and ability to retain customers and sell our services, which would adversely impact our revenue.

In addition, retention and availability of patient care and physician reimbursement data are subject to federal and state laws governing record retention, accuracy, and access. Some laws impose obligations on our customers and on us to produce information for third parties and to amend or expunge data at their direction. Our failure to meet these obligations might result in liability, which could increase our costs and reduce our operating results.

We currently rely on data center providers, Internet infrastructure, bandwidth providers, third-party computer hardware and software, other third parties, and our own systems for providing services to our customers, and any failure or interruption in the services provided by these third parties or our own systems could expose us to litigation and negatively impact our relationships with customers, adversely affecting our brand and our business.

We currently serve our customers primarily from three data centers, located in Raleigh, North Carolina, Charlotte, North Carolina, and Ashburn, Virginia. While we control and have access to our servers, we do not control the operation of these facilities. The owners of our data center facilities have no obligation to renew their agreements with us on commercially reasonable terms, or at all. If we are unable to renew these agreements on commercially reasonable terms, or if one of our data center operators is acquired, we may be required to transfer our servers and other infrastructure to new data center facilities, and we may incur significant costs and possible service interruption in connection with doing so. Problems faced by our third-party data center locations, with the telecommunications network providers with whom we or they contract, or with the systems by which our telecommunications providers allocate capacity among their customers, including us, could adversely affect the experience of our customers. Our third-party data centers operators could decide to close their facilities without adequate notice. In addition, any financial difficulties, such as bankruptcy faced by our third-party data centers operators or any of the service providers with whom we or they contract may have negative effects on our business, the nature and extent of which are difficult to predict.

In addition, our ability to deliver our web-based services depends on the development and maintenance of the infrastructure of the Internet by third parties. This includes maintenance of a reliable network backbone with the necessary speed, data capacity, bandwidth capacity, and security. Our services are designed to operate without interruption in accordance with our service level commitments. However, we have experienced and expect that we will experience future interruptions and delays in services and availability from time to time. In the event of a catastrophic event with respect to one or more of our systems, we may experience an extended period of system unavailability, which could negatively impact our relationship with customers. To operate without interruption, both we and our service providers must guard against:

- damage from fire, power loss, natural disasters and other force majeure events outside our control;
- communications failures;
- software and hardware errors, failures, and crashes;
- security breaches, computer viruses, hacking, denial-of-service attacks, and similar disruptive problems; and
- other potential interruptions.

We also rely on computer hardware purchased or leased and software licensed from third parties in order to offer our services, including software from Oracle Corporation and Microsoft Corporation, and routers and network equipment from Cisco and Dell. This hardware and software is generally commercially available on varying terms. However, it is possible that this hardware and software might not continue to be available on commercially reasonable terms, or at all. Any loss of the right to use any of this hardware or software could result in delays in the provisioning of our services until equivalent technology is either developed by us, or, if available, is identified, obtained and integrated.

We also rely on third-party partnerships to provide certain of our products and services to our customers, including billing and payments and COBRA administration. Our ability to timely and accurately deliver these services depends on the reliability of these third-party partnerships. If we or our third-party partners are unable to deliver these products and services at the quality level that our customers expect, the relationship with our customers might be harmed which could adversely impact renewal rates and have a material adverse effect on our business, financial condition, results of operations and cash flows.

We exercise limited control over third-party vendors and partners, which increases our vulnerability to problems with technology and information services they provide. Interruptions in our network access and services might in connection with third-party technology and information services reduce our revenue, cause us to issue refunds to customers for prepaid and unused subscription services, subject us to potential liability, or adversely affect our renewal rates. Although we maintain insurance for our business, the coverage under our policies might not be adequate to compensate us for all losses that may occur. In addition, we might not be able to continue to obtain adequate insurance coverage at an acceptable cost, if at all.

Interruptions or delays in migrating our service from our third-party data center hosting facilities to cloud computing and hosting providers could impair the delivery of our services and harm our business.

We are in the process of migrating our primary data centers to Amazon Web Services, a cloud computing and hosting provider, to help lower cost, optimize infrastructure efficiency and support strategic growth. Despite precautions taken during any of these data center moves and data transfers, any unsuccessful data transfers might impair the delivery of our service and could materially and adversely disrupt our operations and our service delivery to our customers, which could result in contractual penalties or damage claims from customers. In addition, changes to our data center infrastructure could occur over a period longer than planned, could require greater than expected investment and other internal and external resources and could cause us to incur increased costs as we operate multiple data center facilities. It might also take longer than expected to realize the intended favorable benefits from any data center infrastructure migrations and improvements, and disruptions or unexpected costs might continue to occur while we enhance our data center infrastructure, all of which could impair the delivery of our services and harm our business.

If we are unable to rely on temporary staff during peak enrollment periods, our business might suffer.

During peak enrollment periods, the Company relies on its permanent associates, as well as temporary seasonal staff, who help provide software-related development, quality assurance, maintenance, and other technical support services for certain of our solutions. Our temporary staff might not have the same level of experience and commitment as our permanent associates. If the Company's customers are dissatisfied with their customer service experience or the quality of the product or service they receive, the relationship with our customers might be harmed, which could adversely impact renewal rates and have a material adverse effect on our business, financial condition, results of operations and cash flows.

Additionally, the Company has in the past, and expects to continue in the future, source temporary staff located in various international locations, including India and the Philippines. Political changes or geopolitical instability could disrupt or limit the work our international temporary staff are able to perform. Additionally, certain of our customers or potential customers, including state government agencies, have compliance requirements regarding the onshoring of our workforce. If we are unable to rely on international temporary employees due to geopolitical instability or customer requirements, our customer base, the range of services we are able to provide our customers or our cost for such services might be adversely affected.

The use of open source software in our products and solutions may expose us to additional risks and harm our intellectual property rights.

Some of our products and solutions use or incorporate software that is subject to one or more open source licenses. Open source software is typically freely accessible, usable, and modifiable. Certain open source software licenses require a user who intends to distribute the open source software as a component of the user's software to disclose publicly part or all of the source code to the user's software. In addition, certain open source software licenses require the user of such software to make any derivative works of the open source code available to others on potentially unfavorable terms or at no cost.

The terms of many open source licenses to which we are subject have not been interpreted by U.S. or foreign courts. Accordingly, there is a risk that those licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to commercialize our solutions. In that event, we could be required to seek licenses from third parties in order to continue offering our products or solutions, to re-develop our products or solutions, to discontinue sales of our products or solutions, or to release our proprietary software code under the terms of an open source license, any of which could harm our business. Further, given the nature of open source software, it may be more likely that third parties might assert copyright and other intellectual property infringement claims against us based on our use of these open source software programs.

While we monitor the use of all open source software in our products, solutions, processes, and technology and try to ensure that no open source software is used in such a way as to require us to disclose the source code to the related product or solution when we do not wish to do so, it is possible that such use may have inadvertently occurred in deploying our proprietary solutions. In addition, if a third-party software provider has incorporated certain types of open source software into software we license from such third party for our products and solutions without our knowledge, we could, under certain circumstances, be required to disclose the source code to our products and solutions. This could harm our intellectual property position and our business, results of operations, and financial condition.

Risks Related to Regulation

Government regulation of the areas in which we operate creates risks and challenges with respect to our compliance efforts and our business strategies.

The healthcare and wellness industries are highly-regulated and subject to changing political, legislative, regulatory, and other influences. Changes in the laws and regulations may impact the operating environment and healthcare market and, by extension, the employee benefits industry. Among other impacts, existing and new laws and regulations affecting the employee benefits industry could create legal liabilities for us, cause us to incur additional costs and/or restrict our operations. These laws and regulations are complex and their application to specific services and relationships are not always clear. In particular, many existing laws and regulations affecting employee benefits, when enacted, did not anticipate the services that we provide, and these laws and regulations might be applied to our services in ways that we do not anticipate. Our failure to accurately anticipate the application of these laws and regulations, or our failure to comply, could create liability for us, result in adverse publicity, and negatively affect our business. Some of the risks we face from the regulation of employee benefits are as follows:

- **Healthcare Market Reforms.** Healthcare services and benefits are delivered and reimbursed under an increasingly intricate, and frequently uncertain, statutory and regulatory framework. Ongoing efforts to repeal and/or reform part or all of the PPACA, new payment models for certain federal healthcare programs, and efforts to slow the growth in healthcare spending and to alter the regulatory landscape have created uncertainty in the healthcare industry broadly. Although many of these laws and regulations do not directly apply to us, they may affect the business of many of our customers. For instance, carriers and large employers might experience changes in the numbers of individuals they insure as a result of the elimination of the penalty associated with PPACA's individual mandate, possible repeal of guaranteed issue, and flux in the state and national exchanges under PPACA. Although we are unable to predict with any reasonable certainty or otherwise quantify the likely impact of PPACA reform efforts and other regulatory initiatives on our business model, financial condition, and operations, as well as changes in the business of our customers and the number of individuals they insure, may negatively impact our business.

In addition to marketplace reforms, legislative efforts at cost containment in healthcare programs are ongoing. For example, the American Taxpayer Relief Act of 2012 reduced Medicare payments to certain providers and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. Similarly, at the state level, individual states are increasingly aggressive in passing legislation and implementing regulations designed to control costs, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, designed to encourage importation from other countries and bulk purchasing. We expect that additional state and federal healthcare reform measures will be adopted in the future, any of which could limit the amounts that federal and state governments will pay for healthcare products and services. These laws, and others, may result in additional reductions in Medicare and other healthcare funding and otherwise affect the business of our customers.

•The Federal Anti-Kickback Statute, the federal False Claims Act, the Stark Law, and related laws. Providers and suppliers that accept reimbursement from federal and state healthcare programs, and those that contract with them, are required to comply with various laws and regulations intended to minimize the risk of fraud and abuse. These laws include the federal anti-kickback statute, which attaches criminal liability to unlawful inducements for the referral of business reimbursable under federally-funded healthcare programs; the Stark Law, which attach repayment and monetary damages where a healthcare service provider seeks reimbursement for providing certain services to a patient who was referred by a physician that has certain types of direct or indirect financial relationships with such service provider; the federal False Claims Act, which attaches per-claim liability and potentially treble damages to the filing of false claims for federal payment; the federal prohibition on beneficiary inducements. Many states have also adopted similar laws that apply to any third-party payor including commercial plans.

The False Claims Act prohibits intentionally submitting, conspiring to submit, or causing to be submitted, false or otherwise improper claims, records or statements to the federal government, or intentionally failing to return overpayments, in connection with reimbursement by federal government programs. In addition, violations of the Stark law and the federal Anti-Kickback Statute can also lead to liability under the federal False Claims Act. Most states have enacted false claims laws analogous to the federal False Claims Act. In addition, the federal False Claims Act and some state false claims laws permit private individuals to file whistleblower lawsuits known as “qui tam” actions on behalf of the federal or state government. Many states have passed laws similar to the federal False Claims Act that pertain to all payors, not just items or services paid for by the federal government.

Although our business operations are not generally directly subject to these laws and regulations, any contract we have with a government entity requires us to comply with these laws and regulations. Further, our customers and clients are often subject to these complex laws, and any failure by us or our clients to comply with these laws and regulations could result in substantial liability, including but not limited to criminal liability, could adversely affect demand for our or our client’s services, and could force us to expend significant capital and other resources to address the failure. Any determination by a court or regulatory agency that our services with government clients violate these laws and regulations could subject us to civil or criminal penalties, invalidate all or portions of some of our government client contracts, require us to change or terminate some portions of our business, require us to refund portions of our services fees, cause us to be disqualified from serving not only government clients but also all clients doing business with government payors, and have an adverse effect on our business. In addition, failure to accurately anticipate the application of these laws and regulations to our or our client’s business or any other failure to comply with regulatory requirements could create liability and negatively affect our business. These risks are exacerbated by the fact that many of these laws have not been fully interpreted by regulatory authorities or the courts, and their provisions are sometimes complex and open to a variety of interpretations.

- HIPAA and Other Healthcare-Related Privacy and Data Security Requirements. Numerous federal and state laws and regulations govern the privacy and security of personal health information. In particular, regulations promulgated pursuant to HIPAA, established privacy and security standards that limit the use and disclosure of protected health information, and require the implementation of administrative, physical, and technical safeguards to ensure the confidentiality, integrity, availability, and privacy of protected health information. Health plans, healthcare clearinghouses, and most providers are “Covered Entities” subject to HIPAA. With respect to our operations as a healthcare clearinghouse, we are directly subject to the privacy regulations established under HIPAA, or the Privacy Rule, and the security regulations established under HIPAA, or the Security Rule, and the data security breach notification regulations established under HIPAA, or the Breach Notification Rule. In addition, our health plan customers, or payors, are considered Covered Entities and are required to enter into written agreements with us, known as Business Associate Agreements, under which we are considered to be a “Business Associate” and that require us to safeguard protected health information and restrict how we may use and disclose such information. Both Covered Entities and Business Associates are subject to direct oversight and audit by the Department of Health and Human Services.

Violations of HIPAA could result in civil fines of up to \$60,226 per violation (\$1,806,757 per violation if not timely corrected) and a maximum civil penalty of \$1,806,757 in a calendar year for violations of the same requirement, as well as criminal penalties. The U.S. Department of Health and Human Services’ Office for Civil Rights actively enforces the Privacy Rule, Security Rule, and Breach Notification Rule. Additionally, state attorneys general may bring civil actions seeking either injunctions or damages in response to violations of HIPAA that threaten the privacy of state residents.

We may not be able to adequately address the business risks created by HIPAA implementation and enforcement. Furthermore, we are unable to predict what changes to HIPAA or other laws or regulations might be made in the future or how those changes could affect our business or the costs associated with compliance. Noncompliance may result in litigation, civil penalties, fines and/or settlements.

Some payors and clearinghouses interpret HIPAA transaction requirements differently than we do. Where payors or clearinghouses require conformity with their interpretations as a condition of a successful transaction, we seek to comply with their interpretations.

In addition to the Privacy Rule, Security Rule, and Breach Notification Rule, most states have enacted patient confidentiality laws that protect against the disclosure of confidential medical and/or health 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. Such state laws, if more stringent than HIPAA requirements, are not preempted by the federal requirements, and we might be required to comply with them. Failure by us to comply with any applicable state standards regarding patient privacy may subject us to penalties, including civil monetary penalties and, in some circumstances, criminal penalties. Such failure may injure our reputation and adversely affect our ability to retain customers and attract new customers.

- **Non-Healthcare-Specific Privacy and Data Security Laws.** Numerous federal and state laws and regulations govern the collection, retention, use, and disclosure of personal information. In addition to HIPAA, we are subject to various laws, rules and regulations related to privacy and information security, including those promulgated under the Gramm-Leach-Bliley Act and various state laws regulating the use and security of personal information. Those laws, rules, and regulations include requirements such as reasonable and appropriate safeguards to protect personal information or providing appropriate notice to consumers about how their personal information will be used or disclosed. State legislatures have been actively considering and enacting new laws addressing data security, security breach notification, and privacy. For example, the California Privacy Rights Act, the Colorado Privacy Act, and the Virginia Consumer Data Protection Act were all enacted recently and will become operative in 2023. (Some provisions have already become operative.) These areas may present implementation challenges, could be an enforcement priority for the state regulators, and could generate increased lawsuits by consumers and other individuals. Our management believes that we are currently operating in compliance with these areas of law. However, continued compliance with these evolving laws, rules and regulations regarding the privacy, security and protection of our customers' data, or the implementation of any additional privacy and security rules and regulations, could result in higher compliance and technology costs for us.
- **Medicare and Medicaid Regulatory Requirements.** We have contracts with insurance carriers who offer Medicare Managed Care (also known as Medicare Advantage or Medicare Part C) and Medicaid Managed Care benefits plans. We also have contracts with insurance carriers who offer Medicare prescription drug benefits (also known as Medicare Part D) plans. The activities of the Medicare plans are regulated by the CMS, the federal agency that provides oversight of the Medicare and Medicaid programs. The Medicaid Managed Care plans are regulated by both CMS and the individual states where the plans are offered. Some of the activities that we might perform, such as the enrollment of beneficiaries, may be subject to CMS and/or state regulation, and such regulations may force us to change the way we do business or otherwise restrict our ability to provide services to such plans. Moreover, the regulatory environment with respect to these programs is increasingly complex.
- **Financial Services-Related Laws and Rules.** Financial services and electronic payment processing services are subject to numerous laws, regulations and industry standards, some of which might impact our operations and subject us, our vendors, and our customers to liability as a result of the payment distribution and processing solutions we offer. Although we do not act as a bank, we offer solutions that involve banks, or vendors who contract with banks and other regulated providers of financial services. As a result, we might be impacted by banking and financial services industry laws, regulations, and industry standards, such as licensing requirements, solvency standards, requirements to maintain the privacy and security of nonpublic personal financial information, and Federal Deposit Insurance Corporation deposit insurance limits. In addition, our patient billing and payment distribution and processing solutions might be impacted by payment card association operating rules, certification requirements, and rules governing electronic funds transfers. If we fail to comply with applicable payment processing rules or requirements, we might be subject to fines and changes in transaction fees and may lose our ability to process credit and debit card transactions or facilitate other types of billing and payment solutions. Moreover, payment transactions processed using the Automated Clearing House are subject to network operating rules promulgated by the National Automated Clearing House Association and to various federal laws regarding such operations, including laws pertaining to electronic funds transfers, and these rules and laws might impact our billing and payment solutions. Further, our solutions might impact the ability of our payor customers to comply with state prompt payment laws. These laws require payors to pay healthcare claims meeting the statutory or regulatory definition of a "clean claim" within a specified time frame.
- **Insurance Broker Laws.** Insurance laws in the United States are often complex, and states have broad authority to adopt regulations regarding brokerage activities. Our business's regulatory oversight generally also includes activity governing the selection and payment of insurance products and the licensing of insurance brokers and our wholly owned subsidiary, BenefitStore, Inc., is an insurance agency. Our continuing ability to provide insurance brokerage related services in the jurisdictions in which we operate depends on our compliance with the rules and regulations promulgated from time to time by the regulatory authorities in each of these jurisdictions.
- **ERISA.** The Employee Retirement Income Security Act of 1974, as amended ("ERISA"), regulates how employee benefits are provided to or through certain types of employer-sponsored health benefits plans. ERISA is a set of laws and regulations that is subject to periodic interpretation by the U.S. Department of Labor as well as the federal courts. In some circumstances, and under certain customer contracts, we might be deemed to have assumed duties that make us an

ERISA fiduciary, and thus be required to carry out our operations in a manner that complies with ERISA in all material respects. We believe that our current operations do not render us subject to ERISA fiduciary obligations, and therefore that we are in material compliance with ERISA and that any such compliance does not currently have a material adverse effect on our operations. However, there can be no assurance that continuing ERISA compliance efforts or any future changes to ERISA will not have a material adverse effect on us.

- Third-Party Administrator Laws. Numerous states in which we do business have adopted regulations governing entities engaged in third-party administrator (“TPA”), activities. TPA regulations typically impose requirements regarding enrollment into benefits plans, claims processing and payments, and the handling of customer funds. Changes in state regulations could result in us being obligated to comply with such regulations, which might require us to obtain additional licenses to provide TPA services in such states.

Potential regulatory requirements placed on our software, services, and content could impose increased costs on us, delay or prevent our introduction of new service types, and impair the function or value of our existing service types.

Our products and services are and are likely to continue to be subject to increasing regulatory requirements in a number of ways. As these requirements proliferate, we must change or adapt our products and services to comply. Changing regulatory requirements might render our services obsolete or might block us from accomplishing our work or from developing new services. This might in turn impose additional costs upon us to comply or to further develop our products and services. It might also make introduction of new product or service types more costly or more time-consuming than we currently anticipate. It might even prevent introduction by us of new products or services or cause the continuation of our existing products or services to become unprofitable or impossible.

Potential government subsidy of services similar to ours, or creation of a single payor system, might reduce customer demand.

Recently, entities including brokers and U.S. federal and state governments have offered to subsidize adoption of online benefits platforms or clearinghouses. In addition, federal regulations have been changed to permit such subsidy from additional sources subject to certain limitations. To the extent that we do not qualify or participate in such subsidy programs, demand for our services might be reduced, which may decrease our revenue. In addition, prior proposals regarding healthcare reform have included the concept of creation of a single payor for healthcare insurance. This kind of consolidation of critical benefits activity could negatively impact the demand for our services.

Our services present the potential for embezzlement, identity theft, or other similar illegal behavior by our associates with respect to third parties.

Among other things, certain services offered by us involve collecting payment information from individuals, and this frequently includes check and credit card information. Even though we do not handle direct payments, our services also involve the use and disclosure of personal and business information that could be used to impersonate third parties, commit identity theft, or otherwise gain access to their data or funds. If any of our associates take, convert, or misuse such funds, documents, or data, we could be liable for damages, and our business reputation could be damaged or destroyed. Moreover, if we fail to adequately prevent third parties from accessing personal and/or business information and using that information to commit identity theft, we might face legal liabilities and other losses than can have a negative impact on our business.

Risks Related to Our Indebtedness

We have incurred substantial indebtedness that may decrease our business flexibility, access to capital and/or increase our borrowing costs, and we may still incur substantially more debt, which may adversely affect our operations and financial results.

In December 2018, we issued \$240.0 million aggregate principal of 1.25% convertible senior notes (the “Notes”) due December 15, 2023, unless earlier repurchased by us or converted by the holder pursuant to their terms. As of December 31, 2021, we had approximately \$121.1 million aggregate principal of Notes outstanding. The Notes may limit our ability to borrow additional funds for working capital, capital expenditures, acquisitions or other general business purposes; limit our ability to use our cash flow or obtain additional financing for future working capital, capital expenditures, acquisitions or other general business purposes; require us to use a substantial portion of our cash flow from operations to make debt service payments; limit our flexibility to plan for or react to, changes in our business and industry; place us at a competitive disadvantage compared to our less leveraged competitors; and increase our vulnerability to the impact of adverse economic and industry conditions. Further, the indenture governing the Notes does not restrict our ability to incur additional indebtedness and we and our subsidiaries may incur substantial additional indebtedness in the future, subject to the restrictions contained in any future debt instruments existing at the time, some of which may be secured indebtedness.

Servicing our debt and preferred dividends requires a significant amount of cash, and we might not have or be able to obtain sufficient cash to pay our substantial debt or required dividends.

As of December 31, 2021, we had approximately \$121.1 million aggregate principal of Notes outstanding. We also had the ability to borrow an aggregate of \$50.0 million under our current credit facility, all of which would be secured debt. Further, holders of our redeemable preferred stock are entitled to dividends of 8% per year, payable quarterly, which is approximately \$6.4 million per year as of December 31, 2021, if paid in cash rather than in kind. Our ability to make scheduled payments of the principal of, to pay interest on or to refinance our indebtedness, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business might not continue to generate cash flow from operations in the future sufficient to service our debt timely. In addition, our ability to repurchase or to pay cash upon conversion of the Notes may be limited by law, regulatory authority or agreements governing our future indebtedness. If we are unable to generate sufficient cash to service our debt, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. In addition, our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We might not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default and acceleration of our debt obligations.

The conditional conversion feature of the Notes, if triggered, and any required repurchase of the Notes may adversely affect our financial condition and operating results.

In the event any conditional conversion feature of the Notes is triggered, holders of the Notes will be entitled to convert the Notes at any time during specified periods at their option. In addition, holders of the Notes have the right to require us to repurchase their Notes upon the occurrence of a fundamental change. If one or more holders elect to convert their Notes (and unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock, other than paying cash in lieu of delivering any fractional share), or if we are required to repurchase the Notes due to a fundamental change, we would be required to settle a portion or all of our conversion obligation through the payment of cash or repurchase the Notes with cash, both of which could adversely affect our liquidity. In addition, even if holders do not elect to convert their Notes upon a conditional conversion feature being triggered, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

The Notes are effectively subordinated to our secured debt and any liabilities of our subsidiaries.

The Notes rank senior in right of payment to any of our indebtedness that is expressly subordinated in right of payment to the Notes; equal in right of payment to any of our liabilities that are not so subordinated; effectively junior in right of payment to any of our senior, secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally junior to all indebtedness and other liabilities (including trade payables) of our subsidiaries. In the event of our bankruptcy, liquidation, reorganization or other winding up, our assets that secure debt ranking senior or equal in right of payment to the Notes will be available to pay obligations on the Notes only after the senior, secured debt has been repaid in full from these assets. There might not be sufficient assets remaining to pay amounts due on any or all of the Notes then outstanding. The indenture governing the Notes does not prohibit us from incurring additional senior debt or secured debt, nor does it prohibit any of our subsidiaries from incurring additional liabilities. All our indebtedness, including the Notes, must be repaid before our stockholders would receive anything in a liquidation.

If we fail to meet our current credit facility's financial covenants, our business and financial condition could be adversely affected.

Our current credit facility contains financial covenants. If at any point we fail to comply with the financial covenants, the lenders can demand immediate repayment of our outstanding balance and deny future borrowings under the credit facility. This could have a negative impact on our liquidity, thereby reducing the availability of cash flow for other purposes and adversely affecting our business.

We may still incur substantially more debt or take other actions that would diminish our ability to make payments on the Notes when due.

We and our subsidiaries may incur substantial additional debt in the future, some of which may be secured debt. We are not restricted under the terms of the indenture governing the Notes from incurring additional debt, securing existing or future debt, recapitalizing our debt or taking a number of other actions that could have the effect of diminishing our ability to make payments on the Notes when due. Furthermore, the indenture prohibits us from engaging in certain mergers or acquisitions unless, among other things, the surviving entity assumes our obligations under the Notes and the indenture. These and other provisions in the indenture could deter or prevent a third party from acquiring us even when the acquisition may be favorable to holders of the Notes.

The conversion of the Notes will dilute the ownership interest of existing stockholders, including holders who had previously converted their Notes, or may otherwise depress the price of our common stock.

The conversion of some or all of the Notes will dilute the ownership interests of existing stockholders to the extent we deliver shares of our common stock upon conversion of the Notes. The Notes may in the future become convertible at the option of the holders of the Notes prior to December 15, 2023 under certain circumstances as provided in the indenture governing the Notes. Any sales in the public market of the common stock issuable upon such conversion could adversely affect prevailing market prices of our common stock. In addition, the existence of the Notes may encourage short selling by market participants because the conversion of the Notes could be used to satisfy short positions, or anticipated conversion of the Notes into shares of our common stock could depress the price of our common stock.

The capped call transactions we entered into in connection with the issuance of the Notes might not turn out to be effective in reducing dilution, and might adversely affect the value of our common stock.

In connection with the Notes, we paid approximately \$33.0 million to enter into capped call transactions with certain purchasers or their affiliates (the "Option Counterparties"). The capped call transactions are expected generally to reduce the potential dilution upon conversion of the Notes and/or offset any cash payments we are required to make in excess of the principal amount of converted Notes, as the case may be, with such reduction and/or offset subject to a cap. If our stock price is less than \$53.17 upon conversion of the Notes, the capped calls will have no effect and we will get no benefit from the cash we paid to enter into the capped calls. Furthermore, if our stock is above \$89.98 per share upon conversion of the Notes, the capped calls will not completely eliminate the dilution from Note conversion.

In connection with establishing their initial hedges of the capped call transactions, the Option Counterparties entered into various derivative transactions with respect to our common stock. This activity could have increased (or reduced the size of any decrease in) the market price of our common stock or the Notes at that time.

In addition, the Option Counterparties may modify their hedge positions by entering into or unwinding derivatives with respect to our common stock and/or purchasing or selling our common stock or other securities of ours in secondary market transactions prior to the maturity of the Notes (and are likely to do so during any observation period related to a conversion of Notes or following any repurchase of Notes by us on any fundamental change repurchase date or otherwise). This activity could also cause or avoid an increase or decrease in the price of our common stock or the Notes.

The potential effect, if any, of these transactions and activities on the price of our common stock or the Notes will depend in part on the market conditions and cannot be ascertained at this time. Any of these activities could adversely affect the value of our common stock.

The accounting method for convertible debt securities that may be settled in cash, such as the Notes, could have a material effect on our reported financial results.

Under certain circumstances, convertible debt instruments (such as the Notes) that may be settled entirely or partly in cash are currently accounted for utilizing the treasury stock method, the effect of which is that the shares issuable upon conversion of the Notes are not included in the calculation of diluted earnings per share except to the extent that the conversion value of the Notes exceeds their principal amount. Under the treasury stock method, for diluted earnings per share purposes, the transaction is accounted for as if the number of shares of common stock that would be necessary to settle such excess, if we elected to settle such excess in shares, are issued. We cannot be sure that the accounting standards in the future will continue to permit the use of the treasury stock method. If we are unable to use the treasury stock method in accounting for the shares issuable upon conversion of the Notes, then our diluted earnings per share would be adversely affected.

Risks Related to Ownership of Our Common Stock

Our stock price may be volatile or may decline regardless of our operating performance, and you may not be able to resell your shares at or above the price at which you purchase it.

The stock market historically has experienced extreme price and volume fluctuations. As a result of this volatility, you might not be able to sell your common stock at or above the price at which you purchase it. From our initial public offering in September 2013 through March 3, 2022, the per share trading price of our common stock has been as high as \$77.00 and as low as \$6.09. It might continue to fluctuate significantly in response to various factors, some of which are beyond our control. These factors include:

- our operating performance and the operating performance of similar companies;
- the overall performance of the equity markets;
- any major change in our management;
- changes in laws or regulations relating to the sale of health insurance;
- announcements by us or our competitors of acquisitions, business plans, or commercial relationships;
- threatened or actual litigation;
- publication of research reports or news stories about us, our competitors, or our industry, or positive or negative recommendations or withdrawal of research coverage by securities analysts;
- large volumes of sales of our shares of common stock by existing stockholders; and
- general political and economic conditions.

In addition, the stock market in general, and the market for Internet-related companies in particular, has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Additionally, securities class action litigation has often been instituted against companies following periods of volatility in the overall market and in the market price of a company's securities. This litigation, if instituted against us, could result in substantial costs, divert our management's attention and resources, and harm our business, operating results, and financial condition.

Our stock price could decline due to the large number of outstanding shares of our common stock and those underlying the Notes eligible for future sale.

Sales of a substantial number of shares of our common stock in the public market or the market perception that such sales and issuances may occur could reduce the market price of our common stock and impair our ability to raise capital through the sale of additional common stock or equity-linked securities at a time and price that we deem appropriate.

As of December 31, 2021, we had an aggregate of 33,460,545 shares of common stock outstanding. As of December 31, 2021, there also were outstanding options and restricted stock units ("RSUs") to purchase 3,416,131 shares of our common stock that, if exercised or vested, as applicable, will result in these additional shares becoming available for sale, subject in some cases to Rule 144. We have also registered an aggregate of 2,050,954 shares of our common stock that we may issue or sell under our stock plans. These shares can be freely sold in the public market upon issuance, unless they are held by "affiliates", as that term is defined in Rule 144 of the Securities Act. In addition, a substantial number of shares of our common stock is reserved for issuance upon conversion of the Notes. There are also shares of Series A Preferred Stock (the "Preferred Stock") that are convertible into an aggregate of 5,333,334 shares of our common stock. If a large number of these shares are sold in the public market, the sales could reduce the trading price of our common stock.

We might require additional capital to support business growth.

We intend to continue to make investments to support our business growth and might require additional funds to respond to business challenges or opportunities, including the need to develop new products and services or enhance our existing services, enhance our operating infrastructure, and acquire complementary businesses and technologies. Accordingly, we might need to engage in equity or additional debt financings to secure additional funds. If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock. Any additional debt financing secured by us could involve restrictive covenants relating to our capital-raising activities and other financial and operational matters, which might make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions. In addition, we might not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, our ability to continue to support our business growth and to respond to business challenges could be significantly limited.

The issuance of shares of our common stock upon conversion of our Series A Preferred Stock may dilute the ownership interest of our existing common stockholders, adversely impact the market price of our common stock and make it more difficult for us to raise funds through future equity offerings.

As of December 31, 2021, the outstanding shares of our Preferred Stock were convertible into an aggregate of 5,333,334 shares of our common stock. Additional shares of our common stock may also be issued to the holders of our Preferred Stock in the event we make payment of the regular quarterly dividend on the Preferred Stock in kind, instead of in cash. The issuance of shares of common stock upon conversion of the Preferred Stock would dilute the percentage ownership interest of all holders of our common stock and any positive book value per share of our common stock, and would increase the number of publicly traded shares, which could depress the market price of our common stock. The fact that our stockholders can sell a substantial amount of our common stock in the public market, whether or not sales have occurred or are occurring, could make it more difficult for us to raise additional funds through the sale of equity or equity-related securities in the future at a time and price that we deem reasonable or appropriate, or at all.

Our preferred stockholders have significant rights and preferences over the holders of our common stock that could limit us from taking certain corporate actions, and as a result affect our business, operating results, and the market price of our common stock.

Our preferred stockholders are entitled to a quarterly dividend equal to 8.0% per annum, payable in cash or in kind, before any dividends are paid on our common stock. Our preferred stockholders are also entitled to participate in and receive any dividends declared or paid on our common stock on an as-converted basis. No dividends may be paid on our common stock unless full participating dividends are concurrently paid to our preferred stockholders. Our preferred stockholders also have a claim against our assets senior to the claim of the holders of our common stock in the event of our liquidation, dissolution, or winding-up.

Our preferred stockholders are generally entitled to vote with our common stockholders on all matters submitted for a vote of the common stockholders (voting together with the common stockholders as one class) on an as-converted basis. In addition, the following matters require the approval of a majority of the outstanding shares of Preferred Stock, voting as a separate class: (1) the authorization, creation, or issuance of any securities of the Company having rights, preferences, or privileges senior to or on a parity with any of the rights, preferences, or privileges of the Preferred Stock; (2) effecting any alteration, repeal, change, or amendment of the rights, privileges, or preferences of the Preferred Stock; (3) amendments, modifications or repeal of any provision of the Company's charter or bylaws in a manner adverse to the Preferred Stock; (4) changes in the authorized number of directors of the Company to a number greater than 10 individuals; (5) effecting any transaction between the Company and any of its affiliates (except for certain circumstances); (6) declaration or payment of any dividend or distribution with respect to any Company capital stock at any time the Company has any indebtedness outstanding; (7) incurring any indebtedness in excess of \$500 million (including existing indebtedness and excluding lease obligations), or encumbering or granting a security interest in all or substantially all of the Company's assets in connection with any such indebtedness (except existing security interests); or (8) agreeing or consenting to any of the foregoing actions.

As long as not less than 60% of the shares of the Series A Preferred Stock originally issued remain outstanding, the holders of a majority of the then-outstanding shares of the Preferred Stock, voting together as a single class, will have the right at any election of directors to elect (A) two directors if the board consists of nine or fewer directors; or (B) three directors if the board consists of 10 directors. At any time, such director may be removed with or without cause only by the affirmative vote or written consent of a majority of the holders of the Preferred Stock entitled to elect such director. In addition, while they have these rights to appoint directors, we may not expand the size of our board to greater than 10 directors without the consent of the holders of a majority of the then-outstanding shares of Preferred Stock.

The foregoing rights of our preferred stockholders could, while the Preferred Stock is outstanding, limit us from obtaining future financings or to otherwise conduct necessary corporate activities, and as a result may adversely affect our business, operating results, and the market price of our common stock.

Our certificate of incorporation provides that the Court of Chancery of the State of Delaware is, to the fullest extent permitted by applicable law, the sole and exclusive forum for substantially all disputes between us and our stockholders. These choice of forum provisions could limit the ability of stockholders to obtain a favorable judicial forum for disputes with us or our directors, officers or associates.

Unless we consent to the selection of an alternative forum, our amended and restated bylaws provides that the Court of Chancery of the State of Delaware, or the Court of Chancery, will be, to the fullest extent permitted by law, the sole and exclusive forum for any derivative action or proceeding brought on our behalf; any action asserting a claim of breach of fiduciary duty owed by any of our directors, officers or other associates to the Company or our stockholders; any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, or DGCL, or our certificate of incorporation or bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. Since the choice of forum provisions are only applicable to “the fullest extent permitted by applicable law”, as provided in our bylaws, the provisions do not designate the Court of Chancery as the exclusive forum for any derivative action or other claim for which the applicable statute creates exclusive jurisdiction in another forum. As such, the choice of forum provisions do not apply to any actions arising under the Securities Act or the Exchange Act.

These choice of forum provisions may limit a stockholder’s ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other associates, which may discourage such lawsuits against us and our directors, officers and other associates. Alternatively, if a court were to find the choice of forum provisions contained in our bylaws to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could materially adversely affect our business, financial condition and operating results.

We do not currently intend to pay dividends on our common stock and, consequently, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock.

We have never declared or paid any cash dividends on our common stock and do not currently intend to do so for the foreseeable future. We currently intend to invest our future earnings, if any, to fund our growth. Therefore, you are not likely to receive any dividends on your common stock for the foreseeable future, and the success of an investment in shares of our common stock will depend upon future appreciation in its value, if any. There is no guarantee that shares of our common stock will appreciate in value or even maintain the price at which our stockholders purchased their shares.

Provisions in our restated certificate of incorporation, as amended, and amended and restated bylaws and Delaware law might discourage, delay, or prevent a change in control of our company or changes in our management and, therefore, depress the trading price of our common stock.

Provisions of our certificate of incorporation and bylaws and Delaware law might discourage, delay, or prevent a merger, acquisition, or other change in control that stockholders consider favorable, including transactions in which you might otherwise receive a premium for your shares of our common stock. These provisions might also prevent or frustrate attempts by our stockholders to replace or remove our management. These provisions include:

- limitations on the removal of directors;
- advance notice requirements for stockholder proposals and nominations;
- limitations on the ability of stockholders to call special meetings;
- the inability of stockholders to act by written consent;
- the inability of stockholders to cumulate votes at any election of directors; and
- the ability of our board of directors to make, alter or repeal our bylaws.

Our Board of Directors has the ability to designate the terms of and issue new series of preferred stock without stockholder approval. In addition, Section 203 of the Delaware General Corporation Law prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder, generally a person which together with its affiliates owns, or within the last three years has owned, 15% of our voting stock, for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner.

The existence of the foregoing provisions and anti-takeover measures could limit the price that investors are willing to pay in the future for shares of our common stock. They could also deter potential acquirers of our company, thereby reducing the likelihood that you could receive a premium for your common stock in an acquisition.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

As of December 31, 2021, we occupied approximately 289,000 square feet on the Daniel Island Executive Center campus in Charleston, South Carolina. This office space is leased under leases expiring in 2031. As of December 31, 2021, we also leased facilities in Tulsa, Oklahoma; and Brookfield, Wisconsin.

Since March 2020, most of our associates have worked remotely as a result of the COVID-19 pandemic. Our facilities have remained accessible on a limited basis and have been underutilized since March 2020. Our associates have been successfully productive in a remote environment. In the long-term, we expect to utilize a hybrid approach to work with some combination of remote and in-office presence. As a result, we continue to assess our space requirement for the future. As of December 31, 2021, we sublet all of the space at our Brookfield, Wisconsin and Tulsa, Oklahoma facilities, and we have sublet 32,500 square feet of our Daniel Island Executive Center campus in Charleston, South Carolina.

We believe that our current facilities are sufficient for our needs. We may add other facilities or geographic markets in the future, and we believe that suitable additional space will be available as needed to accommodate any such needs of our operations.

Item 3. Legal Proceedings.

From time to time, we might become involved in legal or regulatory proceedings arising in the ordinary course of our business. Other than as previously described in our SEC filings, we are not currently a party to any material litigation or regulatory proceeding and we are not aware of any pending or threatened litigation or regulatory proceeding against us that could have a material adverse effect on our business, operating results, financial condition or cash flows.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.**Market Information for Common Stock**

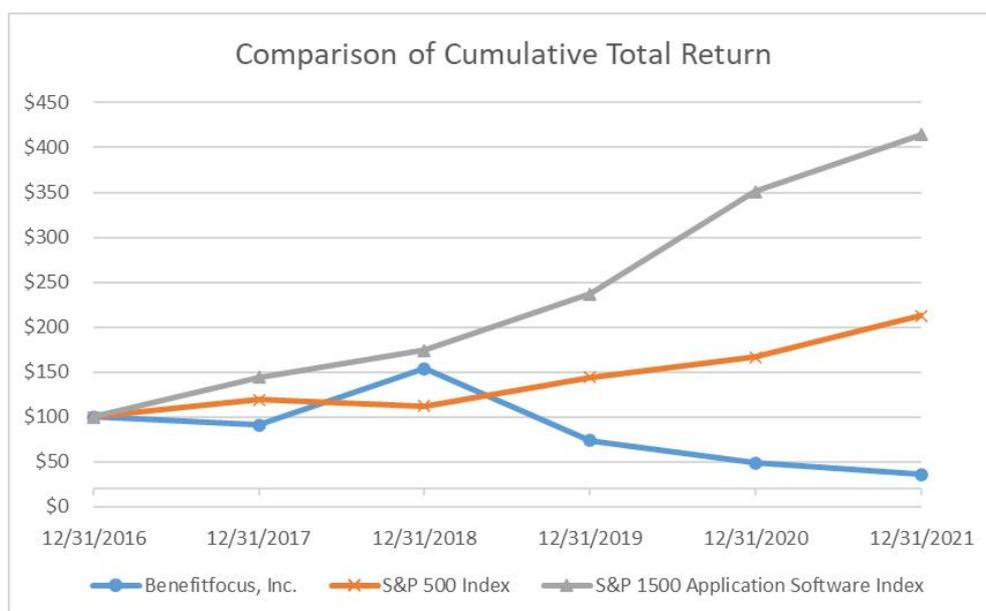
Our common stock has been listed on the Nasdaq Global Market under the symbol "BNFT" since September 18, 2013. Prior to that date, there was no public trading market for our common stock.

As of December 31, 2021, we had 39 holders of record of our common stock. The actual number of stockholders is greater than this number of record holders and includes stockholders who are beneficial owners, but whose shares are held in street name by brokers and other nominees. This number of holders of record also does not include stockholders whose shares may be held in trust by other entities.

Stock Performance Graph

The following shall not be deemed "filed" for purposes of Section 18 of the Exchange Act, or incorporated by reference into any of our other filings under the Exchange Act or the Securities Act of 1933, as amended, except to the extent we specifically incorporate it by reference into such filing.

This chart compares the cumulative total return on our common stock with that of the S&P 500 Index and the S&P 1500 Application Software Index. The chart assumes \$100 was invested at the close of market on December 31, 2016, in the common stock of Benefitfocus, Inc., the S&P 500 Index and the S&P 1500 Application Software Index, and assumes the reinvestment of any dividends. The stock price performance on the following graph is not necessarily indicative of future stock price performance.



Company / Index	Base Period					
	12/31/2016	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021
Benefitfocus, Inc.	\$ 100.00	\$ 90.91	\$ 153.94	\$ 73.87	\$ 48.89	\$ 35.89
S&P 500 Index	\$ 100.00	\$ 119.42	\$ 111.97	\$ 144.31	\$ 166.70	\$ 212.89
S&P 1500 Application Software Index	\$ 100.00	\$ 144.16	\$ 174.03	\$ 237.06	\$ 351.05	\$ 414.18

Purchases of Equity Securities by the Company

Set forth below is a summary of the shares repurchased by the Company during the three months ended December 31, 2021:

Period	(a) Total Number of Shares Purchased	(b) Average Price Paid Per Share	(c) Total Number of Shares Purchased as Part of Publicly Announced Plan or Program	(d) Maximum Dollar Value of Shares that May Yet Be Purchased Under the Plan or Program
Stock Repurchase Program ⁽¹⁾	–	–	–	\$ 10,333

(1) During the three months ended December 31, 2021, there were no purchases of shares of common stock under the Company's stock repurchase program, which was announced March 3, 2020, for the potential repurchase of up to \$20 million of the Company's outstanding common stock.

Equity Compensation Plans

The information required by Item 5 of Form 10-K regarding equity compensation plans is incorporated herein by reference to Part III "Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters".

Item 6. (Reserved)

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis of our financial condition and results of operations together with our consolidated financial statements and the related notes and other financial information included elsewhere in this Annual Report on Form 10-K. Some of the information contained in this discussion and analysis or set forth elsewhere in this report including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. You should review the "Risk Factors" section of this report for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Overview

Benefitfocus is an industry-leading, cloud-based benefits administration technology company serving employers and health plans. We help organizations simplify the complexity of benefits administration while engaging people in the right healthcare and benefit programs for them and their families. We also deliver insights to employers, health plans and their advisors to help maximize returns on their healthcare investment; and our services help reduce administrative burden and costs for organizations.

Benefitfocus solutions are based on a multi-tenant architecture and have a user-friendly interface designed for people to access all of their benefits in one place. Our comprehensive one-to-many model supports a broad line-up of benefits including core medical benefit plans; ancillary benefits, such as, dental, life, disability insurance, mental health and financial wellness; and a full array of voluntary benefits. Our platform includes functionality designed to help consumers identify and evaluate benefit options available to them. As the number of employer benefits plans has increased, with each plan subject to many different business rules and requirements, demand for Benefitfocus solutions is growing.

Our economic model includes a transaction-oriented solution, known as our Benefit Catalog, that aligns brokers, carriers and suppliers around the needs of employers and employees. In this model, Benefit Catalog sellers, who are carriers and suppliers, offer their voluntary and specialty benefit products in a "marketplace" alongside the benefits enrollment platform. This marketplace is designed to increase the economic value of the employee and consumer lives on our platform by aligning Benefit Catalog products to consumer needs. In exchange for Benefitfocus delivering employee/consumer access, data-driven analysis and operational efficiencies, seller partners pay us a percentage of the purchases completed on our platform. Carrier agreements generally have terms of two to four years and are typically cancellable upon breach of contract or insolvency. Supplier contracts have terms of one year or less and are generally cancellable upon breach of contract, failure to cure, bankruptcy and termination for convenience.

We classify our revenue into three streams – subscription, platform, and professional services revenue. Subscription and platform revenue are combined and reported as software services revenue.

Subscription revenue primarily consists of monthly subscription fees paid to us by our employer and health plan customers for access to, and usage of, cloud-based benefits software solutions for a specified contract term. Subscription fees are generally charged based on the number of employees or subscribers with access to the solution. Subscription revenue accounted for approximately 68%, 67%, and 66% of our total revenue during the years ended December 31, 2021, 2020 and 2019, respectively.

Platform revenue includes Benefit Catalog transactional revenue, which is generated from the value of the policies or products enrolled in through our marketplace. Benefit Catalog revenue from insured products is generally recognized over the policy period of the enrolled products. In arrangements where we sell policies to employees of our customers as the broker, we earn insurance broker commissions. Revenue from insurance broker commissions and Benefit Catalog supplier transactions is generally recognized at the time when open enrollment is complete and the orders for policies are transferred to the supplier. Platform revenue accounted for approximately 15%, 13%, and 11% of our total revenue during the years ended December 31, 2021, 2020 and 2019, respectively.

Our professional services revenue stream is largely derived from the implementation of our customers onto our platform, which typically includes discovery, configuration and deployment, integration, testing, and training. We also provide customer support services and customized media content that supports our customers' effort to educate and communicate with consumers. Professional services revenue accounted for approximately 17%, 20%, and 23% of our total revenue during the years ended December 31, 2021, 2020 and 2019, respectively.

Expanding our customer base is a key element of our growth strategy. We believe that our continued innovation and solutions, which extend the functionality of our offerings, provide more robust data analytics capabilities and enhance our ability to quickly respond to evolving market needs. We believe these innovative capabilities, as well as strong customer service, will help us attract additional lives to our platform through new employer customers, partners and brokers and increase our revenue from existing customers and relationships.

We believe that there is a substantial addressable market for our products and services, and we have been investing to further enhance and expand our products over the past several years. We continue to invest in technology and services to better serve our customers, which we believe are an important source of growth for our business. Through our considerable domain expertise, a best-in-class experience, as well as continued innovation on our platform, we believe we will drive better customer retention. As we have invested in growth, we have had operating losses in each of the last eleven years. Although our operating results have improved, we could incur operating losses in future periods. Due to the nature of our customer relationships, which have been stable in spite of some

customer losses over the past years, and our hybrid subscription and transaction-based financial model, we believe that our current investment in growth should lead to increased revenue in the long-term, which may allow us to achieve profitability in the relatively near future. Of course, our ability to achieve profitability will continue to be subject to many factors beyond our control.

On March 11, 2020, the World Health Organization classified the COVID-19 outbreak as a pandemic. We continue to actively monitor COVID-19, including the development of COVID-19 variants, and its potential impact on our operations and financial results. In response to the pandemic, we implemented cost management actions in the second quarter of 2020 to maintain our financial health and liquidity through these economic uncertain times. These included actions to reduce our workforce by approximately 17%, renegotiating vendor service contracts and reducing discretionary expenditures such as travel and professional services. These actions also included investing in accelerating automation efforts to gain efficiencies.

During the initial peak of the COVID-19 pandemic in the second quarter of 2020, we experienced sales delays as HR professionals and health plan administrators shifted their focus to other priorities and challenges their businesses faced as a result of the pandemic. We believe the financial impacts from COVID-19 are temporary in nature and do not significantly affect our business model and growth strategy in the long-term. Therefore, we did not consider the COVID-19 pandemic to have been a triggering event to accelerate our annual impairments tests.

We evaluated our goodwill and indefinite-lived intangible assets and determined there were no interim triggering events as it was not more likely than not that the fair value of our reporting units would be less than their respective carrying amounts. Additionally, we evaluated our long-lived assets, including our property, plant and equipment, lease right-of-use assets and other intangible assets. During the second quarter of 2021, we recorded an impairment loss as a result of subleasing space based on the excess of carrying value over the calculated fair value of the sublease of one of our headquarter building financing lease right of use ("ROU") assets. As we continue to evaluate our real estate footprint and one that assumes fewer of our associates will work from the office on a full-time basis, we may incur additional impairments on our ROU assets as we evaluate options to sublet certain locations.

While the ultimate impact of the pandemic on our business and financial results remains uncertain, our business has been particularly impacted by new sales. The longer sales cycles we experienced and slowdown in new sales activity in 2020 and the first half of 2021 negatively impacted growth in subscription revenue and platform revenue from new business in 2021. Demand from our health plan customers has not returned to pre-pandemic levels, noting health plan administrators continue to redirect focus and resources to competing priorities. Additionally, the impacts of the pandemic on the broader U.S. labor market has resulted in higher seasonal contract labor costs in 2021.

However, as a result of the nature of our customer relationships, the stability of our subscription revenue, the cost restructuring actions taken in the second quarter of 2020 as well as the first half of 2021, and our ongoing investments in automation and process improvements, we believe we will continue to generate cash flows from operations in the relatively near future. Of course, our ability to generate cash flows from operations is subject to many risks and factors beyond our control.

Key Financial and Operating Performance Metrics

We regularly monitor a number of financial and operating metrics in order to measure our current performance and project our future performance. These metrics help us develop and refine our growth strategies and make strategic decisions. We discuss revenue, gross margin, and the components of operating loss in "Components of Operating Results" below. In addition, we utilize other key metrics as described below.

Net Benefit Eligible Lives

Part of our growth strategy is to expand our customer base. This includes driving revenue growth from adding lives to our platform and driving incremental transaction revenue. We believe the number of net benefit eligible lives is a key indicator of our market penetration, growth and future revenue opportunity. We believe net benefit eligible lives is the foundation of our platform revenue opportunity. We define a net benefit eligible life as a person with access to a benefits enrollment subscription under standard contracting or a freelancer with access to benefits enrollment, plus their estimated dependents, as of the measurement date. This definition excludes lives from other subscription-related contracts.

The number of net benefit eligible lives decreased during 2021, primarily due to the termination of a contract with an entity with a substantial number of freelancers. Additionally, we experienced a decline in lives on our platform from certain health plan customers as a result of lowered counts at the time of renewal in 2021.

	As of December 31,		
	2021	2020	2019
		(in millions)	
Net benefit eligible lives	15.6	18.3	17.3

Software Services Revenue Retention Rate

We believe that our ability to retain our customers and expand the revenue they generate for us over time is an important component of our growth strategy and reflects the long-term value of our customer relationships. We measure our performance on this basis using a metric we refer to as our software services revenue retention rate. We calculate this metric for a particular period by establishing the group of our customers that had revenue for a given period. We then calculate our software services revenue retention

rate by taking the amount of software services revenue we recognized for this group in the subsequent comparable period (for which we are reporting the rate) and dividing it by the software services revenue we recognized for the group in the prior period.

Our software services revenue retention rate was greater than 95% for year ended December 31, 2021, compared to being greater than 90% for the year ended December 31, 2020, and greater than 95% for the year ended December 31, 2019. The lower retention rate in 2020 was primarily the result of the impact on revenue from the renegotiation of a certain customer contract. Excluding this customer, our software revenue retention rate exceeded 95% for all periods. We expect our software revenue retention rate to continue at or slightly below current rates.

Adjusted EBITDA

Adjusted EBITDA represents our losses before net interest and other expenses, taxes, and depreciation and amortization expense, adjusted to eliminate stock-based compensation, transaction and acquisition-related costs expensed, restructuring costs, impairment of goodwill, intangible assets, and long-lived assets, gain or loss on extinguishment of debt, costs not core to our business and, now, loss on settlement of lawsuits. The revision to our definition of adjusted EBITDA had no impact on our reported adjusted EBITDA in prior periods. Please note that other companies might define their non-GAAP financial measures differently than we do.

We believe that the exclusion of the expenses eliminated in calculating adjusted EBITDA can provide a useful measure for period-to-period comparisons of our core business. Accordingly, we believe that adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results. However, adjusted EBITDA is not a measure calculated in accordance with United States generally accepted accounting principles ("GAAP"), and should not be considered as an alternative to any measure of financial performance calculated and presented in accordance with GAAP.

We have included adjusted EBITDA in this Annual Report on Form 10-K because it is a key measure used by our management and board of directors to understand and evaluate our core operating performance and trends, to prepare and approve our annual budget, and to develop short- and long-term operational plans. In particular, we believe that the exclusion of the expenses eliminated in calculating adjusted EBITDA can provide a useful measure for period-to-period comparisons of our core business. Accordingly, we believe that adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results.

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

- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized might 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 changes in, or cash requirements for, our working capital needs;
- adjusted EBITDA does not reflect the potentially dilutive impact of stock-based compensation;
- adjusted EBITDA does not reflect interest, tax or dividend payments that would reduce the cash available to us; and
- other companies, including companies in our industry, might calculate adjusted EBITDA or similarly titled measures differently, which reduces their usefulness as comparative measures.

Because of these and other limitations, you should consider adjusted EBITDA alongside other GAAP-based financial performance measures, including various cash flow metrics, gross profit, net loss and our other GAAP financial results. The following table presents for each of the periods indicated a reconciliation of adjusted EBITDA to the most directly comparable GAAP financial measure, net loss (in thousands):

Reconciliation from Net Loss to Adjusted EBITDA:	Year Ended December 31,		
	2021	2020	2019
Net loss	\$ (32,166)	\$ (24,297)	\$ (45,515)
Depreciation	13,955	15,285	15,288
Amortization of software development costs	9,117	7,455	5,130
Amortization of acquired intangible assets	2,509	2,274	1,933
Interest income	(196)	(632)	(2,613)
Interest expense	20,754	23,071	23,524
Income tax (benefit) expense	(2,960)	22	27
Stock-based compensation expense	13,905	14,537	19,572
Transaction and acquisition-related costs expensed	677	450	1,035
Restructuring costs	4,127	5,616	-
Impairment of long-lived assets	4,100	916	-
Loss (gain) on repurchase of convertible senior notes	7,520	(1,138)	-
Loss on settlement of lawsuit	1,760	-	-
Costs not core to our business	5,897	457	649
Total net adjustments	\$ 81,165	\$ 68,313	\$ 64,545
Adjusted EBITDA	\$ 48,999	\$ 44,016	\$ 19,030

Components of Operating Results

Revenue

We derive the majority of our revenue from monthly subscription fees paid to us by our employer and health plan customers for access to, and usage of, our cloud-based benefits software solutions for a specified contract term. We derive platform revenue from both insurance broker commissions from the sale of voluntary and ancillary benefits policies to employees of our customers and from transaction revenue from life and ancillary insurance carriers and specialty providers. We also derive revenue from professional services fees, which primarily include fees related to the implementation of our customers onto our platform and delivery of our call center services. Our implementation services typically include discovery, configuration and deployment, integration, testing, and training.

The following table sets forth a breakdown of our revenue by stream for the periods indicated (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Subscription	\$ 178,759	\$ 179,743	\$ 195,091
Platform	39,576	35,101	33,654
Total software services	\$ 218,335	\$ 214,844	\$ 228,745
Professional services	44,762	53,297	66,941
Total revenue	\$ 263,097	\$ 268,141	\$ 295,686

We recognize revenue when control of these services is transferred to customers in an amount that reflects the consideration we expect to be entitled to in exchange for those services. Taxes collected from customers relating to services and remitted to governmental authorities are excluded from revenues.

We determine revenue recognition through the following steps:

- Identification of each 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; and
- Recognition of revenue when, or as, performance obligations are satisfied.

Software Services Revenue

Software services revenue consists of subscription and platform revenue.

Subscription Revenue

Subscription revenue primarily consists of monthly subscription fees paid to us by our customers for access to, and usage of, cloud-based benefits software solutions for a specified contract term. Fees are generally charged based on the number of employees or subscribers with access to the solution.

Subscription revenue is generally recognized on a ratable basis over the contract term beginning on the date the subscription services are made available to the customer. Our subscription service contracts are generally three years.

Subscription revenue also includes fees paid for other services, such as event sponsorships and certain data services.

Platform Revenue

Platform revenue is generated from the value of the policies or products enrolled in through our marketplace. Platform revenue from carriers is generally recognized over the policy period of the enrolled products. In arrangements where we sell policies to employees of our customers as the broker, we earn insurance broker commissions. Revenue from insurance broker commissions and Benefit Catalog supplier transactions is recognized at the point when the orders for the policies are received and transferred to the insurance carrier or supplier and is reduced by constraints for variable consideration associated with collectability, policy cancellation and termination risks.

Professional Services Revenue

Professional services revenue primarily consists of fees related to the implementation of software products purchased by customers. Implementation services typically include discovery, configuration and deployment, integration, testing, and training. Fees from consulting services, call center services, support services and training are also included in professional services revenue.

We determined that implementation services for certain of our health plan customers significantly modify or customize the software solution and, as such, do not represent a distinct performance obligation. Accordingly, revenue from such implementation services with these health plan customers are generally recognized over the contract term of the associated software services contract, including any extension periods representing a material right. We utilize estimates of hours as a measure of progress to determine revenue for certain types of arrangements.

Revenue from implementation services with employer customers is generally recognized as those services are performed.

Revenue from support and training fees is recognized over the service contract period.

Contracts with Multiple Performance Obligations

Certain of our contracts with customers contain multiple performance obligations. For these contracts, the individual performance obligations are accounted for separately if they are distinct. The transaction price is allocated to the separate performance obligations based on their relative standalone selling prices. We determine the standalone selling prices based on their overall pricing objectives, taking into consideration market conditions and other factors, including the value of their contracts, the software services sold, customer size and complexity, and the number and types of users within the contracts.

Overhead Allocation

Expenses associated with our facilities, security, information technology, and depreciation and amortization, are allocated between cost of revenue and operating expenses based on employee headcount determined by the nature of work performed.

Cost of Revenue

Cost of revenue primarily consists of salaries and other personnel-related costs, including benefits, bonuses, and stock-based compensation, for employees, whom we refer to as associates, providing services to our customers and supporting our software platform infrastructure. Additional expenses in cost of revenue include co-location facility costs for our data centers, depreciation expense for computer equipment directly associated with generating revenue, infrastructure maintenance costs, contract labor, professional fees, amortization expenses associated with acquired intangibles and capitalized internally developed software costs, allocated overhead, and other direct costs.

We expense cost of revenue associated with fulfilling performance obligations as we incur the costs. Costs that relate directly to a customer contract that are not related to satisfying a performance obligation are capitalized and amortized to cost of revenue over the estimated period of benefit of the contract asset, which is generally five years.

Subscription and platform revenue are both generated from our platform and result from the same set of assets and activities. As such, we are not able to meaningfully separate and assign costs of revenue to subscription and platform revenue separately.

We expect cost of revenue as a percentage of revenue to decline and gross margins to increase as we realize the full impact of our restructuring activities and increased automation. However, this trend may vary on a quarterly basis.

Operating Expenses

Operating expenses consist of sales and marketing, research and development, and general and administrative expenses. Salaries and personnel-related costs are the most significant component of each of these expense categories. We expect our operating

expenses as a percentage of revenue for 2022 to be near or lower to levels realized for 2021. As we continue to invest in our product offerings, as well as our rationalization decisions that we have put in place, we expect to see an overall improvement in our operating expense.

Sales and marketing expense. Sales and marketing expense consists primarily of salaries and other personnel-related costs, including benefits, bonuses, stock-based compensation and commissions, for our sales and marketing associates. Costs to obtain a contract that are incremental, such as sales commissions, are capitalized and amortized to expense over the estimated period of benefit of the asset, which is generally four to five years. Additional expenses include advertising, lead generation, promotional event programs, corporate communications, travel, and allocated overhead. For instance, our most significant promotional event is One Place, which we hold annually.

Research and development expense. Research and development expense consists primarily of salaries and other personnel-related costs, including benefits, bonuses and stock-based compensation, for our research and development associates. Additional expenses include costs related to the development, quality assurance, and testing of new technology, and enhancement of our existing platform technology, consulting, travel, and allocated overhead. We believe continuing to invest in research and development efforts is essential to maintaining our competitive position. We are investing in transforming our development philosophy and practices to that of an agile development organization. We believe this will allow us to more quickly innovate and adapt to changing market conditions and customer needs.

General and administrative expense. General and administrative expense consists primarily of salaries and other personnel-related costs, including benefits, bonuses, and stock-based compensation for administrative, finance and accounting, information systems, legal, and human resource associates. Additional expenses include consulting and professional fees, insurance and other corporate expenses, and travel. We expect our general and administrative expenses to increase in the near-term as we incur professional services expenses in connection with any activist shareholder matters and securities class action, and executive employment agreement legal defense, which are not related to our core business.

Restructuring costs. Restructuring costs are comprised of one-time severance charges, continuation of health benefits and outplacement services. During the years ended December 31, 2021, and 2020, we incurred restructuring costs associated with eliminating certain positions in the organization.

Other Income and Expense

Other income and expense consists primarily of interest income and expense and gain (loss) on disposal of property and equipment, as well as charge related to loss on settlement of lawsuit. Interest income represents interest received on our cash and cash equivalents. Interest expense consists primarily of the interest incurred on outstanding convertible debt and borrowings under our lease arrangements and credit facility. During the third quarter of 2021, we repurchased outstanding senior convertible notes which resulted in a loss. During the third quarter of 2020, we repurchased outstanding senior convertible notes which resulted in a gain.

Income Tax Expense

Income tax expense consists of U.S. federal and state income taxes. We recorded an income tax benefit in 2021 and incurred minimal income tax expense for 2020 and 2019. Net operating loss carryforwards for federal income tax purposes were approximately \$327.8 million at December 31, 2021. State net operating loss carryforwards were approximately \$295.9 million at December 31, 2021. Federal and state net operating loss carryforwards will expire at various dates beginning in 2022, if not utilized. Valuation allowances are recorded to reduce deferred tax assets to the amount we believe is more likely than not to be realized.

Results of Operations

Consolidated Statements of Operations Data

The following table sets forth our consolidated statements of operations data for each of the periods indicated (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Revenue	\$ 263,097	\$ 268,141	\$ 295,686
Cost of revenue ⁽¹⁾	122,713	129,388	144,090
Gross profit	140,384	138,753	151,596
Operating expenses:			
Sales and marketing ⁽¹⁾	46,385	52,210	76,049
Research and development ⁽¹⁾	44,696	46,175	54,724
General and administrative ⁽¹⁾	50,886	37,720	45,329
Restructuring costs	4,127	5,616	–
Total operating expenses	146,094	141,721	176,102
Loss from operations	(5,710)	(2,968)	(24,506)
Other income (expense):			
Interest income	196	632	2,613
Interest expense	(20,754)	(23,071)	(23,524)
(Loss) gain on repurchase of convertible senior notes	(7,520)	1,138	–
Other expense	(1,338)	(6)	(71)
Total other expense, net	(29,416)	(21,307)	(20,982)
Loss before income taxes	(35,126)	(24,275)	(45,488)
Income tax (benefit) expense	(2,960)	22	27
Net loss	\$ (32,166)	\$ (24,297)	\$ (45,515)

(1) Cost of revenue and operating expenses include stock-based compensation expense as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Cost of revenue	\$ 2,081	\$ 3,703	\$ 3,569
Sales and marketing	2,876	3,081	3,799
Research and development	1,644	2,555	3,265
General and administrative	7,304	5,198	8,939

The following table sets forth our consolidated statements of operations data as a percentage of revenue for each of the periods indicated (as a percentage of revenue):

	Year Ended December 31,		
	2021	2020	2019
Revenue	100.0 %	100.0 %	100.0 %
Cost of revenue	46.6	48.3	48.7
Gross profit	53.4	51.7	51.3
Operating expenses:			
Sales and marketing	17.6	19.5	25.7
Research and development	17.0	17.2	18.5
General and administrative	19.3	14.1	15.3
Restructuring costs	1.6	2.1	-
Total operating expenses	55.5	52.9	59.6
Loss from operations	(2.2)	(1.1)	(8.3)
Other income (expense):			
Interest income	0.1	0.2	0.9
Interest expense	(7.9)	(8.6)	(8.0)
(Loss) gain on repurchase of convertible senior notes	(2.9)	0.4	-
Other expense	(0.5)	-	-
Total other expense, net	(11.2)	(7.9)	(7.1)
Loss before income taxes	(13.4)	(9.1)	(15.4)
Income tax (benefit) expense	(1.1)	-	-
Net loss	(12.2) %	(9.1) %	(15.4) %

Comparison of Years Ended December 31, 2021 and 2020

Revenue

	Year Ended December 31,					
	2021		2020		Period-to-Period Change	
	Amount	Percentage of Revenue ⁽¹⁾	Amount	Percentage of Revenue ⁽¹⁾	Amount	Percentage ⁽¹⁾
	(in thousands)					
Subscription	\$ 178,759	67.9 %	\$ 179,743	67.0 %	\$ (984)	(0.5) %
Platform	39,576	15.0	35,101	13.1	4,475	12.7
Total software services	\$ 218,335	83.0 %	\$ 214,844	80.1 %	\$ 3,491	1.6 %
Professional services	44,762	17.0	53,297	19.9	(8,535)	(16.0)
Total revenue	\$ 263,097	100.0 %	\$ 268,141	100.0 %	\$ (5,044)	(1.9) %

(1) Rounding may impact the summation of amounts.

Subscription revenue was relatively flat year over year. While we experienced improvements in returns and allowances over the prior year, those improvements were offset by the impact of the renegotiation of a certain customer contract.

Platform revenue increased from growth in premiums and additional volume on the platform. As discussed above in "Components of Operating Results – Revenue", we recognize platform revenue from carriers and specialty products over the policy period and we recognize commissions revenue at a point in time.

The decrease in professional services revenue was attributable to a decrease in implementation revenue and lower levels of demand from custom requests from health plan customers.

We expect total revenue to continue to decline in 2022 compared to 2021 primarily due to lower revenues associated with our health plan customers, as a result of lower levels of demand for custom requests and lower renewals, as well as planned reduction in non-core revenue such as legacy on-prem Connecture revenue and unprofitable professional services revenues. As previously discussed, we experienced longer sales cycles beginning in 2020 and through first half of 2021 and a slowdown in new sales activity which negatively impact subscription and platform revenue in future periods.

Cost of Revenue

	Year Ended December 31,						
	2021			2020			
	Amount	Percentage of Revenue		Amount	Percentage of Revenue	Period-to-Period Change	
						Amount	Percentage
	(in thousands)						
Cost of revenue	\$ 122,713	46.6 %	\$ 129,388	48.3 %	\$ (6,675)	(5.2) %	

The decrease in cost of revenue was attributable to decreases in salaries, stock-based compensation and other personnel-related costs of \$9.4 million as a result of our restructuring actions. These decreases were partially offset by increased depreciation expense of \$1.1 million attributable to an increase in depreciation of capitalized internally developed software costs and an increase of \$1.8 million in product and computer infrastructure costs. Cost of revenue included \$2.1 million and \$3.7 million of stock-based compensation expense for the years ended December 31, 2021 and 2020, respectively, and \$19.9 million and \$18.8 million of depreciation and amortization for the years ended December 31, 2021 and 2020, respectively.

Gross Profit

	Year Ended December 31,						
	2021			2020			
	Amount	Percentage of Revenue		Amount	Percentage of Revenue	Period-to-Period Change	
						Amount	Percentage
	(in thousands)						
Software services	\$ 144,336	66.1 %	\$ 138,393	64.4 %	\$ 5,943	4.3 %	
Professional services	(3,952)	(8.8)	360	0.7	(4,312)	(1197.8)	
Gross profit	\$ 140,384	53.4 %	\$ 138,753	51.7 %	\$ 1,631	1.2 %	

The increase in software services gross profit was driven by a \$3.5 million, or 1.6%, increase in software services revenue and a decrease in software services cost of revenue of \$2.5 million. The decrease in software services cost of revenue was driven by decreased salary and personnel-related costs and professional services of \$5.8 million offset by a \$1.3 million increase in amortization of capitalized internally developed software and \$2.1 million in higher data storage costs and third-party software costs including the costs to terminate a certain software license contract. Software services cost of revenue included \$1.2 million and \$2.1 million of stock-based compensation expense for the years ended December 31, 2021 and 2020, respectively, and \$16.8 million and \$15.5 million of depreciation and amortization for the years ended December 31, 2021 and 2020, respectively.

The decrease in professional services gross profit was driven by a \$8.5 million, or 16.0%, decrease in professional services revenue partially offset by a decrease in professional services cost of revenue of \$4.2 million. The decrease in the professional services costs of revenue was attributed to reducing our cost structure to align with the decrease in demand for professional services including decreases in salary and personnel-related costs from headcount reductions and slightly offset by increased labor costs used during open enrollment. Professional services cost of revenue included \$0.9 million and \$1.6 million of stock-based compensation expense for the years ended December 31, 2021 and 2020, respectively. In addition, professional services cost of revenue included \$3.1 million and \$3.3 million of depreciation and amortization in the years ended December 31, 2021 and 2020, respectively.

We expect professional services margins in the near term to continue to trend lower due to fewer large implementation projects and increased labor costs associated with our seasonal contract labor, slightly offset by shifting to higher margin professional services work.

Operating Expenses

	Year Ended December 31,						
	2021			2020			
	Amount	Percentage of Revenue		Amount	Percentage of Revenue	Period-to-Period Change	
						Amount	Percentage
	(in thousands)						
Sales and marketing	\$ 46,385	17.6 %	\$ 52,210	19.5 %	\$ (5,825)	(11.2) %	
Research and development	44,696	17.0	46,175	17.2	(1,479)	(3.2)	
General and administrative	50,886	19.3	37,720	14.1	13,166	34.9	
Restructuring costs	4,127	1.6	5,616	2.1	(1,489)	(26.5)	

The decrease in sales and marketing expense was primarily attributable to a \$5.0 million decrease in salaries and personnel-related costs, including professional fees, a \$0.4 million decrease in travel-related costs, and a \$0.3 million decrease in the cost of marketing events and advertising expense resulting from our restructuring actions. These decreases were partially offset by a \$0.5

million increase in commissions expense. The decrease in salaries and personnel-related costs was primarily driven by decreased headcount. The decrease in travel-related costs was driven by travel restrictions imposed in response to the pandemic. The cost of marketing events decreased in part because of lower costs incurred with our annual user conference, One Place, which was planned as a digital event in the current year compared to the prior year when it was planned as an in-person event.

The decrease in research and development expense is primarily attributable to a decrease in personnel-related costs and external development and engineering consulting of \$5.4 million resulting from our restructuring actions, partially offset by a \$3.7 million decrease in capitalized internally developed software costs.

The increase in general and administrative expense was primarily attributable to a \$4.0 million impairment charge related to a sublease of part of one of our leased buildings on our headquarter campus and a \$8.6 million increase in professional fees primarily related to costs incurred associated with activist shareholder matters, securities class action and executive employment agreement legal defense and a \$0.6 million increase in salaries and personnel-related costs.

Current period restructuring costs are the result of a reduction to our workforce in January 2021 and the elimination of the office of the executive chairman in June 2021, comprised of one-time severance charges, continuation of health benefits and outplacement services.

Stock-based Compensation

Cost of revenue and operating expenses include an aggregate of \$13.9 million and \$14.5 million of stock-based compensation for the years ended December 31, 2021 and 2020, respectively, representing a decrease of \$0.6 million. The decrease is primarily attributable to the benefit from cancellations of Restricted Stock Units ("RSUs") during 2021 from associates that left the Company and a decrease in the aggregate fair value of RSUs granted during the year.

Comparison of Years Ended December 31, 2020 and 2019

Revenue

	Year Ended December 31,						
	2020			2019			
	Amount	Percentage of Revenue ⁽¹⁾		Amount	Percentage of Revenue ⁽¹⁾	Period-to-Period Change	
						Amount	Percentage ⁽¹⁾
	(in thousands)						
Subscription	\$ 179,743	67.0 %	\$	195,091	66.0 %	\$ (15,348)	(7.9) %
Platform	35,101	13.1 %	\$	33,654	11.4 %	1,447	4.3 %
Total software services	\$ 214,844	80.1 %	\$	228,745	77.4 %	\$ (13,901)	(6.1) %
Professional services	53,297	19.9 %	\$	66,941	22.6 %	(13,644)	(20.4) %
Total revenue	\$ 268,141	100.0 %	\$	295,686	100.0 %	\$ (27,545)	(9.3) %

(1) Rounding may impact the summation of amounts.

Subscription revenue decreased primarily due to a \$14.5 million negative impact from the renegotiation of a customer contract and a \$13.6 million negative impact from customers that terminated products and services. These decreases were partially offset by \$13.5 million increases in revenue from the addition of new customers, contractual price increases and volume increases. An increase in specific reserves contributed to an additional decrease in subscription revenue of \$1.9 million.

Platform revenue increased from growth in premiums and new products from Benefit Catalog, primarily from insurance carriers. As discussed above in "Components of Operating Results – Revenue", we recognize platform revenue from carriers over the policy period and we recognize commissions revenue at a point in time.

The decrease in professional services revenue was primarily attributable to a decrease in implementation revenue, customer-specific development, and the result of terminated services. The decreases were partially offset by increases from new and existing customers.

We expect total revenue to continue to be less in 2021 compared to 2020 primarily due to the impacts of the COVID-19 pandemic, including a slowed sales cycle in 2020 and the effects of higher unemployment. As previously discussed, we experienced longer sales cycles in 2020 and a slowdown in new sales activity which will negatively impact subscription and platform revenue in future periods. Additionally, we expect revenue from health plan customers to decline in 2021 as some customers might renew their agreements with a lower minimum number of covered employees because of an increase in unemployment. We also expect professional services revenue to decrease as we focus on profitability by managing away from unprofitable work.

Cost of Revenue

	Year Ended December 31,					
	2020			2019		
	Amount	Percentage of Revenue		Amount	Percentage of Revenue	Period-to-Period Change
	(in thousands)					
Cost of revenue	\$ 129,388	48.3 %	\$	144,090	48.7 %	\$ (14,702) (10.2) %

The decrease in cost of revenue was attributable to decreases in salaries and other personnel-related costs of \$6.6 million, costs related to external development, engineering consulting, and customer support of \$7.3 million, and travel-related expenses of \$1.3 million. These decreases result from our actions taken during the year in response to the COVID-19 pandemic to maintain financial health and liquidity discussed above in "Overview". These decreases were partially offset by increased depreciation expense of \$2.7 million attributable to an increase in capitalized software development costs. Cost of revenue included \$3.7 million and \$3.6 million of stock-based compensation expense for years ended December 31, 2020 and 2019, respectively, and \$18.8 million and \$16.0 million of depreciation and amortization for the years ended December 31, 2020 and 2019, respectively.

Gross Profit

	Year Ended December 31,					
	2020			2019		
	Amount	Percentage of Revenue		Amount	Percentage of Revenue	Period-to-Period Change
	(in thousands)					
Software services	\$ 138,393	64.4 %	\$	157,221	68.7 %	\$ (18,828) (12.0) %
Professional services	360	0.7		(5,625)	(8.4)	5,985 (106.4)
Gross profit	\$ 138,753	51.7 %	\$	151,596	51.3 %	\$ (12,843) (8.5) %

The decrease in software services gross profit was driven by a \$13.9 million, or 6%, decrease in software services revenue and an increase in software services cost of revenue of \$4.9 million from increases in salary and personnel-related costs and depreciation expense. The increase in software services costs of revenue was primarily attributable to increased investment to support our ongoing customers and primarily driven by increases in salary and personnel-related costs and external development and engineering consulting of \$5.1 million and depreciation and amortization expense of \$2.3 million related to capitalized software development costs. The increase in software services cost of revenue included \$2.1 million of stock-based compensation expense for each of the years ended December 31, 2020 and 2019, respectively, and \$15.5 million and \$12.8 million of depreciation and amortization for the years ended December 31, 2020 and 2019, respectively.

Professional services gross profit increased \$6.0 million as professional services revenue decreased by \$13.6 million and cost of revenue decreased by \$19.6 million. The decrease in professional services cost of revenue is primarily attributable to decreases in salary and personnel-related costs due to headcount reductions that took place during the year, as well as decreased utilization of contract labor. Additionally, salaries and personnel-related costs were impacted by an increase in the deferral of fulfillment costs from carrier implementation projects and a decrease in amortization of capitalized fulfillment costs as older projects became fully amortized. Professional services cost of revenue included \$1.6 million and \$1.5 million of stock-based compensation expense for the years ended December 31, 2020 and 2019, respectively. In addition, professional services cost of revenue included \$3.3 million and \$3.2 million of depreciation and amortization for the years ended December 31, 2020 and 2019, respectively.

We expect the trend of positive professional services margin to continue on an annual basis as a result of investing in accelerating automation and shifting to higher margin professional services work.

Operating Expenses

	Year Ended December 31,					
	2020			2019		
	Amount	Percentage of Revenue		Amount	Percentage of Revenue	Period-to-Period Change
	(in thousands)					
Sales and marketing	\$ 52,210	19.5 %	\$	76,049	25.7 %	\$ (23,839) (31.3) %
Research and development	46,175	17.2		54,724	18.5	(8,549) (15.6)
General and administrative	37,720	14.1		45,329	15.3	(7,609) (16.8)
Restructuring costs	5,616	2.1		-	0.0	5,616 100.0

The decrease in sales and marketing expense was primarily attributable to a \$16.8 million decrease in salaries and personnel-related costs, a \$3.4 million decrease in travel-related costs, and a \$3.2 million decrease in the cost of marketing events. These

decreases result from our actions taken during the second quarter of 2020 in response to the COVID-19 pandemic to maintain financial health and liquidity as discussed above in "Overview". The decrease in salaries and personnel-related costs was driven by decreased headcount as well as lower commissions and bonuses earned caused by delays and longer sales cycle time for new sales activity as a result of the COVID-19 pandemic. The decrease in travel-related costs was driven by travel restrictions imposed in response to the pandemic. The cost of marketing events decreased in part as a result of moving our events, including our user conference, OnePlace, to a digital platform in response to the COVID-19 pandemic which resulted in lower costs in the current period compared to the prior period.

The decrease in research and development expense is primarily attributable to a decrease in personnel-related costs and external development and engineering consulting of \$8.3 million. Additionally, a decrease of \$0.5 million in travel-related costs was primarily attributable to travel restrictions imposed in response to the COVID-19 pandemic.

The decrease in general and administrative expense was primarily attributable to a \$5.2 million decrease in salaries and personnel-related costs as well as a decrease of \$2.7 million in professional fees, travel-related costs and contract labor. These decreases result from our actions taken during the second quarter of 2020 in response to the COVID-19 pandemic to maintain financial health and liquidity discussed as above in "Overview".

As discussed above in "Overview", in the quarter ended June 30, 2020, we reduced our work force by approximately 17%. Restructuring costs recognized as a result of this action was \$5.6 million and consisted of \$5.3 million of salaries and personnel-related expense related to severance payments. The remaining amount is attributable to professional fees for outplacement services and legal fees.

Stock-based Compensation

Cost of revenue and operating expenses include an aggregate of \$14.5 million and \$19.6 million of stock-based compensation for the years ended December 31, 2020 and 2019, respectively, representing a decrease of \$5.0 million. The decrease is primarily attributable to the benefit from cancellations of RSUs during 2020 from associates that left the Company and a decrease in the aggregate fair value of RSUs granted during the year.

Critical Accounting Policies and Significant Judgments and Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenue and expenses. In accordance with GAAP, we base our estimates on historical experience and on various other assumptions that we believe reasonable under the circumstances. Actual results might differ from these estimates under different assumptions or conditions.

While our significant accounting policies are more fully described in Note 2 to our consolidated financial statements appearing elsewhere in this Annual Report on Form 10-K, we believe the following accounting policies are critical to the process of making significant judgments and estimates in the preparation of our consolidated financial statements.

Revenue Recognition - Estimation of Platform Revenue from Insurance Broker Commissions

Our platform revenue from insurance broker commissions and Benefit Catalog supplier transactions is recognized at the point when the orders for the policies are received and transferred to the insurance carrier or supplier. The transaction price is reduced by constraints for variable consideration associated with collectability, policy cancellation and termination risks. We estimate variable consideration primarily using the expected value method based on both historical and current estimates. We then use judgment to develop constraints on the estimated variable consideration included in the transaction price to account for risks in collectability, policy cancellation and termination. Changes in those estimates can have a material effect on the amount of revenue recognized in a period. During 2021, the constraint rate decreased by less than 1%, or less than 0.1 percentage points, during the year. An increase in the constraint rate of one percentage point, would negatively impact revenue recognized in 2021 by approximately \$0.1 million.

Liquidity and Capital Resources

Sources of Liquidity

As of December 31, 2021, our primary sources of liquidity were our cash and cash equivalents totaling \$31.0 million, \$37.0 million in marketable securities, \$16.5 million in accounts receivables, net of allowance, and unused availability under our revolving line of credit of \$50.0 million.

We entered into a credit facility agreement with Silicon Valley Bank on March 3, 2020. This agreement replaced our previous agreement with Silicon Valley Bank, which expired on February 20, 2020. The three-year agreement has a borrowing limit of \$50 million, with the ability for us to increase it up to \$100 million. We are bound by customary representations and warranties and restrictive covenants in connection with the credit facility, including financial covenants related to quick ratio and EBITDA. In the event of a default, the lenders may declare all obligations immediately due and stop advancing money or extending credit under the line of credit. The line of credit is collateralized by substantially all of our personal property assets, including intellectual property and the equity

of our subsidiaries. The terms of our credit facility are described in Note 11 of the consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

In June 2020, we issued 1,777,778 shares of Series A Preferred Stock (the "Preferred Stock") at a purchase price of \$45 per share, resulting in total gross proceeds of approximately \$80 million. The Preferred Stock ranks senior to our common stock with respect to dividends and distributions on liquidation, winding-up and dissolution. Each share of the Preferred Stock has an initial stated value of \$45 per share. Holders of shares of the Preferred Stock are entitled a dividend equal to 8.00% per annum (the "Regular Dividends"), payable quarterly, beginning on June 30, 2020. The Regular Dividends are payable in cash or in kind, at our option. In the event a Regular Dividend is paid in kind, the stated value of each share of the Preferred Stock will be increased by an amount equal to the accrued Regular Dividend not paid in cash. As of December 31, 2021, we had paid all of the Preferred Stock dividends in cash. Holders of the Preferred Stock are also entitled to participate in and receive any dividends declared or paid on the common stock on an as-converted basis, and no dividends may be paid to holders of the common stock unless full participating dividends are concurrently paid to the holders of the Preferred Stock. Each holder of the Preferred Stock has the right, at its option, to convert its shares of the Preferred Stock, in whole or in part, into fully paid and non-assessable shares of the common stock, at any time and from time to time. The number of shares of the common stock into which a share of the Preferred Stock will convert at any time is equal to the quotient obtained by dividing its stated value then in effect plus any accumulated and unpaid Regular Dividends by its conversion price of \$15.00. The conversion price is subject to customary anti-dilution adjustments, including in the event of any stock split, stock dividend, recapitalization or similar events. At closing, before payment of any dividends in kind, the 1,777,778 shares of the Preferred Stock were convertible into 5,333,334 shares of common stock. We may, at our option, redeem the outstanding shares of the Preferred Stock following the fourth anniversary of its issuance. Redemption by us is subject to certain liquidity conditions, as well conditions connected with the trading price of its common stock. The terms of the Preferred Stock are described in Note 13 of our consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

In December 2018, we issued \$240 million aggregate principal amount of 1.25% convertible senior notes (the "Notes") due December 15, 2023, unless earlier purchased by us or converted by the holder pursuant to their terms. Interest is payable semiannually in arrears on June 15 and December 15 of each year. Upon conversion, we will pay or deliver, as the case may be, cash, shares of our common stock or a combination of cash and shares of common stock, at our election. At issuance, the Notes had an initial conversion rate of 18.8076 shares of common stock per \$1,000 principal amount which represents an initial effective conversion price of approximately \$53.17 per share of common stock.

In connection with the issuance of the Notes, we entered into capped call transactions with certain counterparties affiliated with the initial purchasers and others. The capped call transactions are expected to reduce potential dilution of earnings per share upon conversion of the Notes. Under the capped call transactions, we purchased capped call options that in the aggregate relate to the total number of shares of our common stock underlying the Notes, with an initial strike price of approximately \$53.17 per share, which corresponds to the initial conversion price of the Notes and is subject to anti-dilution adjustments substantially similar to those applicable to the conversion rate of the Notes and have a cap price of approximately \$89.98. The terms of the Notes are described further in Note 10 of our consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

During the third quarter of 2021, we repurchased Notes with an aggregate principal amount of \$100.2 million for an aggregate of \$98.7 million in cash. As of the end of the 2021, the remaining outstanding Notes were convertible into 2,277,017 shares of common stock. In connection with the repurchase of the Notes, we terminated a portion of the capped call transactions which resulted in an immaterial amount of payments to us in cash.

Our cash flows from operations have improved in recent years and were positive for the years ended December 31, 2021 and 2020. However, for the year ended December 31, 2019, cash flows from operations were negative due to timing in changes in working capital, a decrease in the balance of deferred revenue and the impact of acquired deferred revenue which yields revenue with no cash inflows. We expect the trend of positive cash flows from operations in at least the near term as we continue to manage our costs.

Based on our current level of operations and restructured costs, we believe our future cash flow from operating activities and existing balances of cash and marketable securities, and availability under our revolving line of credit will be sufficient to meet our cash requirements for at least the next 12 months.

Going forward, we may access capital markets to raise additional equity or debt financing for various business reasons, including required debt payments and acquisitions. The timing, term, size, and pricing of any such financing will depend on investor interest and market conditions, and there can be no assurance that we will be able to obtain any such financing on favorable terms or at all.

Operating and Capital Expenditure Requirements and Contractual Obligations

We believe that our existing cash and cash equivalents and marketable securities balances and cash generated from operations will be sufficient to meet our anticipated cash requirements through at least the next 12 months.

Our short-term material cash requirements as of December 31, 2021, are primarily comprised of lease obligations, dividends on our Preferred Stock, interest on our convertible senior notes, and payments to vendors related to our technology infrastructure. These obligations will be funded from cash from operations and our balances of current assets.

Our long-term material cash requirements as of December 31, 2021, include lease obligations, repayment of our convertible senior notes, if not converted, and dividends on our Preferred Stock, if not converted or paid in kind. Our long-term obligations will be funded from cash from operations, balances of current assets, and if necessary, borrowing under our revolving line of credit or future credit arrangements, the sale of debt securities, or sale of equity.

In addition, we continue to reassess our need for office space. During 2021, we entered into sublease agreements for a part of one building on our headquarters campus in Charleston, South Carolina and our office in Tulsa, Oklahoma. Since March 2020, most of our associates have worked remotely during the COVID-19 pandemic. While our facilities have remained open and accessible, they have been underutilized since March 2020. We have shifted to a permanent hybrid workforce that combines remote work with traditional in office resources. The timing, amount of additional space to ultimately be sublet, expected amount of sublease income, and amount of impairment loss we might recognize in connection with a sublease, if any, is uncertain. Any amounts received under subleases would offset our lease payments and reduce our cash requirements associated with our lease obligations.

The details of the arrangements that give rise to these short- and long-term cash requirements are described in the notes to our consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

Our future capital requirements will depend on many factors, including our customer growth rate, subscription renewal activity, the timing and extent of development efforts, the expansion of sales and marketing activities, the introduction of new and enhanced services offerings, and the continuing market acceptance of our services. We might require additional capital beyond our currently anticipated amounts. If our available cash and cash equivalents balances are insufficient to satisfy our liquidity requirements, we may seek to sell equity or convertible debt securities or enter into an additional credit facility. The sale of equity and convertible debt securities may result in dilution to our stockholders and those securities may have rights senior to those of our common shares. If we raise additional funds through the issuance of convertible debt securities, these securities could contain covenants that would restrict our operations. Additional capital might not be available on reasonable terms, or at all.

Recent Accounting Pronouncements

In August 2020, the FASB issued Accounting Standards Update (“ASU”) No. 2020-06, “Debt - Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity’s Own Equity (Subtopic 815-40)”. The update simplifies the accounting for convertible debt instruments and convertible preferred stock by reducing the number of accounting models and the number of embedded conversion features that could be recognized separately from the primary contract. This ASU also enhances transparency and improves disclosures for convertible instruments and earnings per share guidance. It will be effective for the Company beginning January 1, 2022. This ASU permits the use of either the modified retrospective or fully retrospective method of transition. The Company is currently evaluating the impact of the adoption of ASU 2020-06 on its consolidated financial statements but anticipates that it will result in a reduction in non-cash interest expense related to its convertible senior notes.

We are evaluating other accounting standards and exposure drafts that have been issued or proposed by the FASB or other standards setting bodies that do not require adoption until a future date to determine whether adoption will have a material impact on our consolidated financial statements.

Item 7A. Quantitative and Qualitative Disclosures About Risk.

Market risk is the risk of loss to future earnings, values or future cash flows that may result from changes in the price of a financial instrument. The value of a financial instrument might change as a result of changes in interest rates, exchange rates, commodity prices, equity prices and other market changes. We do not use derivative financial instruments for speculative, hedging or trading purposes, although in the future we might enter into exchange rate hedging arrangements to manage the risks described below.

Interest Rate Risk

We are exposed to market risk related to changes in interest rates. On March 3, 2020, we entered into a revolving line of credit agreement. Borrowings under the agreement bear interest at rates that are variable. Increases in the Prime Rate or federal funds rate will increase the interest rate on borrowings under the agreement.

Changes in interest rates may also impact gains or losses from the conversion of our outstanding convertible senior notes. In December 2018, we issued \$240.0 million in aggregate principal amount of our 1.25% convertible senior notes due 2023. Upon certain events and/or if certain conditions are met, the Notes can be redeemed into cash, or converted into cash, shares or combination of cash and shares. Upon conversion or redemption, we are required to record a gain or loss for the difference between the fair value of the debt to be extinguished and its corresponding net carrying value. The fair value of the debt to be extinguished depends on our then-current incremental borrowing rate. If our incremental borrowing rate at the time of conversion is higher or lower than the implied interest rate of the Notes, we will record a gain or loss in our consolidated statements of operations during the period in which the Notes are converted. The implicit interest rate for the Notes is 7.30%. An incremental borrowing rate that is a hypothetical 100 basis points lower than the implicit interest rate upon conversion of \$240.0 million aggregate principal amount of the Notes would result in a loss of approximately \$2.4 million.

Interest Rate Sensitivity

We are subject to interest rate risk in connection with borrowings under the revolving line of credit agreement, which are subject to a variable interest rate. As of December 31, 2021, there were no amounts due under the agreement. Any debt we incur in the future may also bear interest at variable rates.

Inflation Risk

We do not believe that inflation has had a material effect on our business, financial condition, or results of operations. We continue to monitor the impact of inflation in order to minimize its effects through pricing strategies, productivity improvements and cost

reductions. If our costs were to become subject to significant inflationary pressures, we may not be able to fully offset such higher costs through price increases. Our inability or failure to do so could harm our business, financial condition, and results of operations.

Item 8. Financial Statements and Supplementary Data.

The information required by this Item is set forth in the Consolidated Financial Statements and Notes thereto beginning at page F-1 of this Report.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosures.

None.

Item 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our President and Chief Executive Officer and our Chief Financial Officer, we conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, as of the end of the period covered by this report.

In designing and evaluating our disclosure controls and procedures, management recognizes that any disclosure controls and procedures, no matter how well designed and operated, can provide only 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.

Based on their evaluation, our President and Chief Executive Officer and our Chief Financial Officer concluded that as of December 31, 2021 our disclosure controls and procedures are designed to, and are effective to, provide assurance at a reasonable level that the information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our President and Chief Executive Officer and our Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures as of December 31, 2021.

Management's Annual Report on Internal Control Over Financial Reporting

Our management, including our President and Chief Executive Officer and our Chief Financial Officer, 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). 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 GAAP. Our internal control over financial reporting includes those policies and procedures that: (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of our assets; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of our assets that could have a material effect on the financial statements.

Under the supervision and with the participation of our management, including our President and Chief Executive Officer and our Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2021, based on the Internal Control—Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") (2013 Framework).

The Company acquired Tango Health, Inc. ("Tango Health") in November 2021, which was accounted for as a business combination. Our management excluded Tango Health from its assessment of the effectiveness of our internal control over financial reporting as of and for the year ended December 31, 2021. Tango Health represented 11% of the Company's net assets and contributed significantly less than 1% of total revenues in the consolidated financial statements of the Company as of and for the year ended December 31, 2021. This exclusion is in accordance with the SEC's guidance, which permits companies to omit an acquired business's internal control over financial reporting from management's assessment for up to one year after the date of acquisition.

Based on this evaluation under the 2013 Framework, our President and Chief Executive Officer and our Chief Financial Officer have concluded that our internal control over financial reporting was effective as of December 31, 2021.

Changes in Internal Control Over Financial Reporting

No change in internal control over financial reporting occurred during the most recent fiscal quarter with respect to our operations, which has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Attestation Report of Registered Public Accounting Firm

Our independent registered public accounting firm, Ernst & Young, LLP, has issued an attestation report on the effectiveness of our internal controls over financial reporting as of December 31, 2021, which appears on page F-4 of this Report.

Item 9B. Other Information.

Effective February 28, 2022, we entered into an amendment to the employment agreement, dated August 25, 2020, with our Chief Financial Officer, Alpana Wegner. The amendment provides that in circumstances where Ms. Wegner is entitled to severance,

she will be eligible to receive payment of a pro rata portion of her target annual bonus in addition to the separation benefits previously provided in her employment agreement.

All separation benefits are subject to Ms. Wegner entering into and not revoking a general release of claims. The remainder of her employment agreement remains in full force and effect.

The description of the amendment to Ms. Wegner's employment agreement is qualified in its entirety by reference to the full and complete terms of such amendment, which is filed as an exhibit hereto and incorporated herein by reference.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

Information required by this Item concerning our directors is incorporated by reference from the sections captioned “Election of Directors” and “Corporate Governance Matters” contained in our proxy statement related to the 2022 Annual Meeting of Stockholders, which we intend to file with the Securities and Exchange Commission within 120 days of the end of our 2021 fiscal year pursuant to General Instruction G(3) of Form 10-K.

Our board of directors has determined that of the members of the Audit Committee, Messrs. Pelzer (Chair) and Park and Ms. Rushing are independent within the meaning of the Nasdaq Listing Rules and meet the additional test for independence for audit committee members imposed by Securities and Exchange Commission regulation and the Nasdaq Listing Rules. Our board has also determined that Mr. Pelzer is an “audit committee financial expert” as defined in Item 407(d)(5)(ii) of Regulation S-K.

We have adopted a code of ethics relating to the conduct of our business by all of our employees, officers, and directors, as well as a code of conduct specifically for our principal executive officer and senior financial officers. Each of these policies is posted on our website, www.benefitfocus.com.

The information required by this Item concerning our executive officers is set forth at the end of Part I of this Annual Report on Form 10-K.

Item 11. Executive Compensation.

The information required by this Item is incorporated by reference to the information under the sections captioned “Executive Compensation,” “Director Compensation” and “Compensation Committee Interlocks and Insider Participation” in the proxy statement.

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

The following table sets forth the indicated information as of December 31, 2021 with respect to our equity compensation plans:

<u>Plan Category</u>	<u>Number of securities to be issued upon exercise of outstanding options, warrants and rights</u>	<u>Weighted-average exercise price of outstanding options, warrants and rights</u>	<u>Number of securities remaining available for future issuance under equity compensation plans</u>
Equity compensation plans approved by security holders			
2016 Employee Stock Purchase Plan	-	-	85,455
Second Amended and Restated 2012 Stock Plan, as amended	3,060,665	\$ 0.38	2,050,954
Equity compensation plans not approved by security holders			
Inducement Awards ⁽¹⁾	355,466 ⁽²⁾	-	-
Total	3,416,131	\$ 0.34	2,136,409

(1) The inducement grant was approved by our independent directors and was made as an inducement material to our Chief Executive Officer entering into employment with us in accordance with Nasdaq Listing Rule 5635(c)(4).

(2) 248,826 RSUs will vest in four equal annual installments beginning on the first anniversary of our Chief Executive Officer’s start date. 106,640 performance RSUs will vest in a single installment if the Company achieves a stock price milestone after the second anniversary of the start date and prior to the fifth anniversary of the start date, subject to a minimum service requirement of three years by our Chief Executive Officer.

The other information required by this Item is incorporated by reference to the information under the section captioned “Security Ownership of Certain Beneficial Owners and Management” contained in the proxy statement.

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

The information required by this Item is incorporated by reference to the information under the section captioned “Certain Relationships and Related Party Transactions” and “Corporate Governance Matters” in the proxy statement.

Item 14. Principal Accounting Fees and Services.

The information required by this Item is incorporated by reference to the information under the section captioned “Audit Committee Report” in the proxy statement.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

(a) 1. Financial Statements.

The following statements are filed as part of this Annual Report on Form 10-K:

AUDITED CONSOLIDATED FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm (PCAOB ID: 42)	F-2
Consolidated Balance Sheets as of December 31, 2021 and 2020	F-5
Consolidated Statements of Operations and Comprehensive Loss for the Years Ended December 31, 2021, 2020 and 2019	F-6
Consolidated Statements of Changes in Stockholders' Deficit for the Years Ended December 31, 2021, 2020 and 2019	F-7
Consolidated Statements of Cash Flows for the Years Ended December 31, 2021, 2020 and 2019	F-8
Notes to Consolidated Financial Statements	F-9

Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

(b) Exhibits.

Exhibit Number	Exhibit Title	Incorporated by Reference (Unless Otherwise Indicated)			
		Form	File	Exhibit	Filing Date
3.1.1	Restated Certificate of Incorporation of Benefitfocus, Inc.	10-Q	001-36061	3.1.3	November 12, 2013
3.1.2	Certificate of Designations for the Series A Convertible Preferred Stock of Benefitfocus, Inc., as filed with the Delaware Secretary of State on June 4, 2020.	8-K	001-36061	3.1	June 8, 2020
3.1.3	Certificate of Amendment of Restated Certificate of Incorporation of Benefitfocus, Inc., as amended.	8-K	001-36061	3.1	July 1, 2021
3.2	Second Amended and Restated Bylaws of Benefitfocus, Inc.	8-K	001-36061	3.2	July 1, 2021
4.1	Specimen Certificate for Common Stock.	S-1/A	333-190610	4.1	September 5, 2013
4.2.1	Form of Second Amended and Restated Investors' Rights Agreement, dated, 2013, by and among Benefitfocus, Inc. and certain stockholders named therein.	S-1/A	333-190610	4.3	September 16, 2013
4.2.2	First Amendment to Second Amended and Restated Investors' Rights Agreement, dated February 24, 2015, by and among Benefitfocus, Inc. and certain stockholders named therein.	10-K	001-36061	4.3.1	February 27, 2015

4.3	Indenture of Benefitfocus, Inc. and U.S. National Bank, as Trustee, dated as of December 27, 2018.	8-K	001-36061	4.1	December 28, 2018
4.4	Form of 1.25% Convertible Senior Notes due 2023 (included in Exhibit 4.3).	8-K	001-36061	4.1	December 28, 2018
4.5	Description of Securities.	—	—	—	Filed herewith
10.1#	Benefitfocus, Inc. Management Incentive Bonus Program.	DEF 14A	001-36061	—	April 25, 2014
10.2#	Employment Agreement, dated January 19, 2007, by and between Benefitfocus.com, Inc. and Mason R. Holland, Jr.	S-1	333-190610	10.8	August 14, 2013
10.3#	Form of Employment Agreement.	S-1	333-190610	10.11	August 14, 2013
10.4#	Form of Indemnification Agreement.	S-1	333-190610	10.12	August 14, 2013
10.5.1	Lease between Daniel Island Executive Center, LLC and Benefitfocus.com, Inc., dated as of January 1, 2009, as amended.	S-1	333-190610	10.13	August 14, 2013
10.5.2	Third Amendment to Lease between Daniel Island Executive Center, LLC and Benefitfocus.com, Inc., dated as of December 12, 2016.	8-K	001-36061	10.13.1	December 14, 2016
10.6.1	Lease between Daniel Island Executive Center, LLC and Benefitfocus.com, Inc., dated as of May 31, 2005.	S-1	333-190610	10.14	August 14, 2013
10.6.2	First Amendment to Lease between Daniel Island Executive Center, LLC and Benefitfocus.com, Inc., dated as of December 12, 2016.	8-K	001-36061	10.14.1	December 14, 2016
10.7+	Master Business Agreement between Aetna Life Insurance Company and Benefitfocus.com, Inc., dated as of November 28, 2006.	—	—	—	Filed herewith
10.8.1	Lease between DIEC II, LLC and Benefitfocus.com, Inc., dated as of December 13, 2013.	10-K	001-36061	10.19	March 21, 2014
10.8.2	Amendment to Lease between DIEC II, LLC and Benefitfocus.com, Inc., dated as of December 12, 2016.	8-K	001-36061	10.16.1	December 14, 2016
10.9#	Benefitfocus, Inc. 2016 Employee Stock Purchase Plan.	DEF14A	001-36061	—	April 22, 2016
10.10	Lease between DIEC II, LLC and Benefitfocus.com, Inc., dated as of December 12, 2016.	8-K	001-36061	10.31	December 14, 2016
10.11	Form of Call Option Transaction Notice.	8-K	001-36061	10.1	December 28, 2018
10.12.1#	Employment Agreement, dated July 2, 2019, by and between Benefitfocus.com and Stephen M. Swad.	10-Q	001-36061	10.26	November 7, 2019

10.12.2#	First Amendment to Employment Agreement, dated August 25, 2020, by and between Benefitfocus.com and Stephen M. Swad.	8-K	001-36061	10.1	August 26, 2020
10.12.3#	Second Amendment to Employment Agreement, dated May 3, 2021, by and between Benefitfocus.com and Stephen M. Swad.	8-K	001-36061	10.2	May 5, 2021
10.13	Senior Secured Revolving Credit Facility, dated as of March 3, 2020, by and among Benefitfocus, Inc., Benefitfocus.com, Inc., BenefitStore, Inc., several lenders, Silicon Valley Bank, as administrative agent, issuing lender and swingline lender, and the lenders from time to time party thereto.	10-Q	001-36061	10.26	May 8, 2020
10.14	Guarantee and Collateral Agreement, dated as of March 3, 2020, made by Benefitfocus, Inc., Benefitfocus.com, Inc., BenefitStore, Inc., and other grantors, in favor of Silicon Valley Bank, as administrative agent.	10-Q	001-36061	10.27	May 8, 2020
10.15	Amendment to Leases between Daniel Island Executive Center, LLC, DIEC II, LLC and Benefitfocus.com, Inc., dated as of March 13, 2020.	8-K	001-36061	10.26	March 19, 2020
10.16	Preferred Stock Purchase Agreement, dated May 22, 2020, by and between Benefitfocus, Inc. and BuildGroup LLC.	8-K	001-36061	10.1	May 26, 2020
10.17	Consent to Senior Secured Revolving Credit Facility, dated as of May 22, 2020, by and among Benefitfocus, Inc., Benefitfocus.com, Inc., BenefitStore, Inc., several lenders, Silicon Valley Bank, as administrative agent, issuing lender and swingline lender, and the lenders from time to time party thereto.	8-K	001-36061	10.2	May 26, 2020
10.18	Registration Rights Agreement, dated June 4, 2020, by and between Benefitfocus, Inc. and BuildGroup LLC.	8-K	001-36061	10.1	June 8, 2020
10.19.1#	Benefitfocus, Inc. Second Amended and Restated Stock Plan, as amended.	8-K	001-36061	10.24.1	June 12, 2020
10.19.2#	Form of Grant Notice and Stock Option Agreement under the 2012 Stock Plan, as amended.	S-1	333-190610	10.6	August 14, 2013
10.20.1#	Employment Agreement, dated August 25, 2020, by and between Benefitfocus.com and Alpana Wegner.	8-K	001-36061	10.2	August 26, 2020
10.20.2#	First Amendment to Employment Agreement, effective February 28, 2022, by and between Benefitfocus.com and Alpana Wegner.	—	—	—	Filed herewith

10.21#	Separation and Release Agreement, dated August 24, 2020, by and between Benefitfocus.com and Raymond A. August.	8-K	001-36061	10.3	August 26, 2020
10.22#	Separation and Release Agreement dated September 29, 2020, by and between Benefitfocus.com and James P. Restivo.	8-K	001-36061	10.1	September 30, 2020
10.23	Amended and Restated Co-Sale and Voting Agreement, dated January 26, 2021, by and between Benefitfocus, Inc., Mason R. Holland, Jr. and BuildGroup LLC.	8-K	001-36061	10.1	February 1, 2021
10.24#	Advisory and Board Observation Agreement, dated January 26, 2021, by and between Benefitfocus, Inc. and Mason R. Holland, Jr.	8-K	001-36061	10.2	February 1, 2021
10.25#	Employment Agreement, dated April 29, 2021, by and between Benefitfocus.com and Matthew Levin.	8-K	001-36061	10.1	May 5, 2021
10.26#	Form of Independent Director Compensation Agreement.	—	—	—	Filed herewith
21.1	List of Subsidiaries of Registrant.	—	—	—	Filed herewith
23.1	Consent of Ernst & Young LLP.	—	—	—	Filed herewith
31.1	Certification of the President and Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	—	—	—	Filed herewith
31.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	—	—	—	Filed herewith
32.1	Certification of the President and Chief Executive Officer, and the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	—	—	—	Filed herewith
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Inline XBRL document.	—	—	—	Filed herewith
101.SCH	Inline XBRL Taxonomy Extension Schema Document.	—	—	—	Filed herewith
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.	—	—	—	Filed herewith
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.	—	—	—	Filed herewith
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.	—	—	—	Filed herewith
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.	—	—	—	Filed herewith

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- # Management contract or compensatory plan.
 - + Certain confidential portions and/or the schedules and attachments to this exhibit have been omitted from this filing pursuant to Item 601(a)(5) or 601(b)(10), as applicable, of Regulation S-K. The Company will furnish copies of the unredacted exhibit to the SEC upon request.

Item 16. Form 10-K Summary.

None.

SIGNATURES

Pursuant to the requirements of Sections 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.

Benefitfocus, Inc.

Date: March 3, 2022

By: /s/ Alpana Wegner
Alpana Wegner
Chief Financial Officer

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

<u>Signature</u>	<u>Capacity</u>	<u>Date</u>
<u>/s/ Douglas A. Dennerline</u> Douglas A. Dennerline	Chairman of the Board of Directors	March 3, 2022
<u>/s/ Matthew Levin</u> Matthew Levin	President and Chief Executive Officer (principal executive officer)	March 3, 2022
<u>/s/ Alpana Wegner</u> Alpana Wegner	Chief Financial Officer (principal financial and accounting officer)	March 3, 2022
<u>/s/ A. Lanham Napier</u> A. Lanham Napier	Director	March 3, 2022
<u>/s/ John Park</u> John Park	Director	March 3, 2022
<u>/s/ Francis J. Pelzer V</u> Francis J. Pelzer V	Director	March 3, 2022
<u>/s/ Coretha Rushing</u> Coretha Rushing	Director	March 3, 2022
<u>/s/ Stephen M. Swad</u> Stephen M. Swad	Director	March 3, 2022
<u>/s/ Brad Wilson</u> Brad Wilson	Director	March 3, 2022
<u>/s/ Zeynep Young</u> Zeynep Young	Director	March 3, 2022

BENEFITFOCUS, INC.
INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

AUDITED CONSOLIDATED FINANCIAL STATEMENTS

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Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Benefitfocus, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Benefitfocus, Inc. (the Company) as of December 31, 2021 and 2020, the related consolidated statements of operations and comprehensive loss, changes in stockholders' equity (deficit) and cash flows for each of the three years in the period ended December 31, 2021, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2021, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2021, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated March 3, 2022 expressed an unqualified opinion thereon.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the 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 audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the 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 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 financial statements. We believe that our audits provide a reasonable basis for our opinion.

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 consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the account or disclosure to which it relates.

Revenue Recognition – Estimation of Platform Revenue from Insurance Broker Commissions

Description of the Matter

As described in Note 2 of the consolidated financial statements, platform revenue from insurance broker commissions are recognized at a point in time when the orders for the policies are received and transferred to the insurance carrier. The amount of revenue recognized is based on the consideration the Company expects to receive in exchange for transferring services to the insurance carrier. The Company's broker commission arrangements contain a component of variable consideration. Management estimates variable consideration primarily using the expected value method, based on both historical and current estimates of collectability, policy cancellation and termination information. The Company then utilizes judgment to develop constraints on the estimated variable consideration included in the transaction price to account for risks in collectability, policy cancellation and termination. Changes in those estimates can have a material effect on the amount of revenue recognized.

Auditing the Company's assessment of the estimated constraint requires a high degree of auditor judgment due to the subjectivity in the assumptions utilized in the estimation. Specifically, there is uncertainty in the transaction price given the policy may be cancelled or terminated. Further, there is collections risk given the commissions revenues are receivable over the term of policy period, which occurs after the performance obligation has been satisfied.

How We Addressed the Matter in Our Audit

We obtained an understanding, evaluated the design, and tested the operating effectiveness of controls over the Company's process to estimate variable consideration and establish constraints, including determining the underlying assumptions. For example, we tested controls over management's review of the significant inputs and assumptions including collectability, policy cancellation and termination risk.

Our audit procedures included, among others, evaluating the methodology used, analyzing the significant assumptions discussed above, and testing the accuracy and completeness of the underlying data used in management's calculation. This included testing inputs to the calculation by evaluating historical information by comparing to source documents and performing sensitivity analyses to evaluate the changes in variable consideration that could result from changes in the Company's significant assumptions, including whether alternative assumptions could be more appropriate. We assessed the historical accuracy of management's estimates for variable consideration and the related assumptions by performing a retrospective review on the accuracy of prior period estimates.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2008.

Charlotte, North Carolina
March 3, 2022

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Benefitfocus, Inc.

Opinion on Internal Control Over Financial Reporting

We have audited Benefitfocus, Inc.'s internal control over financial reporting as of December 31, 2021, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 Framework) (the COSO criteria). In our opinion, Benefitfocus, Inc. (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2021, based on the COSO criteria.

As indicated in the accompanying Management's Annual Report on Internal Control Over Financial Reporting, management's assessment of and conclusion on the effectiveness of internal control over financial reporting did not include the internal controls of Tango Health, Inc., which is included in the 2021 consolidated financial statements of the Company and constituted 11% of net assets, as of December 31, 2021 and less than 1% of revenues for the year then ended. Our audit of internal control over financial reporting of the Company also did not include an evaluation of the internal control over financial reporting of Tango Health, Inc.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of Benefitfocus, Inc. as of December 31, 2021 and 2020, the related consolidated statements of operations and comprehensive loss, changes in stockholders' equity (deficit) and cash flows for each of the three years in the period ended December 31, 2021, and the related and our report dated March 3, 2022 expressed an unqualified opinion thereon.

Basis for Opinion

The Company's management is responsible 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 Annual Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the 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 audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

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.

/s/ Ernst & Young LLP
Charlotte, North Carolina
March 3, 2022

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

	As of December 31,	
	2021	2020
Assets		
Current assets:		
Cash and cash equivalents	\$ 31,001	\$ 90,706
Marketable securities	37,049	95,085
Accounts receivable, net	16,491	22,240
Contract, prepaid and other current assets	27,615	21,354
Total current assets	112,156	229,385
Property and equipment, net	27,202	29,701
Financing lease right-of-use assets	56,474	68,670
Operating lease right-of-use assets	774	1,107
Intangible assets, net	21,134	10,393
Goodwill	34,237	12,857
Deferred contract costs and other non-current assets	8,864	10,259
Total assets	\$ 260,841	\$ 362,372
Liabilities, redeemable preferred stock and stockholders' deficit		
Current liabilities:		
Accounts payable	\$ 10,565	\$ 2,160
Accrued expenses	9,451	6,262
Accrued compensation and benefits	16,411	19,129
Deferred revenue, current portion	27,756	27,782
Lease liabilities and financing obligations, current portion	7,378	5,959
Contingent consideration	675	-
Total current liabilities	72,236	61,292
Deferred revenue, net of current portion	2,377	4,422
Convertible senior notes	107,281	184,308
Lease liabilities and financing obligations, net of current portion	75,758	79,282
Other non-current liabilities	313	2,470
Total liabilities	257,965	331,774
Commitments and contingencies		
Redeemable preferred stock:		
Series A preferred stock, par value \$0.001, 5,000,000 shares authorized, 1,777,778 and 1,777,778 shares issued and outstanding at December 31, 2021 and 2020, respectively, liquidation preference \$45 per share as of December 31, 2021 and 2020, respectively	79,193	79,193
Stockholders' deficit:		
Common stock, par value \$0.001, 95,000,000 and 50,000,000 shares authorized, 33,460,545 and 32,327,439 shares issued and outstanding at December 31, 2021 and 2020, respectively	33	32
Additional paid-in capital	431,874	427,431
Accumulated deficit	(508,224)	(476,058)
Total stockholders' deficit	(76,317)	(48,595)
Total liabilities, redeemable preferred stock and stockholders' deficit	\$ 260,841	\$ 362,372

The accompanying notes are an integral part of the Consolidated Financial Statements.

BENEFITFOCUS, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(in thousands, except share and per share data)

	Year Ended December 31,		
	2021	2020	2019
Revenue	\$ 263,097	\$ 268,141	\$ 295,686
Cost of revenue	122,713	129,388	144,090
Gross profit	140,384	138,753	151,596
Operating expenses:			
Sales and marketing	46,385	52,210	76,049
Research and development	44,696	46,175	54,724
General and administrative	50,886	37,720	45,329
Restructuring costs	4,127	5,616	-
Total operating expenses	146,094	141,721	176,102
Loss from operations	(5,710)	(2,968)	(24,506)
Other income (expense):			
Interest income	196	632	2,613
Interest expense	(20,754)	(23,071)	(23,524)
(Loss) gain on repurchase of convertible senior notes	(7,520)	1,138	-
Other expense	(1,338)	(6)	(71)
Total other expense, net	(29,416)	(21,307)	(20,982)
Loss before income taxes	(35,126)	(24,275)	(45,488)
Income tax (benefit) expense	(2,960)	22	27
Net loss	(32,166)	(24,297)	(45,515)
Preferred dividends	(6,400)	(3,662)	-
Net loss available to common stockholders	\$ (38,566)	\$ (27,959)	\$ (45,515)
Comprehensive loss	\$ (32,166)	\$ (24,297)	\$ (45,515)
Net loss per common share:			
Basic and diluted	\$ (1.17)	\$ (0.87)	\$ (1.40)
Weighted-average common shares outstanding:			
Basic and diluted	33,092,896	32,318,201	32,539,748

The accompanying notes are an integral part of the Consolidated Financial Statements.

BENEFITFOCUS, INC.
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' DEFICIT
(in thousands, except share and per share data)

	Common Stock, \$0.001 Par Value		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Par Value			
Balance, December 31, 2018	32,017,773	\$ 32	\$ 403,631	\$ (413,873)	\$ (10,210)
Cumulative effect adjustment from adoption of new accounting standard	–	–	–	7,686	7,686
Exercise of stock options	24,800	–	134	–	134
Issuance of common stock upon vesting of restricted stock units	732,738	1	(1)	–	–
Issuance of common stock under Employee Stock Purchase Plan, or ESPP	13,669	–	319	–	319
Stock-based compensation expense	–	–	21,942	–	21,942
Net loss	–	–	–	(45,515)	(45,515)
Balance, December 31, 2019	32,788,980	\$ 33	\$ 426,025	\$ (451,702)	\$ (25,644)
Cumulative effect adjustment from adoption of new accounting standard	–	–	–	(59)	(59)
Exercise of stock options	62,519	–	433	–	433
Issuance of common stock upon vesting of restricted stock units	572,630	–	(1)	–	(1)
Issuance of common stock under ESPP	13,134	–	151	–	151
Cancellation of convertible senior note capped call hedge	(3,651)	–	26	–	26
Equity component of repurchased convertible senior notes	–	–	(412)	–	(412)
Stock-based compensation expense	–	–	14,537	–	14,537
Common stock repurchased	(1,106,173)	(1)	(9,666)	–	(9,667)
Preferred dividends	–	–	(3,662)	–	(3,662)
Net loss	–	–	–	(24,297)	(24,297)
Balance, December 31, 2020	32,327,439	\$ 32	\$ 427,431	\$ (476,058)	\$ (48,595)
Exercise of stock options	24,250	–	257	–	257
Issuance of common stock upon vesting of restricted stock units	1,095,740	1	(1)	–	–
Issuance of common stock under ESPP	13,116	–	150	–	150
Cancellation of convertible senior note capped call hedge	–	–	98	–	98
Equity component of repurchased convertible senior notes	–	–	(3,566)	–	(3,566)
Stock-based compensation expense	–	–	13,905	–	13,905
Preferred dividends	–	–	(6,400)	–	(6,400)
Net loss	–	–	–	(32,166)	(32,166)
Balance, December 31, 2021	33,460,545	\$ 33	\$ 431,874	\$ (508,224)	\$ (76,317)

The accompanying notes are an integral part of the Consolidated Financial Statements.

BENEFITFOCUS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31,		
	2021	2020	2019
Cash flows from operating activities			
Net loss	\$ (32,166)	\$ (24,297)	\$ (45,515)
Adjustments to reconcile net loss to net cash and cash equivalents used in operating activities:			
Depreciation and amortization	25,581	25,014	22,351
Stock-based compensation expense	13,905	14,537	19,572
Deferred income tax benefit	(3,067)	-	-
Accretion of interest on convertible senior notes	10,234	11,656	11,256
Interest accrual on finance lease liabilities	3,292	97	33
Rent expense less than payments	(63)	(32)	(16)
Non-cash accretion income from investments	930	143	-
Impairment or loss on disposal of right-of-use assets and property and equipment	4,171	918	9
Loss (gain) on extinguishment of debt	7,520	(1,138)	-
Provision for doubtful accounts	-	43	111
Changes in operating assets and liabilities:			
Accounts receivable, net	8,615	11,412	(11,875)
Accrued interest on investments	59	(102)	-
Contract, prepaid and other current assets	(5,106)	169	(3,642)
Deferred costs and other non-current assets	1,466	743	2,893
Accounts payable and accrued expenses	11,226	(11,468)	426
Accrued compensation and benefits	(2,788)	3,884	161
Deferred revenue	(7,920)	(6,304)	(14,047)
Other non-current liabilities	(2,387)	2,376	(92)
Net cash and cash equivalents provided by (used in) operating activities	<u>33,502</u>	<u>27,651</u>	<u>(18,375)</u>
Cash flows from investing activities			
Purchases of investments held-to-maturity	(91,361)	(104,125)	-
Maturities of investments held-to-maturity	103,410	9,000	-
Sales of investments held-to-maturity	44,997	-	-
Business combination, net of cash acquired	(28,175)	-	(20,914)
Purchases of property and equipment	(11,776)	(13,085)	(13,248)
Net cash and cash equivalents provided by (used in) investing activities	<u>17,095</u>	<u>(108,210)</u>	<u>(34,162)</u>
Cash flows from financing activities			
Draws on revolving line of credit	-	10,000	-
Payments on revolving line of credit	-	(10,000)	-
Repurchase of convertible senior notes	(98,678)	(14,619)	-
Payments of debt issuance costs	-	(154)	(357)
Cancellation of convertible senior notes capped call hedge	98	26	-
Proceeds from issuance of preferred stock, net of issuance costs	-	79,192	-
Payment of preferred dividends	(6,400)	(3,662)	-
Repurchase of common stock	-	(9,667)	-
Proceeds from exercises of stock options and ESPP	407	585	453
Payments on financing obligations	(604)	(1,212)	(1,627)
Payments of principal on finance lease liabilities	(5,125)	(10,200)	(5,884)
Net cash and cash equivalents (used in) provided by financing activities	<u>(110,302)</u>	<u>40,289</u>	<u>(7,415)</u>
Net decrease in cash and cash equivalents	<u>(59,705)</u>	<u>(40,270)</u>	<u>(59,952)</u>
Cash and cash equivalents, beginning of year	90,706	130,976	190,928
Cash and cash equivalents, end of year	<u>\$ 31,001</u>	<u>\$ 90,706</u>	<u>\$ 130,976</u>
Supplemental disclosure of non-cash investing and financing activities			
Property and equipment purchases in accounts payable and accrued expenses	\$ 63	\$ 142	\$ 154
Post contract support purchased with financing obligations	\$ -	\$ -	\$ 1,287
Supplemental disclosure of cash flow information			
Income taxes paid	\$ 62	\$ 22	\$ 28
Interest paid	<u>\$ 10,580</u>	<u>\$ 11,408</u>	<u>\$ 12,374</u>

The accompanying notes are an integral part of the Consolidated Financial Statements.

BENEFITFOCUS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(thousands, except share and per share data)

1. Organization and Description of Business

Benefitfocus, Inc. (the "Company") provides a leading cloud-based benefits management platform for consumers, employers, health plans (also known as insurance carriers) and brokers that is designed to simplify how organizations and individuals transact benefits. The financial statements of the Company include the financial position and operations of its wholly owned subsidiaries, Benefitfocus.com, Inc., BenefitStore, Inc. and Tango Health, Inc.

2. Summary of Significant Accounting Policies

Principles of Consolidation

These consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP"). The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation. The Company is not the primary beneficiary of, nor does it have a controlling financial interest in, any variable interest entity. Accordingly, the Company has not consolidated any variable interest entity.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires the Company to make estimates and assumptions that affect the reported amounts in the consolidated financial statements and accompanying notes. Such estimates include allowances for credit losses and returns, valuations of deferred income taxes, long-lived assets, capitalizable software development costs and the related amortization, contingent considerations, incremental borrowing rate used in lease accounting, the determination of the useful lives of assets, and the impairment assessment of acquired intangibles and goodwill. Additionally, as described in revenue and deferred revenue below, estimates are utilized in association with revenue recognition, in particular the estimation of variable consideration using the expected value method from insurance broker commissions reported in Platform revenue. Determination of these transactions and account balances are based on, among other things, the Company's estimates and judgments. These estimates are based on the Company's knowledge of current events and actions it may undertake in the future as well as on various other assumptions that it believes to be reasonable. Actual results could differ materially from these estimates.

Restructuring Costs

Restructuring costs are comprised of one-time severance charges, continuation of health benefits and outplacement services and are presented separately in operating expenses in the consolidated statements of operations and comprehensive loss. During January 2021, the Company recorded restructuring costs of \$1,400 from a reduction to its workforce. In June 2021, the Company recorded restructuring costs of \$2,727 from the elimination of the office of the executive chairman of the board of directors.

On April 28, 2020, the Company announced a restructuring plan to contain costs and further strengthen its liquidity profile in response to the impact of the COVID-19 pandemic. This plan resulted in a reduction in the Company's U.S. workforce of approximately 17%. The Company recorded restructuring costs of \$5,616 in the second quarter of 2020 from one-time severance charges, continuation of health benefits and outplacement services. The plan was implemented and completed in the second quarter of 2020.

Revenue and Deferred Revenue

The Company derives its revenue primarily from fees for subscription services and professional services sold to employers and health plans as well as platform revenue derived from the value of products sold on its platform. Revenue is recognized when control of these services is transferred to customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those services. Taxes collected from customers relating to services and remitted to governmental authorities are excluded from revenue.

The Company determines revenue recognition through the following steps:

- Identification of each 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; and
- Recognition of revenue when, or as, performance obligations are satisfied.

Software Services Revenue

Software services revenue consists of subscription revenue and platform revenue.

Subscription Revenue

Subscription revenue primarily consists of monthly or annual subscription fees paid to the Company by its employer and health plan customers for access to, and usage of, cloud-based benefits software solutions for a specified contract term. Fees are generally charged based on the number of employees or subscribers with access to the solution.

Subscription services revenue is generally recognized on a ratable basis over the contract term beginning on the date the subscription services are made available to the customer. The Company's subscription service contracts are generally three years.

Subscription revenue also includes fees paid for other services, such as event sponsorships and certain data services.

Platform Revenue

Platform revenue is generated from the value of policies or products enrolled in through the Company's marketplace. Platform revenue from insurance carriers is generally recognized over the policy period of the enrolled products. In arrangements where the Company sells policies to employees of its customers as the broker, it earns broker commissions. Revenue from insurance broker commissions and supplier transactions is recognized at a point in time when the orders for the policies are received and transferred to the insurance carrier or supplier and is reduced by constraints for variable consideration associated with collectability, policy cancellation and termination risks.

Professional Services Revenue

Professional services revenue primarily consists of fees related to the implementation of software products purchased by customers. Professional services typically include discovery, configuration and deployment, integration, testing, and training. Fees from consulting services and support services are also included in professional services revenue.

The Company determined that implementation services for certain of its health plan customers significantly modify or customize the software solution and, as such, do not represent a distinct performance obligation. Accordingly, revenue from such implementation services with these health plan customers are generally recognized over the contract term of the associated subscription services contract, including any extension periods representing a material right. In certain arrangements, the Company utilizes estimates of hours as a measure of progress to determine revenue.

Revenue from implementation services with employer customers is recognized as those services are performed.

Revenue from support is recognized ratably over the service period.

Contracts with Multiple Performance Obligations

Certain of the Company's contracts with customers contain multiple performance obligations. For these contracts, the individual performance obligations are accounted for separately if they are distinct. The Company allocates the transaction price to the separate performance obligations based on their relative standalone selling prices. The Company determines the standalone selling prices based on its overall pricing objectives, taking into consideration market conditions and other factors, including the value of its contracts, the subscription services sold, customer size and complexity, and the number and types of users under the contracts.

Contract Costs

The Company capitalizes costs to obtain contracts that are considered incremental and recoverable, such as sales commissions. Payments of sales commissions generally include multiple payments. The Company capitalizes only those payments made within an insignificant time from the contract inception, typically three months or less. Subsequent payments are expensed as incurred. The capitalized costs are amortized to sales and marketing expense over the estimated period of benefit of the asset, which is generally four to five years. The Company expenses the costs to obtain a contract when the amortization period is less than one year. Deferred costs related to obtaining contracts are included in deferred contract costs and other non-current assets.

The Company capitalizes contract fulfillment costs directly associated with customer contracts that are not related to satisfying performance obligations. The costs are amortized to cost of revenue expense over the estimated period of benefit, which is generally five years. Deferred fulfillment costs are included in deferred contract costs and other non-current assets.

The following tables present information about deferred contract costs:

	As of December 31,			
	2021		2020	
Balance of deferred contract costs				
Costs to obtain contracts	\$	4,418	\$	5,624
Costs to fulfill contracts	\$	2,887	\$	3,639

	Year ended December 31,					
	2021		2020		2019	
Amortization of deferred contract costs						
Costs to obtain contracts included in sales and marketing expense	\$	2,971	\$	3,275	\$	3,662
Costs to fulfill contracts included in cost of revenue expense	\$	1,298	\$	1,285	\$	2,790

Cost of Revenue

Cost of revenue primarily consists of employee compensation, professional services, data center co-location costs, networking expenses, depreciation expense for computer equipment directly associated with generating revenue, amortization expense for capitalized software development costs, and infrastructure maintenance costs. In addition, the Company allocates a portion of overhead, such as facilities and security costs, additional depreciation and amortization expense, and employee benefit costs to cost of revenue based on headcount.

Cash and Cash Equivalents

Cash and cash equivalents consist of bank checking accounts and money market accounts. The Company considers all highly liquid investments with original maturities of three months or less at the time of purchase to be cash equivalents.

Marketable Securities

Marketable securities consist of short-term investments in corporate bonds, commercial paper, and U.S. Treasury and agency bonds. During the year ended December 31, 2021, the Company changed the classification of its marketable securities from held-to-maturity to available-for-sale based on its intent to sell the securities. The Company's available-for-sale marketable securities are recorded at fair value which approximates cost due to the short duration of such securities. Prior to reclassification, the Company's held-to-maturity marketable securities were recorded at amortized cost and any gains or losses realized upon maturity were reported in other expense, net in the consolidated statements of operations and comprehensive loss.

Debt securities classified as either available-for-sale or held-to-maturity are subject to the expected credit loss model prescribed under ASU No. 2016-13, "Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses of Financial Instruments". The Company utilizes a lifetime expected credit loss measurement objective for the recognition of credit losses for debt securities at the time the financial asset is originated or acquired. The Company measures expected credit losses on its debt portfolio on a collective basis by major security type. The expected credit losses are adjusted each period for changes in expected lifetime credit losses. The Company's credit loss calculations for debt securities are based upon historical default and recovery rates of bonds rated with the same rating as its portfolio. An adjustment factor is applied to these credit loss calculations based upon the Company's assessment of the expected impact from current economic conditions on its investments. The Company monitors the credit quality of debt securities through the use of their respective credit rating and updates them on a quarterly basis. The allowance for credit losses is discussed in Note 6.

Concentrations of Credit Risk

The Company's financial instruments that are exposed to concentrations of credit risk consist primarily of cash equivalents, marketable securities, and accounts receivable. All of the Company's cash and cash equivalents are held at financial institutions that management believes to be of high credit quality. The bank deposits of the Company might, at times, exceed federally insured limits and are generally uninsured and uncollateralized. The Company has not experienced any losses on cash and cash equivalents to date.

To manage credit risk related to marketable securities, the Company invests in various types of highly rated corporate bonds, commercial paper, and various U.S. backed securities with maturities of less than two years. In December 2021, the Company updated its investment policy to limit it to money market funds and securities issued by the U.S. Treasury or U.S. government agencies.

To manage accounts receivable risk, the Company evaluates the creditworthiness of its customers and maintains an allowance for doubtful accounts. Accounts receivable are unsecured and derived from revenue earned from customers located in the United States. No customer exceeded 10% of total revenue for the years ended December 31, 2021, 2020 and 2019. No customer exceeded 10% of accounts receivable as of December 31, 2021 and 2020.

Allowance for Credit Losses

The company uses a current expected credit loss model. Accounts receivable and allowance for credit losses are discussed in Note 7.

Property and Equipment and Capitalized Software Development Costs

Property and equipment, including capitalized software development costs, are stated at cost less accumulated depreciation and amortization. Expenditures for major additions and improvements are capitalized. Depreciation and amortization are recognized over the estimated useful lives of the related assets using the straight-line method.

The estimated useful lives for significant property and equipment categories are generally as follows:

Developed software	3 years
Computers and related equipment	3-5 years
Purchased software and licenses	1-7 years
Leasehold improvements	Lesser of estimated useful life of asset or lease term
Furniture and fixtures	7 years
Other equipment	5-12 years

Useful lives of significant assets are periodically reviewed and adjusted prospectively to reflect the Company's current estimates of the respective assets' expected utility. Costs associated with maintenance and repairs are expensed as incurred.

The Company capitalizes certain costs related to its software developed or obtained for internal use. Costs related to preliminary project activities and post-implementation activities are expensed as incurred. Internal and external costs incurred during the application development stage, including upgrades and enhancements representing modifications that will result in significant additional functionality, are capitalized. Software maintenance and training costs are expensed as incurred. Capitalized costs are recorded as part of property and equipment and are amortized on a straight-line basis to cost of revenue over the software's estimated useful life, which is three years. The Company evaluates these assets for impairment whenever events or changes in circumstances occur that could impact the recoverability of these assets.

Identifiable Intangible Assets

Identifiable intangible assets with finite lives are recorded at their fair values at the date of acquisition and are amortized on a straight-line basis over their respective estimated useful lives, which is the period over which the asset is expected to contribute directly or indirectly to future cash flows.

Impairment of Long-Lived Assets

The Company reviews long-lived assets and definite-lived intangible assets for impairment whenever events or changes in circumstances indicate the carrying amount of an asset might not be recoverable. Recoverability of the long-lived asset is measured by a comparison of the carrying amount of the asset or asset group to future undiscounted net cash flows expected to be generated. If such assets are not recoverable, the impairment to be recognized, if any, is measured as the amount by which the carrying amount of the assets exceeds the estimated fair value (discounted cash flow) of the assets or asset group. Assets held for sale are reported at the lower of the carrying amount or fair value, less costs to sell. As of December 31, 2021 and 2020, management believes that the carrying amount of all long-lived assets are recoverable and has not identified any assets as being for sale.

Goodwill

Goodwill represents the excess of the aggregate of the fair value of consideration transferred in a business combination over the fair value of assets acquired, net of liabilities assumed. The Company recorded goodwill in connection with its business combinations. Goodwill is not amortized, but is subject to an annual impairment test, as described below.

The Company performs a qualitative assessment to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying value before testing goodwill for impairment for each reporting unit. The reporting units are determined by the components of the Company's operating segments that constitute a business for which both (1) discrete financial information is available and (2) segment management regularly reviews the operating results of that component. If it is more likely than not that the fair value of a reporting unit is less than its carrying value, the Company performs the impairment test by applying a fair-value-based test. The Company compares the fair value of a reporting unit to its carrying value. If the carrying value of the net assets assigned to the reporting unit exceeds the fair value of the reporting unit, an impairment loss is recorded equal to the difference.

The Company has one reporting unit. To determine the fair value of the Company's reporting unit, the Company has used its market capitalization. The Company may also determine fair value using discounted cash flow analysis, which requires significant assumptions and estimates about future operations. Significant judgments inherent in this analysis include the determination of an appropriate discount rate, estimated terminal value and the amount and timing of expected future cash flows.

The Company performs its annual goodwill impairment analysis as of October 31 of each year, or more frequently if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying value.

Debt Issuance Costs

Debt issuance costs related to the convertible senior note financing have been recorded as a reduction of the carrying amount of the debt and are amortized to interest expense using the effective interest method.

Debt issuance costs related to the revolving line of credit have been recorded in other non-current assets and are amortized to interest expense over the remaining life of the agreement.

Leases

The Company periodically enters into finance leases for property and equipment. The leasing arrangements for the Company's office space at its headquarters campus are classified as finance leases. The Company also leases office space under operating leases.

The Company determines if an arrangement is a lease at inception. Right of use ("ROU"), assets represent the Company's right to use an underlying asset for the lease term. Lease liabilities represent an obligation to make lease payments arising from the lease. Leases with a term of 12 months or less are not included in the recognized ROU assets and lease liabilities for all classes of assets.

ROU assets and lease liabilities are recognized at the lease commencement date based on the present value of lease payments over the lease term. Because the Company's leases do not provide an implicit interest rate, the Company uses its incremental borrowing rate based on information available at commencement date to determine the present value of lease payments. The ROU asset also consists of any prepaid lease payments, lease incentives, or initial direct costs. The lease terms used to calculate the ROU asset and related lease liability include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option.

Lease expense for operating leases is recognized on a straight-line basis over the lease term as an operating expense while the expense for finance leases is recognized as depreciation expense and interest expense. The Company has lease agreements which require payments for lease and non-lease components (e.g. common area maintenance and equipment maintenance) that are accounted for as a single lease component. Variable lease payment amounts that cannot be determined at the commencement of the lease, such as maintenance costs based on future obligations, are not included in the ROU assets or liabilities. These amounts are expensed as incurred and recorded as variable lease expense.

Financing Obligations

Financing obligations include liabilities for the purchase of software licenses and support.

Advertising

The Company expenses advertising costs as they are incurred. Direct advertising costs for the years ended December 31, 2021, 2020 and 2019 were \$329, \$308 and \$332, respectively.

Comprehensive Loss

The Company's net loss equals comprehensive loss for all periods presented.

Stock-Based Compensation

The Company accounts for stock-based compensation awards, which include stock options and restricted stock units ("RSUs"), based on the fair value of the award as of the grant date. The Company recognizes stock-based compensation expense over the period during which the award holder is required to perform services in exchange for the award, which is the vesting period. Compensation expense related to RSUs and stock options is recognized over the vesting period of the applicable award using the straight-line method. Compensation expense related to performance-based restricted stock units, which are accounted for as equity awards, is recognized on an accelerated attribution basis (graded vesting) when it is probable that the performance measure will be met.

Compensation costs related to RSUs is based on the market price on the grant date. The Company uses the Black-Scholes option pricing model for estimating the fair value of stock options. The use of the option valuation model requires the input of subjective assumptions, including the expected life of the option and the expected stock price volatility. The Company recognizes the effect of forfeitures as they occur. The recognition of stock-based compensation expense associated with performance-based restricted stock units requires the estimation of the probability of achieving performance measures.

Income Taxes

The Company uses the asset and liability method for income tax accounting. This method requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the financial reporting and tax basis of assets and liabilities, as well as for operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using the tax rates that are expected to apply to taxable income for the years in which those tax assets and liabilities are expected to be realized or settled. Valuation allowances are recorded to reduce deferred tax assets to the amount the Company believes is more likely than not to be realized. The tax benefits of uncertain tax positions are recognized only when the Company believes it is more likely than not that the tax position will be upheld on examination by the taxing authorities based on the merits of the position. The Company recognizes interest and penalties, if any, related to unrecognized income tax benefits in income tax expense. Income tax effects related

to settlements of share-based payment awards are reported in earnings as an increase or decrease to income tax expense (benefit), net. Additionally, income tax-related cash flows resulting from share-based payments are reported as operating activities in the statement of cash flows.

Basic and Diluted Net Loss per Common Share

Basic net loss per share attributable to common stockholders is computed by dividing the net loss attributable to common stockholders by the weighted-average number of shares of common stock outstanding during the period. Diluted net loss per share is computed by giving effect to all potential shares of common stock, including outstanding stock options, outstanding warrants, common stock related to unvested restricted stock units and convertible senior notes to the extent dilutive, common stock related to the conversion of preferred stock to the extent dilutive, and common stock issuable pursuant to the Benefitfocus, Inc. 2016 Employee Stock Purchase Plan ("ESPP"). Basic and diluted net loss per share was the same for each period presented as the inclusion of all potential common shares outstanding would have been anti-dilutive.

Recently Adopted Accounting Standards

Business Combinations

The Company adopted Accounting Standards Update ("ASU") No. 2021-08, "Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers" in the interim period ended December 31, 2021, which required retrospective application to the beginning of the fiscal year. The Company applied the provisions of the ASU to its accounting for the acquisition of Tango Health, Inc. in November 2021, the only business combination it completed during 2021. The ASU requires acquirers to recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with Accounting Standards Codification ("ASC") Topic 606, Revenue from Contracts with Customers, as if it had originated the contracts.

Income Taxes

On January 1, 2021, the Company adopted ASU No. 2019-12, "Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes". The purpose of this ASU is to simplify various aspects related to accounting for income taxes, eliminate certain exceptions to the general principles in ASC Topic 740 related to intra-period tax allocation, simplify when companies recognize deferred taxes in an interim period, and clarify certain aspects of the current guidance to promote consistent application. ASU No. 2019-12 had no impact on the Company's consolidated financial statements.

Financial Instruments

On January 1, 2020, the Company adopted ASU No. 2016-13. The purpose of this ASU is to require a financial asset measured at amortized cost basis to be presented at the net amount expected to be collected. On adoption, the Company recorded an immaterial cumulative-effect adjustment to retained earnings in connection with expected credit losses on its trade receivables.

Fair Value Measurement

On January 1, 2020, the Company adopted ASU No. 2018-13, "Fair Value Measurement (Topic 820): Changes to the Disclosure Requirements for Fair Value Measurement". The ASU modifies the disclosure requirements required for fair value measurements. The adoption of this guidance did not have a material impact on the Company's consolidated financial statements.

Accounting Standards Not Yet Adopted

In August 2020, the FASB issued ASU No. 2020-06, "Debt - Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity's Own Equity (Subtopic 815-40)". The update simplifies the accounting for convertible debt instruments and convertible preferred stock by reducing the number of accounting models and the number of embedded conversion features that could be recognized separately from the primary contract. This ASU also enhances transparency and improves disclosures for convertible instruments and earnings per share guidance. It will be effective for the Company beginning January 1, 2022. This ASU permits the use of either the modified retrospective or fully retrospective method of transition. The Company is currently evaluating the impact of the adoption of ASU 2020-06 on its consolidated financial statements but anticipates that it will result in a reduction in non-cash interest expense related to its convertible senior notes.

3. Business Combination

On November 19, 2021, the Company purchased 100% of the outstanding stock of Tango Health, Inc., for a total consideration of \$28,471. This acquisition added technology to strengthen the Company's platform, expand its customer reach, and enhance the value the Company delivers to its Patient Protection and Affordable Care Act ("ACA") compliance customers.

As the valuation of certain assets and liabilities for purposes of purchase price allocations are preliminary in nature, they are subject to adjustment as additional information is obtained about the facts and circumstances regarding these assets and liabilities that existed at the acquisition date. Any adjustments to our estimates of acquisition accounting will be made in the periods in which the adjustments are determined, and the cumulative effect of such adjustments will be calculated as if the adjustments had been completed as of the acquisition date. The preliminary acquisition accounting will be finalized within one year from the date of acquisition. The Company believes the information gathered to date provides a reasonable basis for estimating the preliminary fair and recorded values of assets acquired and liabilities assumed.

The following table summarizes the preliminary fair value of the consideration paid and the amounts of the assets acquired and liabilities assumed recognized at the acquisition date:

Consideration Transferred	
Cash consideration transferred	\$ 31,628
Contingently returnable consideration	(879)
Consideration payable	500
Contingent consideration	675
Fair value of total purchase price consideration	<u>31,924</u>
Cash acquired	<u>(3,453)</u>
Fair value of total purchase price consideration, net of cash acquired	<u>\$ 28,471</u>
Recognized Amounts of Identifiable Assets Acquired and Liabilities Assumed	
Accounts receivable, net	\$ 2,866
Contract, prepaid and other current assets	453
Intangible assets	13,250
Accounts payable and accrued expenses	(435)
Deferred revenue, current portion	(5,849)
Deferred tax liability	(3,194)
Total identifiable net assets	<u>7,091</u>
Goodwill	<u>21,380</u>
Total identifiable net assets and goodwill	<u>\$ 28,471</u>

The goodwill of \$21,380 arising from the acquisition relates to the growth of the business through future adaptations of the technology and the growth of the business through new customers. The goodwill recognized from this stock acquisition is not deductible for income tax purposes.

The identifiable intangible assets acquired have a weighted average amortization period of 6.9 years and include developed technology, customer relationships, and trade name. The Company did not acquire any contingent liabilities as part of the transaction.

The consideration transferred to complete the acquisition includes contingently returnable assets of \$879 and contingent consideration of \$675 that is measured at fair value. The Company uses a probability weighted value analysis as a valuation technique to estimate future cash flow and subsequently converted those cash flows to a single present value amount. The significant unobservable input used in the fair value of the contingently returnable asset consisted of a certain renewal of a customer relationship to be completed by June 30, 2022. The range of outcomes is materially consistent with the value recorded. The significant unobservable input used in the fair value of the contingent consideration is the attainment of certain sales criteria and the probability outcome assigned to those criteria by January 31, 2022. Significant increases or decreases to either of these inputs would result in a higher or lower asset or liability capped by reasonable assumptions around the assumptions within a relatively short period of time. As of December 31, 2021, none of the contingent consideration amounts had been paid to the sellers, nor had any contingently returnable amounts been released from escrow.

Contract assets and deferred revenue balances were recorded at the book amounts acquired as the contract terms and performance obligations were consistent with the Company's application of the provisions of ASC Topic 606, Revenue from Contracts with Customers. All other assets acquired and liabilities assumed were recorded at preliminary fair and recorded values. The fair value of the assets and liabilities assumed is provisional pending finalization of the Company's review of supporting records for these assets and liabilities.

The Company incurred \$493 in costs related to the acquisition, all of which were recognized in general and administrative expense during the year ended December 31, 2021.

Revenue recognized by the Company related to the operations of and identifiable expenses associated with the acquired business were immaterial for the year ended December 31, 2021.

Supplemental pro forma revenue and earnings information are not presented because the Company determined they were immaterial to the consolidated financial statements. The Company estimates that the difference between pro forma information compared to reported results would not be significant.

4. Net Loss Per Common Share

Diluted loss per common share is the same as basic loss per common share for all periods presented because the effects of potentially dilutive items were anti-dilutive given the Company's net loss.

The following common share equivalent securities have been excluded from the calculation of weighted-average common shares outstanding because the effect is anti-dilutive for the periods presented:

<u>Anti-Dilutive Common Share Equivalents</u>	<u>Year Ended December 31,</u>		
	<u>2021</u>	<u>2020</u>	<u>2019</u>
Restricted stock units	3,319,578	2,590,877	1,970,555
Stock options	96,553	121,928	206,447
Convertible senior notes	2,277,017	4,161,182	4,513,824
Conversion of preferred stock	5,333,334	5,333,334	-
Total anti-dilutive common share equivalents	<u>11,026,482</u>	<u>12,207,321</u>	<u>6,690,826</u>

Basic and diluted net loss per common share is calculated as follows:

	<u>Year Ended December 31,</u>		
	<u>2021</u>	<u>2020</u>	<u>2019</u>
Numerator:			
Net loss	\$ (32,166)	\$ (24,297)	\$ (45,515)
Preferred dividends	(6,400)	(3,662)	-
Net loss available to common stockholders	<u>\$ (38,566)</u>	<u>\$ (27,959)</u>	<u>\$ (45,515)</u>
Denominator:			
Weighted-average common shares outstanding, basic and diluted	33,092,896	32,318,201	32,539,748
Net loss per common share, basic and diluted	<u>\$ (1.17)</u>	<u>\$ (0.87)</u>	<u>\$ (1.40)</u>

5. Fair Value Measurement

The carrying amounts of certain of the Company's financial instruments, including cash and cash equivalents, net accounts receivable, accounts payable and other accrued liabilities, and accrued compensation and benefits, approximate fair value due to their short-term nature. The carrying value of the Company's financing obligations approximates fair value, considering the borrowing rates currently available to the Company with similar terms and credit risks.

The Company uses a three-tier fair value hierarchy to classify and disclose all assets and liabilities measured at fair value on a recurring basis, as well as assets and liabilities measured at fair value on a non-recurring basis, in periods subsequent to their initial measurement. The hierarchy requires the Company to use observable inputs when available, and to minimize the use of unobservable inputs when determining fair value. The three tiers are defined as follows:

Level 1. Quoted prices (unadjusted) in active markets for identical assets or liabilities.

Level 2. Other inputs that are directly or indirectly observable in the marketplace.

Level 3. Unobservable inputs for which there is little or no market data, which require the Company to develop its own assumptions.

Assets and Liabilities Measured at Fair Value on a Recurring Basis

The Company evaluates its financial assets and liabilities subject to fair value measurements on a recurring basis to determine the appropriate level to classify them for each reporting period. This determination requires significant judgments to be made.

The following tables present information about the Company's assets and liabilities that are measured at fair value on a recurring basis using the above categories:

Description	December 31, 2021			
	Level 1	Level 2	Level 3	Total
Assets:				
Money market mutual funds (1)	\$ 24,150	\$ -	\$ -	\$ 24,150
Available-for-sale securities (2)	-	37,049	-	37,049
Contingently returnable consideration (3)	-	-	879	879
Total assets	\$ 24,150	\$ 37,049	\$ 879	\$ 62,078
Liabilities:				
Contingent consideration (3)	\$ -	\$ -	\$ 675	\$ 675
Total liabilities	\$ -	\$ -	\$ 675	\$ 675

Description	December 31, 2020			
	Level 1	Level 2	Level 3	Total
Assets:				
Money market mutual funds (1)	\$ 87,224	\$ -	\$ -	\$ 87,224
Total assets	\$ 87,224	\$ -	\$ -	\$ 87,224

- (1) Money market mutual funds are classified as cash equivalents in the Company's consolidated balance sheets, as short-term, highly liquid investments readily convertible to known amounts of cash, with remaining maturities of three months or less at the time of purchase. The Company's cash equivalent money market funds have carrying values that approximate fair value.
- (2) During the year ended December 31, 2021, the Company changed the classification of its marketable securities from held-to-maturity to available-for-sale based on its intent for future use of those securities. Amortized cost of these securities approximates their fair value.
- (3) During the year ended December 31, 2021, the Company recorded contingently returnable consideration and contingent consideration as a result of its acquisition of Tango Health, Inc., as described in Note 3. The Company measures the contingently returnable asset and contingent consideration at fair value using significantly unobservable inputs classified within Level 3 of the fair value hierarchy. The Company uses a probability weighted value analysis as a valuation technique to estimate future cash flow and subsequently converted those cash flow to a single present value amount. The significant unobservable input used in the fair value of contingently returnable asset consisted of a certain renewal of an agreement to be completed by June 30, 2022. The significant unobservable input used in the fair value of contingent consideration is the attainment of certain sales criteria and the probability outcome assigned to those criteria by January 31, 2022. Significant increases or decreases to either of these inputs would result in a significantly higher or lower asset or liability capped by reasonable assumption criteria within a relatively short period of time, which allowed for specific assumptions, to be applied.

6. Marketable Securities

Marketable securities consist of corporate bonds, commercial paper and U.S. Treasury and agency bonds. During the year ended December 31, 2021, the Company changed the classification of its marketable securities from held-to-maturity to available-for-sale based on its intent to sell the securities. All marketable securities have contractual maturities of less than one year as of December 31, 2021 and 2020. The following tables present information about the Company's marketable securities by major security type:

Available-for-Sale Securities

Sector:	As of December 31, 2021					Fair value
	Amortized cost	Allowance for credit losses	Net carrying amount	Gross unrealized gains	Gross unrealized losses	
Financial	\$ 37,049	\$ -	\$ 37,049	\$ -	\$ -	\$ 37,049
Total	\$ 37,049	\$ -	\$ 37,049	\$ -	\$ -	\$ 37,049

Held-to-Maturity Securities

As of December 31, 2020						
Sector:	Amortized cost	Allowance for credit losses	Net carrying amount	Gross unrealized gains	Gross unrealized losses	Fair value
Industrial	\$ 8,993	\$ -	\$ 8,993	\$ -	\$ -	\$ 8,993
Financial	55,943	-	55,943	-	(5)	55,938
Government	30,149	-	30,149	6	-	30,155
Total	\$ 95,085	\$ -	\$ 95,085	\$ 6	\$ (5)	\$ 95,086

The fair value of marketable securities in the Government major security type is classified as a Level 1 in the Company's fair value hierarchy described in Note 5. The fair values of the remaining major security types are classified as Level 2.

During the year ended December 31, 2021, the Company sold investments from its held-to-maturity portfolio to take advantage of opportunities to retire a portion of its convertible senior notes and to acquire Tango Health, Inc. as follows:

As of December 31, 2021				
Sector:	Net Carrying Amount of Sold Securities	Sale Proceeds	Gross Realized Gains Included in Earnings	Gross Realized Losses Included in Earnings
Industrial	\$ 6,319	\$ 6,312	\$ -	\$ (7)
Financial	29,647	29,635	3	(15)
Government	9,056	9,050	-	(6)
Total	\$ 45,022	\$ 44,997	\$ 3	\$ (28)

The Company invests in highly rated securities with maturities of two years or less at the time of purchase. Given the credit quality of the financial assets and the historical loss experience associated with their respective credit ratings as well as the duration of these financial assets and the short time horizon over which to consider expectations of future economic conditions, the Company has assessed that non-collection of the cost basis of these financial assets is remote.

Subsequent to year end, all of the Company's marketable securities have been converted to cash equivalents.

7. Accounts Receivable, net

Accounts receivable, net include:

<u>Accounts receivable, net</u>	As of December 31,	
	2021	2020
Accounts receivable	\$ 18,970	\$ 26,791
Less: Allowance for credit losses	(167)	(200)
Less: Allowance for returns	(2,312)	(4,351)
Total accounts receivable, net	\$ 16,491	\$ 22,240

Accounts receivable are stated at their amortized cost adjusted for any write-offs and allowances for returns. The Company estimates expected credit losses related to accounts receivable balances based on a review of available and relevant information including current economic conditions, projected economic conditions, historical loss experience, account aging, and other factors that could affect collectability. Expected credit losses are determined individually or collectively depending on whether the accounts receivable balances share similar risk characteristics. The allowance for credit losses is the best estimate of the amount of expected credit losses related to existing accounts receivable. The Company does not have any off-balance sheet credit exposure related to its customers.

In November 2021, the Company acquired Tango Health, Inc., as described in Note 3. After assessing historical credit losses, the Company determined the impact of the acquisition on the provision for credit losses to be minimal.

<u>Allowance for credit losses</u>	Year ended December 31,		
	2021	2020	2019
Beginning of period	\$ 200	\$ 155	\$ 392
Provision for credit losses	34	212	111
Write-offs and recoveries	(67)	(167)	(348)
End of period	\$ 167	\$ 200	\$ 155

The allowances for returns are accounted for as reductions of revenue and are estimated based on the Company's periodic assessment of historical experience and trends. The Company considers factors such as historical reasons for adjustments, service and delivery issues or delays, and past due customer billings.

Allowance for returns	Year ended December 31,		
	2021	2020	2019
Beginning of period	\$ 4,351	\$ 2,760	\$ 3,192
Charged against revenue	756	7,851	3,761
Deductions	(2,795)	(6,260)	(4,193)
End of period	\$ 2,312	\$ 4,351	\$ 2,760

8. Property and Equipment

Property and equipment consists of the following as of December 31:

Property and equipment	2021	2020
Developed software	\$ 64,767	\$ 57,300
Computers and related equipment	36,133	33,872
Purchased software and licenses	31,057	31,362
Leasehold improvements	7,026	7,591
Furniture and fixtures	6,501	7,015
Other equipment	1,601	2,339
Total property and equipment, at cost	147,085	139,479
Accumulated depreciation and amortization	(119,883)	(109,778)
Property and equipment, net	\$ 27,202	\$ 29,701

The following table presents depreciation and amortization expense for the year ended December 31:

Depreciation and amortization expense	2021	2020	2019
Depreciation and amortization expense related to property and equipment	\$ 14,418	\$ 13,516	\$ 11,819

The following table presents depreciation and amortization expense reported in the statement of operations for the year ended December 31:

Depreciation and amortization expense	2021	2020	2019
Cost of revenue	\$ 18,384	\$ 17,469	\$ 14,986
Sales and marketing	1,255	1,479	1,625
Research and development	2,604	2,848	2,963
General and administrative	829	944	844
Total depreciation and amortization expense	\$ 23,072	\$ 22,740	\$ 20,418

The following tables present supplementary information about capitalized software development costs:

Capitalized software development costs	Year ended December 31,		
	2021	2020	2019
Capitalized	\$ 7,467	\$ 11,558	\$ 9,784
Amortization expense	\$ 9,117	\$ 7,455	\$ 5,130
Impairment	\$ -	\$ 620	\$ -

Capitalized software development costs	As of December 31,	
	2021	2020
Net book value	\$ 16,292	\$ 17,942

During the year ended December 31, 2020, the Company recognized an impairment loss related to certain software development projects that were discontinued. Accordingly, the Company recorded impairment expense \$620 in cost of revenue in its consolidated statements of operations.

9. Goodwill and Intangible Assets

The following tables present the changes in goodwill and the gross carrying amounts of the components of goodwill as of December 31:

Changes in goodwill	2021	2020
Goodwill on January 1	\$ 12,857	\$ 12,857
Additions from business combination	21,380	-
Impairment	-	-
Goodwill on December 31	<u>\$ 34,237</u>	<u>\$ 12,857</u>

Gross carrying amounts	2021	2020
Goodwill	\$ 35,907	\$ 14,527
Accumulated impairment loss	(1,670)	(1,670)

Information regarding the Company's acquisition-related intangible assets is as follows:

	As of December 31, 2021			
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted-Average Remaining Useful Life (in years)
Trademarks	\$ 1,190	\$ (505)	\$ 685	3.1
Developed technology	12,500	(3,829)	8,671	5.1
Customer agreements	16,460	(4,682)	11,778	6.0
Non-compete agreements	126	(126)	-	-
Total	<u>\$ 30,276</u>	<u>\$ (9,142)</u>	<u>\$ 21,134</u>	<u>5.6</u>

	As of December 31, 2020			
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted-Average Remaining Useful Life (in years)
Trademarks	\$ 840	\$ (399)	\$ 441	5.2
Developed technology	7,900	(2,436)	5,464	4.2
Customer agreements	8,160	(3,672)	4,488	5.2
Non-compete agreements	126	(126)	-	-
Total	<u>\$ 17,026</u>	<u>\$ (6,633)</u>	<u>\$ 10,393</u>	<u>4.8</u>

As of December 31, 2021, expected amortization expense for the intangible assets for each of the next five years and thereafter was as follows:

Year Ending December 31,	Amortization expense
2022	\$ 4,292
2023	4,271
2024	4,117
2025	2,998
2026	1,986
Thereafter	3,470
Total	<u>\$ 21,134</u>

Amortization and impairment of acquisition-related intangible assets is as follows:

<u>Amortization of acquisition-related intangible assets</u>	<u>Year ended December 31,</u>		
	<u>2021</u>	<u>2020</u>	<u>2019</u>
Amortization expense	\$ 2,509	\$ 2,274	\$ 1,933
Impairment	\$ -	\$ -	\$ -

10. Convertible Senior Notes

In December 2018, the Company issued \$240,000 aggregate principal amount of 1.25% convertible senior notes ("Notes") due December 15, 2023, unless earlier repurchased by the Company or converted by the holder pursuant to their terms. Interest is payable semiannually in arrears on June 15 and December 15 of each year, commencing on June 15, 2019.

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

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

At issuance, the Notes had an initial conversion rate of 18.8076 shares of common stock per \$1 principal amount of Notes, which represented an initial effective conversion price of approximately \$53.17 per share of common stock and 4,513,824 shares issuable upon conversion. Throughout the term of the Notes, the conversion rate may be adjusted upon the occurrence of certain events. Holders of the Notes will not receive any cash payment representing accrued and unpaid interest, if any, upon conversion of a Note, except in limited circumstances. Accrued but unpaid interest will be deemed to be paid by cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock paid or delivered, as the case may be, to the holder upon conversion of Notes.

Prior to the close of business on September 14, 2023, the Notes will be convertible at the option of holders during certain periods, only upon satisfaction of certain conditions set forth below. On or after September 15, 2023, until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert all or any portion of their Notes at the conversion price at any time regardless of whether the conditions set forth below have been met.

Holders may convert all or a portion of their Notes prior to the close of business on September 14, 2023, in multiples of \$1 principal amount, only under the following circumstances:

- during any calendar quarter commencing after the calendar quarter ending on March 31, 2019 (and only during such calendar quarter), if the last reported sales price of the common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day;
- during the five business day period after any five consecutive trading day period, or the Notes measurement period, in which the "trading price" (as defined in the Indenture) per \$1 principal amount of notes for each trading day of the Notes measurement period was less than 98% of the product of the last reported sale price of the Company's common stock and the conversion rate on each such trading day;
- if the Company calls any or all of the Notes for redemption, at any time prior to the close of business on September 14, 2023; or
- upon the occurrence of specified corporate events.

As of December 31, 2021, the Notes were not convertible.

Based on market data available for publicly traded, senior, unsecured corporate bonds issued by companies in the same industry and with similar maturity, the Company estimated the implied market interest rate of its Notes to be approximately 7.30%, assuming no conversion option. Assumptions used in the estimate represent what market participants would use in pricing the liability component of the Notes, including market interest rates, credit standing, and yield curves, all of which are defined as Level 2 observable inputs. The estimated implied interest rate was applied to the Notes, which resulted in a fair value of the liability component of \$181,500 upon issuance, calculated as the present value of future contractual payments based on the \$240,000 aggregate principal amount. The excess of the principal amount of the liability component over its carrying amount, or the debt discount, is amortized to interest expense over the term of the Notes. The \$58,500 difference between the gross proceeds received from issuance of the Notes of \$240,000 and the estimated fair value of the liability component represents the equity component of the Notes and was recorded in additional paid-in capital. The equity component is not remeasured as long as it continues to meet the conditions for equity classification.

In accounting for the transaction costs related to the issuance of the Notes, the Company allocated the total amount incurred to the liability and equity components in proportion to the allocation of proceeds. Transaction costs attributable to the liability component,

totaling \$4,808, are being amortized to expense over the term of the Notes, and transaction costs attributable to the equity component, totaling \$1,550, are included with the equity component in shareholders' deficit.

During the year ended December 31, 2021, the Company repurchased Notes with an aggregate principal amount of \$100,181 and carrying value of \$87,592, including accrued interest. The Company paid \$98,678 in cash of which \$95,113, including broker fees, was allocated to the liability component of the Notes and \$3,566 was allocated to the equity component and recorded as an adjustment to additional paid-in capital. The Company recognized a loss on the extinguishment of the liability in the amount of \$7,520, including \$501 of broker fees, that is presented separately in other income (expense) in the consolidated statements of operations and comprehensive loss.

During the year ended December 31, 2020, the Company repurchased Notes with an aggregate principal amount of \$18,750 and carrying value of \$15,346, including accrued interest. The Company paid \$14,619 in cash of which \$14,207 was allocated to the liability component of the Notes and \$412 was allocated to the equity component and recorded as an adjustment to additional paid-in capital. The Company recognized a gain on the extinguishment of the liability in the amount of \$1,138 that is presented separately in other income (expense) in the consolidated statements of operations and comprehensive loss.

The following table sets forth information about the balances of the Notes as of December 31:

	2021	2020
Liability Component:		
Principal	\$ 121,069	\$ 221,250
Less: debt discount, net of amortization	(13,788)	(36,942)
Net carrying amount	\$ 107,281	\$ 184,308
Equity component (a)	52,973	56,539
Remaining discount amortization period (in years)	1.96	

(a) Recorded in the consolidated balance sheets within additional paid-in capital, net of \$1,550 transaction costs in stockholders' deficit.

The following table sets forth total interest expense recognized related to the Notes:

	Year Ended December 31,	
	2021	2020
1.25% coupon	\$ 2,418	\$ 2,921
Amortization of debt discount and transaction costs	10,234	11,656
Total interest expense	\$ 12,652	\$ 14,577
Effective interest rate on liability component	8.68%	7.83%

As of December 31, 2021, the fair value of the Notes, which was determined based on inputs that are observable in the market or that could be derived from, or corroborated with, observable market data, quoted price of the Notes in an over-the-counter market (Level 2), and carrying value of debt instruments (carrying value excludes the equity component of the Company's convertible senior notes classified in equity) were as follows:

	As of December 31, 2021		As of December 31, 2020	
	Fair Value	Carrying Value	Fair Value	Carrying Value
Convertible senior notes	\$ 113,805	\$ 107,281	\$ 192,587	\$ 184,308

In connection with the issuance of the Notes, the Company entered into capped call transactions with certain counterparties affiliated with the initial purchasers and others. The capped call transactions are expected to reduce potential dilution of earnings per share upon conversion of the Notes. Under the capped call transactions, the Company purchased capped call options that in the aggregate relate to the total number of shares of the Company's common stock underlying the Notes, with an initial strike price of approximately \$53.17 per share, which corresponds to the initial conversion price of the Notes and is subject to anti-dilution adjustments substantially similar to those applicable to the conversion rate of the Notes, and have a cap price of approximately \$89.98. The cost of the purchased capped calls of \$33,024 was recorded to stockholders' deficit and will not be re-measured provided it continues to meet the conditions for equity classification.

In connection with the repurchase of the Notes described above, the Company terminated a portion of the capped call transactions which resulted in \$98 of cash payments to the Company during the year ended December 31, 2021, which were recorded in additional paid-in capital. During the year ended December 31, 2020, an immaterial amount of cash payments were made to the Company in connection with termination of capped calls and was recorded in additional paid-in capital.

Based on the closing price of the Company's common stock of \$10.66 on December 31, 2021, the if-converted value of the Notes was less than their respective principal amounts.

11. Revolving Line of Credit

The Company entered into a credit facility with Silicon Valley Bank providing for a revolving line of credit agreement on March 3, 2020. This agreement replaced the Company's previous agreement with Silicon Valley Bank, which expired on February 20, 2020. The three-year agreement has a borrowing limit of \$50,000, with the ability for the Company to increase it to up to \$100,000. Interest is payable monthly. Advances under the agreement bear interest at (a) the higher of (i) the prime rate as published in the Wall Street Journal or (ii) the federal funds effective rate plus 0.50%, plus (b) an applicable margin ranging from (0.50%) to 0.50% based on the Company's Average Daily Usage ("ADU") of the credit facility in the preceding month. The Company also is charged for amounts unused under this arrangement at a rate ranging from 0.00% to 0.40% based on the Company's ADU in the preceding month. Any outstanding principal is due at the end of the term.

The obligations of the Company under the credit facility are secured by a first priority lien (subject to certain permitted liens) in substantially all of the personal property assets of the Company and its subsidiaries pursuant to the terms of a Guarantee and Collateral Agreement, dated March 3, 2020 and the other security documents.

The credit facility requires the Company to maintain a Consolidated Adjusted Quick Ratio ("AQR") of (i) Consolidated Quick Assets to (ii) Consolidated Current Liabilities minus the current portion of Deferred Revenue of at least 1.25 to 1.00 as of the last day of any fiscal quarter, and, if the AQR is less than 2.00 to 1.00, a Minimum Consolidated EBITDA of at least \$1.00 for any such fiscal quarter calculated on a trailing 12-month basis. The Company has also agreed to fiscal year dollar limits on its capital expenditures. If an event of default occurs, the lender would be entitled to take various actions, including the acceleration of amounts due under the credit facility and all actions permitted to be taken by a secured creditor.

No amounts were borrowed or repaid under the credit facility during the year ended December 31, 2021. During the year ended December 31, 2020, the Company borrowed an aggregate of \$10,000 under the credit facility for general operating purposes and repaid an aggregate of \$10,000. There were no amounts outstanding under the Company's revolving line of credit as of December 31, 2021 and 2020. The amount available to borrow was \$50,000 and the interest rate was 2.75% as of December 31, 2021.

12. Commitments and Contingencies

Supplemental cash flow information related to the Company's operating and finance leases was as follows:

<u>Cash Paid for Amounts Included in the Measurement of Lease Liabilities</u>	<u>Year Ended December 31,</u>		
	<u>2021</u>	<u>2020</u>	<u>2019</u>
Financing cash flows from finance leases	\$ 5,125	\$ 10,200	\$ 5,884
Operating cash flows from finance leases	\$ 4,437	\$ 8,090	\$ 8,527
Operating cash flows from operating leases	\$ 487	\$ 557	\$ 599
<u>ROU Assets Obtained in Exchange for New Lease Obligations</u>			
Finance lease liabilities	\$ 3,277	\$ 3,593	\$ 4,248
Operating lease liabilities	\$ -	\$ -	\$ 1,107

As of December 31, 2021, the Company had no additional significant operating or finance leases that had not yet commenced.

Operating Leases

The Company leases office facilities under various non-cancelable operating lease agreements with original lease periods expiring between 2023 and 2027. Some of the leases provide for renewal terms at the Company's option. Certain future minimum lease payments due under these operating lease agreements contain free rent periods or escalating rent payment provisions. These leases do not contain purchase options. Lease expense is recognized on a straight-line basis over the lease term as an operating expense.

The components of operating lease expense were as follows:

<u>Operating lease expense</u>	<u>Year Ended December 31,</u>		
	<u>2021</u>	<u>2020</u>	<u>2019</u>
Fixed operating lease expense	\$ 324	\$ 414	\$ 705
Short-term lease expense	80	405	33
Variable operating lease expense	99	112	145
Total operating lease expense	503	931	883
Sublease income	(124)	-	(28)
Net operating lease cost	\$ 379	\$ 931	\$ 855

The following table presents the lease balances within the consolidated balance sheets, weighted average remaining lease term, and weighted average discount rates related to the Company's operating leases:

<u>Lease Assets and Liabilities</u>	<u>Classification</u>	<u>As of December 31, 2021</u>	<u>As of December 31, 2020</u>
Assets			
Operating lease ROU asset - Buildings	Operating lease right-of-use assets	\$ 774	\$ 1,107
Liabilities			
Operating lease ROU liabilities, current portion	Lease liabilities, current	\$ 325	\$ 300
Operating lease ROU liabilities, net of current portion	Lease liabilities, non-current	943	1,268
Total operating lease liabilities		<u>\$ 1,268</u>	<u>\$ 1,568</u>
Weighted average remaining lease term (in years)		4.43	5.21
Weighted average discount rate		6.07%	6.04%

In November 2021, the Company entered into a sublease agreement for all of the space under one of its facility operating leases. The rental income from this sublease agreement was less than the Company's remaining lease commitment for this space. Accordingly, the Company recorded an impairment loss of its ROU operating assets of \$96 based on the present value of the payments to be received under the sublease. This impairment expense was included in cost of revenue and operating expenses in the Company's consolidated statements of operations for the year ended December 31, 2021.

On December 31, 2020, the Company entered into a sublease agreement for all of the space under one of its facility operating leases. The rental income from this sublease agreement was less than the Company's remaining lease commitment for this space. Accordingly, the Company recorded an impairment loss of its ROU operating assets of \$296 based on the present value of the payments to be received under the sublease. This impairment expense was included in cost of revenue and operating expenses in the Company's consolidated statements of operations for the year ended December 31, 2020.

The following table presents the maturity of the Company's operating lease liabilities as of December 31, 2021:

Year Ending December 31,	<u>Operating Leases</u>
2022	\$ 391
2023	398
2024	175
2025	179
2026	183
Thereafter	123
Total minimum lease payments	1,449
Less: imputed interest	(181)
Total operating lease liabilities	<u>\$ 1,268</u>

Finance Leases

The Company leases three buildings on its Charleston, South Carolina campus classified as finance leases.

During the year ended December 31, 2021, the Company entered into various financing lease arrangements for servers and networking equipment used in operations. Total payments under the various agreement are approximately \$3,498, with terms ranging from 33 to 36 months and average annualized payments of approximately \$1,166. In connection with these leases, the Company recorded financing ROU assets and financing lease liabilities of \$3,277.

On March 13, 2020, the Company executed an amendment to its three leases for office space on its headquarters campus. Pursuant to this amendment, the Company paid the lessor, a former related party, \$3,993 for future rent due in the first half of 2021, representing an approximately 17% discount on rent due for those periods. The ROU assets and financing lease liabilities were adjusted to reflect the effect of the amendment and associated payments.

In February 2020, the Company entered into a financing lease arrangement for servers and networking equipment used in operations. Total payments under the agreement are \$3,723, including the first annual payment of \$784 and two annual payments of \$1,470, each. In connection with this lease, the Company recorded financing ROU assets and financing lease liabilities of \$3,593.

The Company has entered into various purchase agreements to obtain property and equipment for operations that are accounted for as finance leases. These arrangements have original terms ranging from 3 to 5 years with interest rates ranging from 2.99% to 7.61%. The leases are secured by the underlying leased property and equipment.

The components of finance lease expense were as follows:

Finance lease expense	Year Ended December 31,		
	2021	2020	2019
Amortization of ROU assets	\$ 8,654	\$ 9,224	\$ 8,599
Interest on lease liabilities	7,826	8,051	8,535
Variable finance lease expense	173	46	53
Total finance lease expense	16,653	17,321	17,187
Sublease income	(275)	-	-
Net finance lease cost	\$ 16,378	\$ 17,321	\$ 17,187

The following table presents the lease balances within the consolidated balance sheets, weighted average remaining lease term, and weighted average discount rates related to the Company's finance leases:

Lease Assets and Liabilities	Classification	As of	As of
		December 31, 2021	December 31, 2020
Assets			
Finance lease ROU asset	Finance lease right-of-use assets, net	\$ 80,978	\$ 85,040
Finance lease ROU accumulated amortization	Finance lease right-of-use assets, net	(24,504)	(16,370)
Finance lease ROU assets, net		\$ 56,474	\$ 68,670
Liabilities			
Finance lease ROU liabilities, current portion	Lease liabilities, current	\$ 7,050	\$ 5,034
Finance lease ROU liabilities, net of current portion	Lease liabilities, non-current	74,806	77,916
Total finance lease liabilities		\$ 81,856	\$ 82,950
Weighted average remaining lease term (in years)		9.44	10.31
Weighted average discount rate		10.44%	9.53%

In April 2021, the Company entered into a non-cancellable sublease agreement for part of one building on its headquarters campus. The sublease term expires May 31, 2028 and may be renewed at the option of the sublessee through November 30, 2031. Because market conditions and value have declined since the Company entered into its lease, in part due to the COVID-19 pandemic, payments to the Company under the sublease are less than its current obligation for the asset. Accordingly, the Company recorded an impairment loss of the financing lease ROU asset of \$4,003 based on the excess of the carrying amount over the calculated fair value of the sublease. This impairment expense was included in operating expenses in the Company's consolidated statements of operations and comprehensive loss for the year ended December 31, 2021.

The following table presents the maturity of the Company's finance lease liabilities as of December 31, 2021:

Year Ending December 31,	Finance Leases
2022	\$ 14,371
2023	12,260
2024	12,116
2025	11,596
2026	11,943
Thereafter	65,311
Total minimum lease payments	127,597
Less: imputed interest	(45,741)
Total finance lease liabilities	\$ 81,856

Financing Obligations

Financing obligations were \$13 and \$722, as of December 31, 2021 and 2020, respectively, and consist primarily of obligations for software licensing and support.

Contractual Commitments

The Company has \$8,785 of non-cancellable contractual commitments as of December 31, 2021, primarily related to the purchase of software and maintenance contracts. These commitments are not accrued in the consolidated balance sheets of the Company. The following table presents the non-cancellable contractual commitments:

	<u>Purchase Commitments</u>
Year Ending December 31,	
2022	\$ 8,209
2023	576
Thereafter	-
Total purchase commitments	<u>\$ 8,785</u>

Legal Contingencies

The Company may become a party to a variety of legal proceedings that arise in the normal course of business. While the results of such normal course legal proceedings cannot be predicted with certainty, management believes, based on current knowledge, that the final outcome of any matters will not have a material adverse effect on the Company's business, financial position, results of operations or cash flows.

13. Redeemable Preferred Stock

On June 4, 2020, the Company issued and sold 1,777,778 shares of its newly created series of preferred stock, par value of \$0.001 per share, designated as "Series A Convertible Preferred Stock" (the "Preferred Stock") to BuildGroup LLC (the "Buyer") at a purchase price of \$45 per share, resulting in total gross proceeds for the Company of approximately \$80,000. A member of the Company's Board of Directors is the Chief Executive Officer of the Buyer. The Buyer also has a second representative on the Board.

The Preferred Stock ranks senior to the Company's common stock with respect to dividends and distributions on liquidation, winding-up and dissolution. Each share of the Preferred Stock has an initial stated value of \$45 per share. Holders of shares of the Preferred Stock are entitled to a dividend equal to 8.00% per annum (the "Regular Dividends"), payable quarterly, beginning on June 30, 2020. The Regular Dividends are payable in cash or in kind, at the Company's option. In the event a Regular Dividend is paid in kind, the stated value of each share of the Preferred Stock will be increased by an amount equal to the accrued Regular Dividend not paid in cash. As of December 31, 2021, the Company has paid all dividends on the Preferred Stock in cash. Holders of the Preferred Stock are also entitled to participate in and receive any dividends declared or paid on the common stock on an as-converted basis, and no dividends may be paid to holders of the common stock unless full participating dividends are concurrently paid to the holders of the Preferred Stock.

Each holder of the Preferred Stock has the right, at its option, to convert its shares of the Preferred Stock, in whole or in part, into fully paid and non-assessable shares of the common stock, at any time and from time to time. The number of shares of the common stock into which a share of the Preferred Stock will convert at any time is equal to the quotient obtained by dividing its stated value then in effect plus any accumulated and unpaid Regular Dividends by its conversion price of \$15.00. The conversion price is subject to customary anti-dilution adjustments including adjustments in the event of any stock split, stock dividend, recapitalization or similar events. At closing, before payment of any dividends in kind, the 1,777,778 shares of the Preferred Stock were convertible into 5,333,334 shares of common stock.

The Company may, at its option, redeem the outstanding shares of the Preferred Stock following the fourth anniversary of its issuance. Redemption by the Company is subject to certain liquidity conditions as well as conditions connected with the trading price of its common stock. Upon redemption by the Company, the Company will pay the holder of the Preferred Stock 105% of the initial stated value of such share plus any increase in the stated value from the initial stated value plus accumulated and unpaid Regular Dividends. If the Company undergoes a change of control as defined in the purchase agreement, the Company must redeem all of the then-outstanding shares of the Preferred Stock for cash consideration equal to the greater of the amount due for redemption as described above and the amount such holder of shares of the Preferred Stock would have received in respect of the number of shares of the Common Stock that would be issuable upon conversion of such share of the Series A Preferred Stock.

Unless and until approval of the Company's stockholders is obtained as contemplated by the Nasdaq Listing Rules, no holder of the Preferred Stock may convert shares of the Preferred Stock into shares of common stock if and to the extent that such conversion would result in the holder beneficially owning in excess of 19.9% of the then-outstanding shares of the common stock.

As long as not less than 60% of the shares of the Preferred Stock originally issued remain outstanding, the holders of a majority of the then-outstanding shares of the Preferred Stock, voting together as a single class, have the right at any election of directors to elect two directors if the Board consists of nine or fewer directors or three directors if the Board consists of 10 directors. At any time, such elected director(s) may be removed with or without cause only by the affirmative vote or written consent of a majority of the holders of the Preferred Stock entitled to elect such director.

Holders of the Preferred Stock generally are entitled to vote with the holders of the shares of the common stock on all matters submitted for a vote of holders of shares of the common stock (voting together with the holders of shares of the common stock as one class) on an as-converted basis, subject to a limitation of ownership of 19.9% of common stock. Additionally, certain matters require the approval of the holders of a majority of the outstanding shares of the Preferred Stock, voting as a separate class.

The Buyer is subject to limitations while it holds at least 10% of the Preferred Stock originally purchased. Furthermore, until the earliest of May 30, 2024 and receipt of a notice of redemption, the Buyer cannot sell, transfer or otherwise dispose of the shares of the Preferred Stock or the underlying shares of the common stock, subject to limited exceptions that include exceptions in the case of transfers to certain permitted transferees.

For so long as the Buyer and its affiliates collectively hold at least 60% of the shares of the Preferred Stock originally purchased by it or the common stock issuable upon conversion thereof, the Company will pay the Buyer a fee of \$400 for the first year following closing and \$200 per year thereafter. These management and oversight fees are expensed over the period incurred.

In the period of issuance, the Company incurred \$807 in issuance costs related to the sale of the Preferred Stock, including \$150 of reimbursement to the Buyer for reasonable fees and out-of-pocket expenses incurred by the Buyer in connection with the transaction. The issuance costs were netted against the proceeds from this transaction.

14. Stock-Based Compensation

Employee Stock-based Compensation Plan

The Company maintains the Second Amended and Restated 2012 Stock Plan, as amended, (the "2012 Plan") and previously had in place the Amended and Restated 2000 Stock Option Plan (the "2000 Plan"), which expired in 2020. Pursuant to the 2012 Plan, the Company has reserved 5,111,619 shares of its common stock for issuance to its employees, directors and non-employee third parties. The 2012 Plan, effective on January 31, 2012, serves as the successor to the 2000 Plan and permits the granting of incentive stock options, non-statutory stock options, stock bonuses, stock purchase rights, stock appreciation rights, and restricted stock units and awards. Shares available for grant under the 2000 Plan, which were reserved but not issued or subject to outstanding awards under the 2000 Plan as of the effective date of the 2012 Plan, were added to the reserves of the 2012 Plan. As of December 31, 2021, no awards were outstanding under the 2000 Plan. As of December 31, 2021, the Company had 2,050,954 shares allocated to the 2012 Plan, but not yet issued.

The Company has issued two types of awards under these plans: stock options and RSUs. The following table sets forth the number of awards outstanding for each award type:

<u>Award type outstanding - 2012 Plan</u>	<u>As of December 31,</u>		
	<u>2021</u>	<u>2020</u>	<u>2019</u>
Restricted stock units	2,964,112	2,590,877	1,970,555
Stock options	96,553	121,928	206,447

The grant date value of RSUs is equal to the closing price of the Company's stock on the date of grant, or, if not a trading day, the closing price of the previous trading day. Stock options are granted at exercise prices not less than the estimated fair market value of the Company's common stock at the date of grant. Generally, the Company issues previously unissued shares for the exercise of stock options or exchange of RSUs; however, previously acquired shares may be reissued to satisfy future issuances. The standard vesting period for RSU and option awards is over four years; however, vesting periods range from one to four years. The options expire 10 years from the grant date. Compensation expense for the fair value of the stock-based awards at their grant date is recognized ratably over the vesting period.

In May 2021, the Company reserved 355,466 shares of its common stock for issuance in connection with hiring its Chief Executive Officer in the form of inducement grants comprising 248,826 RSUs and 106,640 performance RSUs under Nasdaq Listing Rule 5635(c)(4). These RSUs were issued outside of the Company's 2012 Plan but are intended to be subject to the terms and conditions of the 2012 Plan and are included in stock-based compensation expense.

Compensation expense related to stock-based awards is included in the following line items in the accompanying consolidated statements of operations and comprehensive loss for the years ended December 31:

<u>Stock-based compensation expense</u>	<u>2021</u>	<u>2020</u>	<u>2019</u>
Cost of revenue	\$ 2,081	\$ 3,703	\$ 3,569
Sales and marketing	2,876	3,081	3,799
Research and development	1,644	2,555	3,265
General and administrative	7,304	5,198	8,939
Total stock-based compensation expense	<u>\$ 13,905</u>	<u>\$ 14,537</u>	<u>\$ 19,572</u>

The total compensation cost related to non-vested awards not yet recognized as of December 31, 2021 was \$30,055 and will be recognized over a weighted-average period of approximately 2.9 years.

Restricted Stock Units

During 2021, the Company granted RSUs under the 2012 Plan. Restricted stock units granted to employees vest in equal annual installments over terms that range from one to four years from the grant date, subject to continued service to the Company. The Company amortizes the grant date fair value of the stock subject to the RSUs on a straight-line basis over the period of vesting.

The summary of unvested restricted stock units under the 2012 Plan is as follows:

	Restricted stock units	Weighted average grant date fair value
Unvested at December 31, 2020	2,590,877	\$ 14.40
Granted	2,811,624	13.23
Forfeited	(1,342,649)	12.76
Vested	(1,095,740)	15.07
Unvested at December 31, 2021	2,964,112	\$ 13.71

As of December 31, 2021, the number and intrinsic value of restricted stock units under the 2012 Plan expected to vest was 2,749,586 and \$29,311, respectively. The aggregate fair value of restricted stock units vested during the years ended December 31, 2021, 2020 and 2019 was \$14,877, \$6,132 and \$32,065, respectively.

Included in the grants of 2021 restricted stock units are performance restricted stock units for which vesting is contingent upon meeting various financial targets to support growth initiatives. The Company granted 699,504 performance restricted stock units to officers and certain employees with an aggregate grant-date fair value of \$9,693. The actual number of shares issued upon vesting could range from 0% to 100%. As of December 31, 2021, there were 532,527 performance restricted stock units outstanding with a weighted average grant-date fair value of \$14.60 per unit, of which 318,001 units with a weighted average grant-date fair value of \$15.14 per unit were expected to vest.

Stock Options

The following is a summary of the option activity for the year ended December 31, 2021:

	Number of Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Outstanding balance at December 31, 2020	121,928	\$ 11.73		
Granted	-	-		
Exercised	(24,250)	10.57		
Forfeited	(1,125)	10.66		
Expired	-	-		
Outstanding balance at December 31, 2021	96,553	\$ 12.04	1.1	\$ 16
Exercisable at December 31, 2021	96,553	\$ 12.04	1.1	\$ 16
Vested and expected to vest at December 31, 2021	96,553	\$ 12.04	1.1	\$ 16

The aggregate intrinsic value of employee options exercised during the years ended December 31, 2021, 2020, and 2019 was \$96, \$219 and \$958, respectively. No stock options were granted during the years ended December 31, 2021, 2020 and 2019.

Inducement Grants

As described above, the Company issued inducement grants comprising 248,826 RSUs which vest in equal annual installments over four years from the grant date. The Company amortizes the grant date fair value of the stock subject to the RSUs on a straight-line basis over the period of vesting. The Company also granted 106,640 performance RSUs with an aggregate derived fair value of \$1,069. The performance RSUs vest in a single installment if the Company's closing stock price is at least \$23.00 for a period of 20 consecutive trading days occurring after the second anniversary of the grant and prior to the fifth anniversary of the grant. If this price-based requirement is met before the third anniversary of the grant date, then the performance RSUs will vest on the third anniversary of the grant date subject to continued service to the Company. If this price-based requirement is met after the third anniversary but prior to the fifth anniversary of the grant date, then the performance RSUs will vest on the date the price requirement is met subject to continued service to the Company. The Company amortizes the aggregate derived fair value of the stock subject to the performance RSUs on a straight-line basis over the derived service period of 2.3 years from the date of grant.

As of December 31, 2021, the number and intrinsic value of RSUs under inducement grants expected to vest was 355,466 and \$3,789, respectively.

15. Stockholders' Deficit

Common Stock

The holders of common stock are entitled to one vote for each share. The voting, dividend and liquidation rights of the holders of common stock are subject to and qualified by the rights, powers and preferences of the holders of preferred stock.

The Company maintains the ESPP pursuant to which the Company has reserved 85,455 shares of its common stock for purchase by its employees who meet certain criteria. Under the ESPP, eligible employees may purchase the Company's common stock through accumulated payroll deductions. Options to purchase shares are granted twice yearly on or about January 1 and July 1 and exercisable on or about the succeeding June 30 and December 31, respectively, of each year. Shares are purchased at acquisition prices equal to 95% of the fair market value of the Company's common stock at the purchase date. No participant may purchase more than \$12 worth of the Company's common stock in a six-month offering period.

At December 31, 2021, the Company had reserved a total of 10,885,874 of its authorized 95,000,000 shares of common stock for future issuance as follows:

Outstanding stock options	96,553
Restricted stock units	3,319,578
Available for future issuance under stock award plans	2,050,954
Available for future issuance under ESPP	85,455
Issuable upon conversion of Series A Preferred Stock	5,333,334
Total common shares reserved for future issuance	<u>10,885,874</u>

At the Company's annual meeting of stockholders held in June 2021, the stockholders approved an amendment to the Company's Restated Certificate of Incorporation, as amended to increase the total number of authorized shares of common stock reserved for issuance thereunder from 50,000,000 to 95,000,000 shares.

In December 2019, the Company's Board of Directors approved a stock repurchase program for the potential repurchase of up to \$20,000 of its outstanding common stock. Under the stock repurchase program, the Company is authorized to purchase shares of its common stock through various means, including open market or privately negotiated transactions. The program has no time limit and may be suspended for periods or discontinued at any time by the Board of Directors. Repurchases under the program will be funded by the Company's existing cash and cash equivalents or future cash flow. Any shares acquired will be available for general corporate purposes.

Under its stock repurchase program, the Company purchased 1,106,173 shares of its outstanding common stock, for an aggregate of \$9,667 during the year ended December 31, 2020. All of these shares have been cancelled and returned to its pool of authorized shares to be used for general purposes. No outstanding common stock was repurchased during the year ended December 31, 2021.

16. Revenue

Disaggregation of Revenue

The following table provides information about disaggregation of revenue by service line:

Service line	Year ended December 31		
	2021	2020	2019
Subscription	\$ 178,759	\$ 179,743	\$ 195,091
Platform	39,576	35,101	33,654
Total software services	\$ 218,335	\$ 214,844	\$ 228,745
Professional services	44,762	53,297	66,941
Total	<u>\$ 263,097</u>	<u>\$ 268,141</u>	<u>\$ 295,686</u>

Contract Balances

The following table provides information about contract assets and contract liabilities from contracts with customers:

	<u>Balance at Beginning of Period</u>	<u>Balance at End of Period</u>
As of December 31, 2021		
Contract assets	\$ 15,105	\$ 18,051
Contract liabilities		
Deferred revenue	\$ 32,204	\$ 30,133
As of December 31, 2020		
Contract assets	\$ 16,685	\$ 15,105
Contract liabilities		
Deferred revenue	\$ 38,508	\$ 32,204

The Company recognizes payments from customers based on contractual billing schedules. Accounts receivable are recorded when the right to consideration becomes unconditional. Contract assets include amounts related to the Company's contractual right to consideration for completed performance objectives not yet invoiced. Contract liabilities include payments received in advance of performance under the contract and are recognized as revenue when earned under the contract. The Company had no asset impairment charges related to contract assets during the years ended December 31, 2021 and 2020.

Contract assets are largely comprised of unbilled software services revenue from insurance broker commissions. The performance obligation for this revenue is satisfied when the order is received. Amounts are recorded as accounts receivable when the right to consideration becomes unconditional which generally occurs over the period of the underlying insurance policy. Payments from insurance broker commissions are typically received monthly in arrears.

During the years ended December 31, 2021 and 2020, there were no significant changes in the contract assets outside of standard revenue and billing activity.

Revenue recognized during the years ended December 31, 2021 and 2020 that was included in the deferred revenue balance at the beginning of the periods was \$29,142 and \$33,092, respectively.

The Company added deferred revenue of \$5,849 as a result of a business combination during the year ended December 31, 2021.

The Company recorded favorable adjustments to revenue arising from performance obligations satisfied or partially satisfied in previous periods of \$3,784 and \$4,374 during the years ended December 31, 2021 and 2020, respectively.

Performance Obligations

As of December 31, 2021, the aggregate amount of the Company's performance obligations that are unsatisfied or partially unsatisfied were approximately \$276,000, of which a majority are expected to be satisfied within the next three years. The Company excludes from its population of performance obligations contracts with original durations of one year or less, contract renewal periods that renew automatically, and amounts of variable consideration that are allocated to wholly unsatisfied distinct service that forms part of a single performance obligation and meets certain variable allocation criteria.

17. Employee Benefit Plan

The Company maintains a qualified defined contribution plan under Section 401(k) of the U.S. Internal Revenue Code (the "401(k) Plan") covering substantially all employees. Employees are eligible to participate in the 401(k) Plan after one day of service and upon attainment of age 21, and may elect to defer an amount or percentage of their annual compensation up to amounts prescribed by law. The Company makes discretionary matching contributions to employee plan accounts. During each of the years ended December 31, 2021, 2020 and 2019, the Company matched 50% of the employees' contribution, with the match limited to 3% of qualifying compensation. Employee vesting in matching company contributions occurs at a rate of 20% per year after one year of service. During the years ended December 31, 2021, 2020, and 2019, employer matching contributions were \$2,217, \$2,790 and \$3,370, respectively.

18. Income Taxes

The Company's effective tax rate for the year ended December 31, 2021, was 8.5%. Current tax expense relates to estimated state income taxes. A deferred tax benefit was recognized as a result of acquired deferred tax liabilities in connection with the acquisition of Tango Health, Inc. which resulted in a partial release of the valuation allowance.

The Company files income tax returns in the U.S. for federal and various state jurisdictions. The Company is subject to U.S. federal income tax examination for calendar tax years 2018 through 2020 as well as state income tax examinations for various years depending on statutes of limitations of those jurisdictions.

The following table summarizes the components of income tax expense for the years ended December 31:

Current:	2021	2020	2019
Federal	\$ -	\$ -	\$ -
State and local	107	22	27
Total current expense	<u>\$ 107</u>	<u>\$ 22</u>	<u>\$ 27</u>
Deferred:			
Federal	\$ (3,067)	\$ -	\$ -
State and local	-	-	-
Total deferred taxes	<u>\$ (3,067)</u>	<u>\$ -</u>	<u>\$ -</u>

Reconciliation between the effect of applying the federal statutory rate and the effective income tax rate used to calculate the Company's income tax provision is as follows for the years ended December 31:

	2021	2020	2019
Federal statutory rate	21.0%	21.0%	21.0%
Effect of:			
State income taxes, net of federal benefit	4.7%	1.8%	8.2%
Change in state tax rates	(28.3%)	3.8%	2.9%
Change in valuation allowance	15.8%	(13.7%)	(33.7%)
State tax credits	(0.3%)	(0.6%)	1.4%
Stock-based compensation	(3.2%)	(11.5%)	2.5%
Section 162(m)	(0.9%)	(0.2%)	(1.2%)
Other permanent items	(0.3%)	(0.6%)	(1.1%)
Income tax provision effective rate	<u>8.5%</u>	<u>0.0%</u>	<u>0.0%</u>

The significant components of the Company's deferred tax asset and liability were as follows as of December 31:

Deferred tax assets relating to:	2021	2020
Net operating loss carryforwards	\$ 82,398	\$ 93,408
Deferred revenue	7,873	7,499
Commissions and incentive accrual	839	1,945
Deferred rent	129	136
State tax credits	8,509	8,414
Stock-based compensation	2,273	2,684
Compensation and other accruals	1,618	1,455
Finance lease right-of-use liabilities	20,636	22,567
Total gross deferred tax assets	<u>124,275</u>	<u>138,108</u>
Deferred tax liabilities		
Finance lease right-of-use assets	\$ (14,755)	\$ (20,193)
Property and equipment and intangible assets	(6,955)	(4,366)
Convertible debt	(4,468)	(9,806)
Total gross deferred tax liabilities	<u>(26,178)</u>	<u>(34,365)</u>
Deferred tax assets less liabilities	98,097	103,743
Less: valuation allowance	(98,223)	(103,743)
Net deferred tax asset (liability)	<u>\$ (126)</u>	<u>\$ -</u>

The Company is in a net deferred tax liability due to the limitation on the utilization of net operating losses in the indefinite life period is limited to 80% of taxable income in accordance with the Tax Cuts and Jobs Act. The deferred tax liability is recorded as part of "other non-current liabilities" on the Company's consolidated balance sheets.

As of December 31, 2021 and 2020, the Company's gross deferred tax was reduced by a valuation allowance of \$98,223 and \$103,743, respectively.

The valuation allowance decreased by \$5,520 and increased by \$1,226 during the years ended December 31, 2021 and 2020, respectively. The valuation allowance decrease in 2021 resulted primarily from changes in the deferred tax assets related to convertible debt, leases and the acquisition of Tango Health, Inc. The valuation allowance increase in 2020 resulted primarily from changes in the

deferred tax assets related to compensation and other accruals and finance lease right-of-use liabilities. The following table provides information about the Company's deferred tax valuation allowance:

Deferred tax valuation allowance	Year ended December 31,		
	2021	2020	2019
Beginning of period	\$ 103,743	\$ 102,517	\$ 82,308
Additions charged against expenses	-	1,226	22,446
Deductions	(5,520)	-	(2,237)
End of period	<u>\$ 98,223</u>	<u>\$ 103,743</u>	<u>\$ 102,517</u>

Net operating loss carryforwards for federal income tax purposes were approximately \$321,373 and \$326,944 at December 31, 2021 and 2020, respectively. State net operating loss carryforwards were \$290,783 and \$294,442 at December 31, 2021 and 2020, respectively. The federal and state net operating loss carryforwards will expire at various dates during 2022 through 2039, if not utilized. Net operating loss carryforwards and credit carryforwards reflected above may be limited due to historical and future ownership changes.

South Carolina jobs tax credit and headquarters tax credit carryovers of \$10,981 and \$11,088 were available at December 31, 2021 and 2020, respectively. Headquarters credits are expected to be used to offset future state income tax license fees. The credits expire in various amounts during 2022 through 2035.

The Company follows ASC Subtopic 740-10 for accounting for unrecognized tax benefits. As of December 31, 2021, the Company had gross unrecognized tax benefits of \$469. A reconciliation of the beginning and ending amounts of unrecognized tax benefits is as follows for the years ended December 31:

	2021	2020	2019
Balance at beginning of year	\$ 437	\$ 437	\$ 437
Additions based on tax positions related to the current year	-	-	-
Additions for tax positions in prior years	103	-	-
Reductions for tax positions of prior years	-	-	-
Reductions for tax positions due to lapse of statute	(71)	-	-
Settlements	-	-	-
Balance at end of year	<u>\$ 469</u>	<u>\$ 437</u>	<u>\$ 437</u>

At December 31, 2021, of the \$469 liabilities for unrecognized tax benefits \$103 could impact the Company's effective tax rate, if recognized. The Company expects the unrecognized tax benefits to change by \$128 within the next twelve months.

19. Segments and Geographic Information

Operating segments are defined as components of an enterprise for which discrete financial information is available that is evaluated regularly by the chief operating decision maker ("CODM") for purposes of allocating resources and evaluating financial performance. The Company's CODM, the Chief Executive Officer, reviews financial information presented on a consolidated basis, accompanied by information about operating segments, for purposes of allocating resources and evaluating financial performance.

The Company views its operations and manages its business as one operating segment. Segment information matches the consolidated financial information for the current periods and prior periods reported.

Substantially all assets were held and all revenue was generated in the United States during the years ended December 31, 2021, 2020 and 2019.

20. Related Parties

Series A Preferred Stock

As described in Note 13, the Company sold 1,777,778 shares of Preferred Stock to an entity whose Chief Executive Officer is a member of the Company's Board of Directors. In connection with this transaction, the Company reimbursed the Buyer \$150 for fees incurred in closing the sale of Preferred Stock in June 2020. The Company paid dividends of \$6,400 and \$3,662 to the Buyer for the years ended December 31, 2021 and 2020, respectively. Additionally, the Company paid management oversight fees of \$286 and \$229 to the Buyer for the years ended December 31, 2021 and 2020, respectively. There were no management oversight fees due to the Buyer as of December 31, 2021 and 2020.

Leasing Arrangements

The Company leases its office space at its Charleston, South Carolina headquarters campus under the terms of three non-cancellable leases from entities that are or have been affiliated with a significant stockholder who was a former executive and Company director. In June 2021, the stockholder resigned as a director and executive chairman. As a result, the Company no longer considers these entities to be related parties as of July 1, 2021. The Company's headquarter campus building leases are accounted for as financing lease right-of-use assets and lease liabilities on the Consolidated Balance Sheets. The lease agreements have 15-year terms ending on December 31, 2031, with Company options to renew for five additional years. The arrangements provide for 3.0% fixed annual rent increases.

For the period January 1, 2021 to June 30, 2021, payments under these agreements were \$1,241. Payments under these agreements were \$15,137 and \$10,884 for the years ended December 31, 2020 and 2019, respectively. Amounts due to the related parties were \$667 as of December 31, 2020 and were recorded in "Accrued expenses". Payments made during the year ended December 31, 2020 include amounts paid in connection with the amendment of these leases described in Note 12.

Other Related Party Expenses

The Company utilizes the services of various companies that are owned and controlled by a significant stockholder who was also the former executive chairman and Company director. In June 2021, the stockholder resigned as a director and executive chairman. As a result, the Company no longer considers these companies to be related parties as of July 1, 2021. The companies provide construction project management services, private air transportation and other services. For the period January 1, 2021 to June 30, 2021, expenses related to these companies were \$37. Expenses related to these companies were \$177 and \$256 for the years ended December 31, 2020 and 2019, respectively. Amounts due to the related parties were de minimis as of December 31, 2020.

BENEFITFOCUS.COM, INC.

AMENDMENT TO EMPLOYMENT AGREEMENT

THIS AMENDMENT TO EMPLOYMENT AGREEMENT (this “**Amendment**”) is made and entered into this 28th day of February 2022, by and between: Benefitfocus.com, Inc., having its principal place of business at 100 Benefitfocus Way, Charleston, SC 29492, (hereinafter referred to as “**Benefitfocus**”) and Alpana Wegner (hereinafter referred to as the “**Associate**”).

WHEREAS, Associate and Benefitfocus previously entered into an Employment Agreement dated as of August 25, 2020 (the “**Employment Agreement**”);

WHEREAS, Associate and Benefitfocus wish to alter certain terms of the Employment Agreement with regard to Associate’s post termination compensation; and

WHEREAS, in light of the foregoing, Associate and Benefitfocus desire to mutually and voluntarily amend the Employment Agreement, pursuant to the terms as set forth herein, effective as of February 28, 2022 (the “**Amendment Effective Date**”).

NOW, THEREFORE, in consideration of the foregoing, the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows.

1. AMENDMENT TO SECTION 8.a. OF EXHIBIT B TO THE EMPLOYMENT AGREEMENT. Section 8.a. of Exhibit B shall be deleted and replaced with the following:

a. In the event that Benefitfocus or its acquirer terminates your employment without Cause, as defined herein, or upon your resignation for Good Reason, as defined herein (each a “trigger event”), at the time of or within twelve (12) months of the Change in Control, as defined herein, then upon your execution of a general release of claims satisfactory to Benefitfocus or its acquirer within the time allowed for execution (but not more than 59 days following the termination of employment date), which release is not revoked by you during any revocation period allowed by law, Benefitfocus or its acquirer will provide you with the following severance benefits: (i) salary continuation for a period of twelve (12) months at your then-current rate of base salary (which shall be paid in substantially equal installments in accordance with Benefitfocus’ payroll practice, commencing within 30 days after a Release becomes irrevocable); (ii) a pro rata portion of your then-current target bonus amount, based on days worked in the calendar year, commencing on the first regularly scheduled pay day that is at least sixty (60) days after the date of your termination; (iii) if you are eligible for, elect and remain eligible for COBRA continuation coverage, Benefitfocus or its acquirer will pay the same percentage of the premium it was paying prior to termination during the period you are receiving salary continuation; and (iv) to the extent the RSU and PSU awards referenced in this Agreement, or any other stock rights (as that term is defined in the plan) that have been granted to Associate have not been fully vested prior to such termination without cause or resignation for good reason, then upon that trigger event all unvested RSUs, PSUs and

Stock Rights shall immediately vest in full to Associate. For the avoidance of doubt, PSUs that are already “earned” and now are just time-based RSUs for the earned share amount for some remaining time-based vesting schedule, those PSUs will accelerate in the same way RSUs would. For PSUs that are not yet “earned” as the performance period is still active/pending, those PSUs will be converted to RSUs at the target share amount at the time of the Change in Control. In the event of any conflict or interpretation issues between this clause (iv) and the Plan, or any document setting forth the terms of any such RSU, PSU or Stock Right, the terms of clause (iv) shall prevail and control.

2. AMENDMENT TO SECTION 8.b. OF EXHIBIT B TO THE EMPLOYMENT AGREEMENT. Section 8.b. of Exhibit B shall be deleted and replaced with the following:

b. In the event that Benefitfocus terminates your employment without Cause, or your resignation for Good Reason, as defined herein, at any time prior to a Change in Control, as defined herein, then upon your execution of a general release of claims satisfactory to Benefitfocus within the time allowed for execution, (but not more than 59 days following the termination of employment date), which release is not revoked by you during any revocation period allowed by law, Benefitfocus will provide you with (i) salary continuation for a period of twelve (12) months at your then-current rate of base salary (which shall be paid in substantially equal installments in accordance with Benefitfocus’ usual and customary payroll schedule, commencing within 30 days after a Release becomes irrevocable); (ii) a pro rata portion of your then-current target bonus amount, based on days worked in the calendar year, commencing on the first regularly scheduled pay day that is at least sixty (60) days after the date of your termination; (iii) if you are eligible for, elect and remain eligible for COBRA continuation coverage, Benefitfocus or its acquirer will pay the same percentage of the premium it was paying prior to termination during the period you are receiving salary continuation; and (iv) to the extent the RSU and PSU awards referenced in this Agreement, or any other stock rights (as that term is defined in the plan) that have been granted to you in have not been fully vested prior to such termination without Cause or resignation for Good Reason, then upon that trigger event all unvested RSUs, PSUs and stock rights that would have vested in the twelve (12) month period following the Termination Date shall immediately vest and become exercisable. In the event of any conflict or interpretation issues between clause (iv) of the preceding sentence and the Plan, or any document setting forth the terms of any such RSU, PSU or stock right, the terms of clause (iv) shall prevail and control.

3. REMAINDER OF EMPLOYMENT AGREEMENT. Except as expressly set forth in this Amendment, the provisions of the Employment Agreement shall remain in full force and effect, in their entirety, in accordance with their terms.

4. MISCELLANEOUS. This Amendment shall be governed, construed, and interpreted in accordance with the laws of the State of South Carolina, without giving effect to conflicts of laws principles. The parties agree that this Amendment may only be modified in a signed writing executed by both parties. This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns. This Amendment may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one agreement. Facsimile or PDF reproductions of original signatures will be deemed binding for the purpose of the execution of this Amendment.

Signed, sealed and delivered in the presence of:
BENEFITFOCUS

ASSOCIATE

By: /s/ Matt Levin
Name: Matt Levin
Title: Chief Executive Officer

By: /s/ Alpana Wegner
Name: Alpana Wegner

Date: March 2, 2022

Date: March 2, 2022

(Amendment to the Employment Agreement)

**DESCRIPTION OF THE REGISTRANT'S SECURITIES
REGISTERED PURSUANT TO SECTION 12 OF THE
SECURITIES EXCHANGE ACT OF 1934**

The authorized capital stock of Benefitfocus, Inc. consists of 95,000,000 shares of common stock, \$0.001 par value per share, and 5,000,000 shares of preferred stock, par value \$0.001 per share. The following description summarizes the material terms of our capital stock. Because it is only a summary, it does not contain all the information that may be important to you. For a complete description of our capital stock, you should refer to our restated certificate of incorporation, as amended, or our "restated certificate", and our second amended and restated bylaws, or our "restated bylaws", which are included as exhibits to this Annual Report on Form 10-K, and to the provisions of applicable Delaware law.

As used in this exhibit, the terms "Benefitfocus, Inc.," "Benefitfocus," "Company," "company," "we," "us," and "our" mean Benefitfocus, Inc.

Common Stock

Holders of our common stock are entitled to the following rights.

- *Dividend Rights.* Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of outstanding shares of our common stock are entitled to receive dividends out of funds legally available at the times and in the amounts that our board of directors may determine. All dividends are non-cumulative.
- *Voting Rights.* The holders of our common stock are entitled to one vote for each share of common stock held on all matters submitted to a vote of the stockholders, including the election of directors. Our restated certificate and restated bylaws do not provide for cumulative voting rights.
- *No Preemptive or Similar Rights.* The holders of our common stock have no preemptive, conversion, or subscription rights, and there are no redemption or sinking fund provisions applicable to our common stock.
- *Right to Receive Liquidation Distributions.* Upon our liquidation, dissolution or winding-up, the assets legally available for distribution to our stockholders would be distributable ratably among the holders of our common stock and any participating preferred stock outstanding at that time after payment of liquidation preferences, if any, on any outstanding shares of preferred stock and payment of other claims of creditors.
- *Fully Paid and Non-Assessable.* All of the outstanding shares of our common stock are fully paid and non-assessable.
- *Potential Adverse Effect of Future Preferred Stock.* The rights, preferences and privileges of the holders of common stock are subject to, and might be adversely affected by, the rights of the holders of shares of any series of our preferred stock that we may designate and issue in the future.

Preferred Stock

Our board of directors is authorized, subject to limitations prescribed by Delaware law, to issue up to 5,000,000 shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each series, and to fix the designation, powers, preferences and rights of the shares of each series and any of its qualifications, limitations or restrictions, in each case without further

action by our stockholders. Our board also can increase or decrease the number of shares of any series of preferred stock, but not below the number of shares of that series then outstanding unless approved by the affirmative vote of the holders of a majority of our capital stock entitled to vote, or such other vote as may be required by the certificate of designation establishing the series. Our board may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of our common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring, or preventing a change in our control or the removal of management and might adversely affect the market price of our common stock and the voting and other rights of the holders of our common stock.

Series A Convertible Preferred Stock

On June 4, 2020, we filed a certificate of designations (the "Certificate of Designations") with the Secretary of State of the State of Delaware creating our Series A Convertible Preferred Stock (the "Series A Preferred Stock") and establishing the designations, preferences, and other rights of the Series A Preferred Stock, which became effective upon filing. In connection with the issuance of the Series A Preferred Stock, we also entered into a preferred stock purchase agreement (the "Purchase Agreement"), which included certain additional rights for the holders of the Series A Preferred Stock. We issued 1,777,778 shares of the Series A Preferred Stock, each with an initial stated value of \$45 per share.

The holders of our Series A Preferred Stock are entitled to the following rights.

- *Dividend Rights.* Pursuant to the Certificate of Designations, the holders of outstanding shares of our Series A Preferred Stock are entitled to a dividend equal to 8.00% per annum (the "Regular Dividends"), which are paid quarterly, beginning on June 30, 2020. The Regular Dividends are payable in cash or in kind, at our option. In the event a Regular Dividend is paid in kind, the stated value of each share of the Series A Preferred Stock will be increased by an amount equal to the accrued Regular Dividend not paid in cash. Holders of the Series A Preferred Stock are also entitled to participate in and receive any dividends declared or paid on the common stock on an as-converted basis, and no dividends may be paid to holders of the common stock unless full participating dividends are concurrently paid to the holders of the Series A Preferred Stock.
 - *Conversion Rights.* Pursuant to the Certificate of Designations, each holder of our Series A Preferred Stock has the right, at its option, to convert its shares of the Series A Preferred Stock, in whole or in part, into fully paid and non-assessable shares of the common stock, at any time and from time to time. The number of shares of the common stock into which a share of the Series A Preferred Stock will convert at any time is equal to the quotient obtained by dividing (I) the sum of (x) the stated value then in effect with respect to such share, and (y) an amount equal to accumulated and unpaid Regular Dividends on such share of the Series A Preferred Stock (but only to the extent such accumulated and unpaid Regular Dividends are not included in the stated value referred to in the preceding clause (x)); by (II) \$15.00, subject to customary anti-dilution adjustments, including in the event of any stock split, stock dividend, recapitalization or similar events. At closing, before payment of any dividends in kind, the 1,777,778 shares of the Series A Preferred Stock would be convertible into 5,333,334 shares of common stock. Unless and until approval of our stockholders is obtained as contemplated by the Nasdaq listing rules, no holder of the Series A Preferred Stock may convert shares of the Series A Preferred Stock into shares of common stock if and to the extent that such conversion would result in the holder beneficially owning in excess of 19.9% of the then-outstanding shares of the common stock (the "Ownership Limitation").
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- *Redemption Rights.* Pursuant to the Certificate of Designations, our Company may, at our option, redeem the outstanding shares of the Series A Preferred Stock following the fourth anniversary of their issuance. Redemption by our Company is subject to certain liquidity conditions as well conditions connected with the trading price of our common stock. Upon redemption by our Company, we will pay the holders of the Series A Preferred Stock 105% of the initial stated value of such share plus any increase in the stated value from the initial stated value plus accumulated and unpaid Regular Dividends. If our Company undergoes a change of control, as defined in the Certificate of Designations, we must redeem all of the then-outstanding shares of the Series A Preferred Stock for cash consideration equal to the greater of the amount due for redemption as described above and the amount such holder of shares of the Series A Preferred Stock would have received in respect of the number of shares of the common stock that would be issuable upon conversion of such share of the Series A Preferred Stock.
 - *Voting Rights.* Pursuant to the Certificate of Designations, holders of the Series A Preferred Stock will generally be entitled to vote with the holders of the shares of the common stock on all matters submitted for a vote of holders of shares of the common stock (voting together with the holders of shares of the common stock as one class) on an as-converted basis, subject to the Ownership Limitation. Additionally, certain matters will require the approval of the holders of a majority of the outstanding shares of the Series A Preferred Stock, voting as a separate class, including, *inter alia*: (1) the authorization, creation, or issuance of any securities of our Company having rights, preferences, or privileges senior to or on a parity with any of the rights, preferences, or privileges of the Series A Preferred Stock; (2) amendments, modifications or repeal of any provision of our charter or bylaws in a manner adverse to the Series A Preferred Stock; (3) changes in the authorized number of directors of our Company to a number greater than 10 individuals; (4) effecting any transaction between our Company and any of its affiliates (except for certain circumstances); (5) declaration or payment of any dividend or distribution with respect to any of our capital stock at any time we have any indebtedness outstanding; and (6) incurring any indebtedness in excess of \$500 million (including existing indebtedness excluding lease obligations).
 - *Preferred Stock Directors.* Pursuant to the Certificate of Designations, as long as not less than 60% of the shares of the Series A Preferred Stock originally issued remain outstanding, the holders of a majority of the then-outstanding shares of the Series A Preferred Stock, voting together as a single class, will have the right at any election of directors to elect (A) two directors if the Board consists of nine or fewer directors; or (B) three directors if the Board consists of 10 directors (the "Preferred Stock Directors"). At any time, a Preferred Stock Director may be removed with or without cause only by the affirmative vote or written consent of a majority of the holders of the Series A Preferred Stock entitled to elect such director.
 - *Right to Receive Liquidation Distributions.* Pursuant to the Certificate of Designations, upon our liquidation, dissolution or winding-up, the assets or funds legally available for distribution to our stockholders would be distributable to the holder of our Series A Preferred Stock subject to the rights of any of our creditors and the change in control redemption, on any outstanding shares of Series A Preferred Stock. The Series A Preferred Stock rank senior to our common stock, with respect to dividends and distributions on liquidation, winding-up and dissolution.
 - *No Preemptive or Similar Rights.* The holders of our Series A Preferred Stock have no preemptive, or subscription rights, and there are no redemption or sinking fund provisions applicable to our Series A Preferred Stock.
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- *Restrictions on Transfer.* Pursuant to the Purchase Agreement, until the earliest of (i) May 30, 2024 and (ii) receipt of a notice of Company redemption by the holders of the Series A Preferred Stock, the holders of the Series A Preferred Stock will not sell, transfer or otherwise dispose of the shares of the Series A Preferred Stock or the underlying shares of the common stock, subject to limited exceptions (including exceptions in the case of transfers to certain permitted transferees).

Additionally, the holders of our Series A Preferred Stock are subject to a Co-Sale and Voting Agreement dated June 4, 2020, as amended on January 26, 2021 (the "Voting Agreement", and the signatories thereto, the "Stockholders"). Pursuant to the Voting Agreement, the Stockholders agreed, *inter alia*, that except in the case of certain exempted transfers or offerings, a Stockholder who proposes to transfer any of its shares must give the other Stockholder 14 days advance written notice of such transfer, and that the other Stockholder, within seven days of receipt of such notice, may elect to participate in such transfer on a pro rata basis based on the number of shares of common stock then beneficially owned by each, on an as-converted basis.

- *Standstill Period.* Pursuant to the Purchase Agreement, so long as the holders collectively hold not less than 10% of the shares of the Series A Preferred Stock originally purchased by them (the "Standstill Period"), subject to customary exceptions, the holders will be limited in their ability to acquire additional shares of the common stock with voting rights; enter into a merger or business combination involving our Company; solicit proxies with respect to the common stock; deposit any common stock in a voting trust; join a group for the purpose of acquiring, holding, voting or disposing of the common stock; take any action which would reasonably be expected to require us to make a public announcement regarding the possibility of a business combination or merger; publicly disclose any intentions inconsistent with any of the foregoing; knowingly advise other persons in connection with any of the foregoing; or publicly request that we waive any of the foregoing restrictions.

Registration Rights

In connection with our IPO, we entered into a Second Amended and Restated Investors' Rights Agreement, or the "Investor Rights Agreement", with the holders (as defined therein), which we subsequently amended in February 2015. In connection with the issuance of our Preferred Stock, we entered into a Registration Rights Agreement, or Rights Agreement, with the holders thereof, dated June 4, 2020.

Investor Rights Agreement

Pursuant to the Investor Rights Agreement, as amended, certain holders have the right, subject to various conditions and limitations, to include their shares in registration statements relating to our securities. The holders of at least 6 2/3% of the then outstanding shares subject to these registration rights have the right to demand that we register such shares under the Securities Act of 1933, as amended, or the "Securities Act", with respect to shares having an aggregate offering price of at least \$5,000,000, and subject to other limitations. In addition, these holders are entitled to piggyback registration rights with respect to the registration under the Securities Act of shares of common stock. In the event that we propose to register any shares of common stock under the Securities Act either for our account or for the account of other security holders, the holders of shares having piggyback registration rights are entitled to receive notice of such registration and to include shares in any such registration, subject to limitations. Further, at any time after we become eligible to file a registration statement on Form S-3, the holders of at least 5% of the shares subject to these registration rights may require us to file registration statements under the Securities Act on Form S-3 with respect to shares of common stock having an aggregate offering price, net of selling expenses, of at least \$5,000,000. To the extent that we qualify as a well-known seasoned issuer at the time a requisite number of holders demand the registration of shares subject to these registration rights, we will file an automatic shelf registration statement covering the shares for which registration is demanded if so requested by the holders of such shares. These registration rights are subject to conditions and limitations, among them the right of the underwriters of an

offering to limit the number of shares of common stock held by such security holders to be included in such registration. We are generally required to bear all of the expenses of such registrations, including reasonable fees of a single counsel acting on behalf of all selling Holders, except underwriting discounts, selling commissions and stock transfer taxes applicable to the sale.

Rights Agreement

Pursuant to the Rights Agreement, we agreed to file a registration statement registering for resale the shares of common stock issuable upon conversion of the Preferred Stock within 30 calendar days from the date of the Purchase Agreement (as defined therein). We are generally required to bear all of the expenses of such registrations, including reasonable fees of a single counsel acting on behalf of the holders of Preferred Stock. The registration statement on Form S-3 required by the Rights Agreement was filed pursuant on June 24, 2020 and was declared effective on July 1, 2020.

Convertible Notes

In December 2018, we issued \$240.0 million in aggregate principal amount of 1.25% Convertible Senior Notes due in 2023, or the "Notes". The Notes are senior unsecured obligations of our Company.

In connection with the issuance of the Notes, we entered into an indenture, dated December 27, 2018, or the "Indenture", with U.S. Bank National Association, as trustee. The Indenture includes customary covenants and sets forth certain events of default after which the Notes may be declared immediately due and payable and sets forth certain types of bankruptcy or insolvency events of default involving our Company after which the Notes become automatically due and payable. The Indenture does not restrict our ability to incur additional indebtedness.

The Notes will mature on December 15, 2023, unless earlier converted, redeemed or repurchased in accordance with their terms. The Notes will bear interest from December 27, 2018 at a rate of 1.25% per year payable semi-annually in arrears on June 15 and December 15 of each year, beginning on June 15, 2019. The Notes will be convertible at the option of the holders at any time prior to the close of business on September 14, 2023, only under the following circumstances:

- during any calendar quarter commencing after the calendar quarter ending on March 31, 2019 (and only during such calendar quarter), if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day;
- during the five business day period after any five consecutive trading day period, or the "Measurement Period", in which the Trading Price (as defined in the Indenture) per \$1,000 principal amount of Notes for each trading day of the Measurement Period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate in effect on each such trading day;
- if we call any or all of the Notes for redemption, at any time prior to the close of business on September 14, 2023; or
- upon the occurrence of specified corporate events.

On or after September 15, 2023, until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert all or any portion of their Notes, in multiples of \$1,000 principal amount, at the option of the holder regardless of the foregoing circumstances.

Upon conversion, we may satisfy the conversion obligation by paying or delivering, as the case may be, cash, shares of our common stock or a combination of cash and shares of our common stock, at our election, in the manner and subject to the terms and conditions provided in the Indenture. The initial conversion rate for the Notes will be 18.8076 shares of our common stock per \$1,000 principal amount of

Notes, which is equivalent to an initial conversion price of approximately \$53.17 per share of our common stock. The conversion rate is subject to adjustment under certain circumstances in accordance with the terms of the Indenture.

We may redeem for cash all or any portion of the Notes, at our option, on or after December 20, 2021, if the last reported sale price of our common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately preceding the date on which we provide notice of redemption at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date. No sinking fund is provided for the Notes.

If we undergo a Fundamental Change (as defined in the Indenture), subject to certain conditions, holders may require us to repurchase for cash all or any portion of their Notes in principal amounts of \$1,000 or an integral multiple thereof, at a fundamental change repurchase price equal to 100% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date.

In connection with the offering of the Notes, we entered into privately negotiated capped call transactions with certain counterparties affiliated with the initial purchasers and others. The capped call transactions are expected generally to reduce the potential dilution to our common stock upon any conversion of the Notes and/or offset any cash payments we are required to make in excess of the principal amount of converted Notes, as the case may be, with such reduction and/or offset subject to a cap based on the cap price. The cap price of the capped call transactions is initially \$89.98 per share and is subject to certain adjustments under the terms of the capped call transactions.

During the three months ended September 30, 2021 and 2020, we repurchased Notes with an aggregate principal amount of approximately \$100.18 million and \$18.75 million, respectively. In connection with the repurchase of the Notes, we terminated related portions of the capped call transactions.

CERTAIN PROVISIONS OF DELAWARE LAW, OUR RESTATED CERTIFICATE AND RESTATED BYLAWS

The provisions of Delaware law, our restated certificate, and our restated bylaws may have the effect of delaying, deferring, or discouraging another person from acquiring control of our Company.

Delaware Law. We are governed by the provisions of Section 203 of the Delaware General Corporation Law. In general, Section 203 prohibits a public Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a period of three years after the date of the transaction in which the person became an interested stockholder unless:

- 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;
- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding shares owned by persons who are directors and also officers and by specified employee stock plans; or
- at or subsequent to the date of the transaction, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested stockholder.

A “business combination” includes mergers, asset sales or other transactions resulting in a financial benefit to the stockholder. In general, an “interested stockholder” is a person who, together with affiliates and associates, owns, or within three years did own, 15% or more of the corporation’s outstanding voting

stock. These provisions may have the effect of delaying, deferring, or preventing a change in our control. Because the Goldman Funds beneficially held more than 15% of our shares at the time we became subject to Delaware law, our restated certificate exempts the Goldman Funds and their affiliates from being an “interested stockholder” within the meaning of Section 203.

Restated Certificate and Restated Bylaw Provisions. Various provisions of our restated certificate and restated bylaws could deter hostile takeovers or delay or prevent changes in control of our management team, including the following:

- **Board of Directors Vacancies.** Our restated certificate and restated bylaws authorize only our board or the stockholders at a duly called meeting for that purpose to fill vacant directorships. In addition, the number of directors constituting our board is permitted to be set only by a resolution adopted by a majority of our board. These provisions would prevent a stockholder from increasing the size of our board and then gaining control of our board by filling the resulting vacancies with its own nominees.
- **Classified Board.** Our restated bylaws previously provided that our board was to be classified into three classes of directors. At the 2021 annual meeting of stockholders, our stockholders approved an amendment to our Restated Certificate to declassify the board and provide for the annual election of directors (the “Charter Declassification Amendment”). Pursuant to the terms of the Charter Declassification Amendment, the directors elected prior to the 2021 annual meeting will continue to serve the remaining portion of their three-year terms, but directors elected at or after the 2021 annual meeting were and will be elected to one-year terms. Accordingly, the entire Board will be elected on an annual basis at the Company’s 2023 annual meeting of stockholders and at each annual meeting of stockholders thereafter. Until our entire board is elected on an annual basis, the phased-out declassification could delay a successful tender offeror from obtaining majority control of our board of directors, and the prospect of that delay might deter a potential offeror.
- **Stockholder Action; Special Meeting of Stockholders.** Under our restated bylaws, our stockholders may no longer take action by written consent, and may only take action at annual or special meetings of our stockholders. Our restated bylaws further provide that special meetings of our stockholders may be called only by a majority of our board, the chairman of our board, by such other person the board expressly authorizes to call a special meeting, or by stockholders representing at least 35% of the votes entitled to be cast on any issue proposed to be considered at such special meeting.
- **Advance Notice Requirements for Stockholder Proposals and Director Nominations.** Our restated bylaws provide advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders, or to nominate candidates for election as directors at our annual meeting of stockholders. To be timely, a stockholder’s notice must be delivered to, or mailed and received at, our principal executive offices not less than 90 days nor more than 120 days prior to the first anniversary of the date of our notice of annual meeting provided with respect to the previous year’s annual meeting of stockholders; provided, that if no annual meeting of stockholders was held in the previous year or the date of the annual meeting of stockholders has been changed to be more than 30 calendar days earlier or 60 days later than such anniversary, notice by the stockholder, to be timely, must be received not earlier than the 120th day nor later to the 90th day prior to the date of such annual meeting or, if later, the 10th day following the date we publicly disclose the date of the annual meeting. Our restated bylaws also specify certain requirements regarding the form and content of a stockholder’s notice. These provisions might preclude our stockholders from bringing matters before our annual meeting of stockholders or from making nominations for directors at our annual meeting of stockholders.
- **Issuance of Undesignated Preferred Stock.** Our board of directors has the authority, without further action by our stockholders, to issue shares of undesignated preferred stock with rights and preferences, including voting rights, designated from time to time by our board. Our board may utilize these shares for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefits plans. The existence of authorized and unissued shares of preferred stock would enable our board to render more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest or other means. If we issue such shares without stockholder approval and in violation of limitations imposed by any stock exchange on which our stock may then be trading, our stock could be delisted.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Broadridge Corporate Issuer Solutions, Inc.

Stock Exchange Listing

Our common stock is listed on the Nasdaq Global Market under the symbol “BNFT”.

PORTIONS OF THIS EXHIBIT MARKED [*] HAVE BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE SUCH INFORMATION IS BOTH NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

**MASTER BUSINESS AGREEMENT
BETWEEN
AETNA LIFE INSURANCE COMPANY
AND
BENEFITFOCUS.COM, INC.**

This Master Business Agreement (this “MBA”) is entered into this day of November 28, 2006 (the “MBA Effective Date”) by and between Aetna Life Insurance Company, a Connecticut corporation with its principal place of business located at 151 Farmington Avenue, Hartford, CT 06156 (“Aetna”) and Benefitfocus.com, Inc., a South Carolina, corporation with its principal place of business located at 100 Benefitfocus Way, Charleston, South Carolina, 29492, (“Supplier”), (individually a “Party” and collectively the “Parties”).

WHEREAS, the purpose of this MBA is to establish legally binding terms and conditions between the Parties for placing and accepting prospective future business engagements as of the MBA Effective Date and occasionally thereafter until otherwise terminated; and

WHEREAS, the Parties may enter into one or more written instruments (each an “Attachment”) as may be necessary to encompass certain terms of the business relationship; and

WHEREAS, the Parties may enter into one or more written instruments (each a “Schedule”) which shall set forth the business specifications pursuant to an applicable Attachment(s) and this MBA; and

WHEREAS, Supplier understands and agrees that Aetna offers no commitment or guarantee of any minimum purchases or revenues under this MBA and Supplier may not be Aetna’s sole supplier.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein recited and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, warrant, covenant, understand and agree as follows:

1. DEFINITIONS. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in an Attachment or Schedule. For the purposes of this Agreement:

- A. “Affiliate” means any company that (i) controls, (ii) is controlled by or (iii) is under common control with either Party or its parent corporation. A company shall be deemed to control a company if it has the power to direct or cause the direction of the management or policies of such company, whether through the ownership of voting securities, by contract, or otherwise.
 - B. “Agreement” means this MBA and any Attachments, Schedules or any exhibits or appendices hereto.
 - C. “Attachment” means mutually executed written instruments that, in addition to this MBA, set forth certain relevant terms and conditions regarding the business relationship by and between the Parties, and specifically refer to this Agreement.
 - D. “Deliverables” may mean the reports, documents, templates, studies, strategies, operating models, technical architectures, design ware, software objects, Programs, source code, object code, specifications, Documentation, abstracts and summaries thereof and other work product and materials originated and prepared for Aetna and to be delivered by Supplier pursuant to this MBA.
 - E. “Divested Entity” means any subsidiary, Affiliate, division, department or line of business of Aetna or of an Affiliate that loses its relationship with Aetna as a result of divestiture or otherwise.
 - F. “Force Majeure” means acts of God, civil or military authority, acts of the public enemy, acts of terrorism, war, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, the elements of any other cause beyond the reasonable control of such Party.
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- G. “Materials” means any and all technical notes, tangible and intangible property, reports, and work products required to be delivered by Supplier in connection with the work hereunder, whether in draft or completed form excluding any Supplier Technology and the Program(s).
- H. “Schedule(s)” means a mutually executed written instrument that sets forth the relevant purchase or acquisition information, term, fees, dates for performance and such other information as the Parties deem necessary and appropriate. Schedules shall be consecutively numbered for the purposes of identification. Each Schedule shall be incorporated into and subject to the terms of the Agreement.
- I. “Supplier Technology” means Supplier’s proprietary technology, including but not limited to, software tools, hardware designs, algorithms, Program (in source and object forms), user interface designs, architecture, class libraries, Documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by Supplier or licensed to Supplier from a third party) and also includes any derivatives, improvements, enhancements or extensions of Supplier Technology conceived, reduced to practice, or developed during the term of this Agreement by either Party that are not uniquely applicable to Aetna or that have general applicability in the software industry.
- 2. AFFILIATE RIGHTS.** All of the rights and obligations of Aetna hereunder shall extend to all Aetna Affiliates existing on the Effective Date, as well as to any Aetna Affiliates hereafter acquired, but only so long as an Affiliate relationship exists. Supplier agrees that in the event it believes it has an actionable claim against any Aetna Affiliate due to the failure of such Aetna Affiliate to comply with this Agreement, Supplier will only seek to satisfy its claim against Aetna and in consideration Aetna shall indemnify Supplier against all costs, liabilities and damages awarded to Supplier arising out of, or resulting from, any breach, omission or violation of its obligations by any Aetna Affiliate, arising out of, or related to, this Agreement. Excluding the foregoing, any reference to “Aetna” in this Agreement shall be deemed to include all Aetna Affiliates.

3. FEES/PAYMENT OF SERVICES/TAXES

- A. Fees. Conditioned upon the prior execution by both Parties of this MBA, the applicable Attachment and/or Schedule, Aetna shall pay to Supplier the fees specified in the applicable Statement of Work in accordance with the invoicing provisions below. Supplier shall receive no compensation in excess of the amount set forth in the applicable Schedule without Aetna’s prior written approval. Aetna shall not pay fees in advance unless otherwise agreed to in the applicable Schedule.
- B. Invoicing and Payment. Supplier shall electronically invoice Aetna for the fees set forth in the applicable Schedule. All invoices shall (i) reference Aetna’s purchase order number; (ii) use the fee or rate specified on the appropriate Schedule; and (iii) be sent in a timely manner to Aetna. Payment terms are [*] ([*]) [*] calculated from the date the invoice was received at Aetna’s Accounts Payable Department. Supplier will send all invoices to Aetna’s *Accounts Payable* Department Invoices submitted [*] after the invoice due date in the applicable Schedule shall be presumed to have been paid and it shall become Supplier’s burden to demonstrate otherwise. Invoices received [*] or more after the due date in the applicable Schedule shall be deemed null and void and Aetna shall be relieved of its obligation to pay them Aetna will electronically pay each invoice that complies with this Section 3.B. unless Aetna has some reasonable basis for non-payment. Failure by Aetna to make payments to Supplier that are reasonably disputed in writing shall not constitute a material breach of the Agreement. Immediately upon Aetna or Supplier determining that Aetna is owed a credit of any kind, Supplier shall itemize each such credit on a separate credit memo and submit the credit memo to Aetna. The Supplier will not apply outstanding credits to unpaid invoices. At Aetna’s option, Aetna may request that Supplier submit a check to Aetna in an amount equal to any such credit within [*] ([*]) [*] of Aetna’s request to do so.
- C. Disputed Payments. If Aetna disputes, in good faith, any amount on a Supplier invoice, Supplier and Aetna will use all reasonable efforts to resolve and settle such dispute within thirty (30) days after invoice date. Each party will provide full supporting documentation concerning any disputed amount within seven (7) business days after receipt of written request for such documentation. Aetna will have no obligation to make any payment of disputed charges on the invoice during the time it is subject to good-faith dispute. Once the invoice dispute is resolved and settled, Aetna will pay any amount due per the payment terms noted in Section 3.B.

If any payment dispute is not resolved within thirty days after the invoice date, Supplier and Aetna agree to submit the dispute to an expedited arbitration proceeding using the procedures set forth in Section 12.B, as modified by this Paragraph. Each Party agrees to cooperate fully in securing an expedited proceeding. Upon either Party’s demand for Arbitration, an Arbitrator shall be appointed within fourteen days from the demand. The fourteen day time limit

may be extended only by the written agreement of the Parties. The Arbitrator will give the Parties two potential hearing dates, which dates shall be within sixty days from the date of the demand for Arbitration. Within five calendar days of receipt of the potential dates, the Parties will mutually agree on one of the dates offered, and will so inform the Arbitrator. If neither date is acceptable to both Parties but the Parties can agree on two alternate dates, they will so advise the Arbitrator who will select one, if he/she is available. If no agreement can be made, the Arbitrator will weigh the equities between the Parties and select a date least burdensome on the Parties collectively. The Arbitrator will be responsible for making hearing room arrangements. Within the rules established by this Paragraph, the Arbitrator shall assure a fair and adequate hearing, providing both Parties a sufficient opportunity to present their respective evidence and arguments. The Arbitrator's decision must be made within fourteen days from the date of the adjournment of the hearing. The Arbitrator, by accepting the appointment, agrees to hold the hearing and issue a decision under the procedures and time limits set forth in this Paragraph.

- D. Taxes. Aetna shall be responsible for any applicable sales, use and excise taxes, but not for any taxes based upon Supplier's property or net income. Supplier agrees that Aetna shall have the right to bring any action against the taxing authority, when Aetna deems appropriate, to contest any assessment of taxes which Aetna must pay under this Agreement or to obtain a refund of such taxes, either in its own name or in the name of Supplier, provided that Aetna shall conduct such contest in good faith. Supplier agrees to provide Aetna with reasonable cooperation with respect to any such action. Aetna agrees to be solely responsible for determining, calculating and timely remitting the appropriate sales or use tax for any Services performed by Supplier.

4. TERM AND TERMINATION

- A. Term. The terms and conditions of this MBA shall become effective as of the MBA Effective Date and shall continue in perpetuity unless terminated pursuant to this Section. The term defined in each Attachment or Schedule shall be the term of that Attachment or Schedule only.

B. Termination.

- i. Termination for Convenience. Aetna may terminate this MBA or any Attachment or Schedule attached hereto for any reason with [*] ([*]) [*] prior written notice to Supplier, provided Aetna has paid all unpaid, one-time fees, all outstanding invoices, and all unpaid Services that have been performed. Termination of an individual Attachment or Schedule pursuant to this Section shall not effect the termination of this MBA.
- ii. Termination for Cause for Aetna. In addition to any provision of an Attachment or Schedule that provides Aetna with the right to terminate an Attachment or Schedule, in the event that of any one or more of the following occur, Aetna reserves the right to terminate this MBA or any or all Attachments or Schedules and have recourse to any other right or remedy under law and/or equity pursuant to the Agreement for the following conditions:
- a. Supplier has materially breached any provision of the Agreement and such breach remains uncured for thirty (30) days following receipt of written notice from Aetna; or
 - b. any deliverable or service is found to be unsatisfactory or inadequate in quality, condition or nature, in accordance with the business requirements and acceptance criteria set forth in the applicable Schedule; or
 - c. Unless specifically prohibited by law, any proceedings under the bankruptcy law or any state or local insolvency statutes are filed against the Supplier which remains undismissed or undischarged for a period of thirty (30) days; or Supplier files a petition in voluntary bankruptcy or seeks relief under any bankruptcy law or any state or local insolvency statutes; or Supplier consents to the appointment of or taking possession by a receiver, trustee or liquidator of itself or its property; or Supplier makes an assignment for the benefit of creditors.
- iii. Termination for Cause for Supplier. In addition to any provision of an Attachment or Schedule that provides Supplier with the right to terminate an Attachment or Schedule, in the event of any one or more of the following, Supplier reserves the right to terminate this MBA or any or all Attachments or Schedules and have recourse to any other right or remedy under law and/or equity pursuant to the Agreement for the following conditions:
- a. Aetna has materially breached any provision of the Agreement and such breach remains uncured for thirty (30) days following receipt of written notice from Supplier;
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- b. Aetna has failed to pay an undisputed claim and such claim goes unpaid for fifteen (15) days following receipt of written notice from Supplier.
 - c. Unless specifically prohibited by law, any proceedings under the bankruptcy law or any state or local insolvency statutes are filed against Aetna which remains undismissed or undischarged for a period of thirty (30) days; or Aetna files a petition in voluntary bankruptcy or seeks relief under any bankruptcy law or any state or local insolvency statutes; or Aetna consents to the appointment of or taking possession by a receiver, trustee or liquidator of itself or its property; or Aetna makes an assignment for the benefit of creditors.
- C. **Early Termination.** Any notice of termination shall specify the Early Termination Date. In the event this Agreement or a Schedule is terminated prior to completion of the Services or delivery of the Program, Supplier's and Aetna's respective rights and duties under shall continue in full force and effect until midnight, Hartford, Connecticut time on the Early Termination Date. As of the Early Termination Date, Supplier shall discontinue all work. Pending Aetna's instructions, Supplier shall preserve and protect all Deliverables and Materials on hand, work in progress, data, and completed work, both in its own and in any third party's facilities. Aetna shall have the immediate right to possession and ownership of the current draft of the Materials produced through the Early Termination Date. If Aetna is terminating for reasons other than convenience, Supplier shall not be entitled to any additional fees or expenses as of the Early Termination Date. Regardless of the reason of such termination, Supplier shall not be entitled to any prospective profits or damages because of such termination and Supplier shall refund promptly to Aetna any undisputed fees paid by Aetna hereunder which Supplier did not earn prior to the Early Termination Date.
- D. **Termination Transition.** In connection with the expiration or termination of this Agreement and any applicable Schedule prior to completion of Services, Supplier will comply with Aetna's reasonable directions to effect the orderly transition and migration to Aetna or Aetna's designee from Supplier of all Services then being performed by Supplier or which Supplier is then responsible for performing under the Agreement or applicable Schedule (the "Termination Transition"). Supplier will assist in the Termination Transition for a period mutually agreed upon in writing by Aetna and Supplier. Aetna's designee and its employees and agents will cooperate in good faith with Supplier in connection with Supplier's obligations under this section and Aetna's designee will perform its obligations under any approved transition plan developed by Aetna. Supplier will develop and submit to Aetna for approval a transition plan setting forth the respective tasks to be accomplished by each party in connection with the orderly transition and a schedule pursuant to which the tasks are to be completed.
- E. **Effect of Termination.** Within [*] ([*]) [*] termination of the Agreement or any Schedule for any reason, Supplier shall promptly refund to Aetna any prepaid fees, excluding Maintenance Services fees, associated with the applicable Schedule. There shall be [*] of any kind [*] for the cancellation or termination of this Agreement and/or any applicable Schedule. Promptly upon termination, or at any time upon Aetna's request, Supplier shall promptly return in a manner, method and format specified by Aetna, [*] to Aetna, or, at Aetna's option, destroy,

all (or, if Aetna so requests, any part) of Aetna's Confidential Information and/or Materials, and all copies thereof and other materials containing such Confidential Information and/or Materials, and Supplier shall certify in writing its compliance with the foregoing.

5. CONFIDENTIALITY

- A. **Health Insurance Portability and Accountability Act ("HIPAA").** Supplier will, or is likely to, have access to, create, maintain, transmit and/or receive certain Protected Health Information in conjunction with the Services and/or products being provided under this Agreement. In conformity with the regulations at 45 C.F.R. Parts 160-164, implementing the privacy and security requirements set forth in the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (the "Privacy and Security Rules"), the Parties have entered into a written agreement that meets the applicable requirements of the Privacy and Security Rules and such written agreement is attached hereto and made a part hereof as Exhibit A.
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- B. Gramm-Leach-Bliley Act (“GLBA”). Supplier will, or is likely to, have access to, create, maintain, transmit and/or receive certain protected Customer Information in conjunction with the Services and/or products being provided under this Agreement. Various state departments of insurance have promulgated regulations regarding the safeguarding of certain Customer Information, as required by the federal Gramm-Leach-Bliley Act (“GLBA”). In conformity with such regulations, implementing the requirements set forth in the Administrative Simplification provisions of the Gramm-Leach-Bliley Act (the “Safeguard Rules”), the Parties have entered into a written agreement that meets the applicable requirements of the Safeguard Rules and such written agreement is attached hereto and made a part hereof as Exhibit B.
- C. Definition of Confidential Information. For the purpose of this Agreement, “Aetna Confidential Information” shall include information concerning Aetna’s providers and/or suppliers performing services or providing products for or on behalf of Aetna’s enrollees or members; shall include all financial, technical and other information in any form (including all copies thereof) which is reasonably considered proprietary to Aetna or any of its Affiliates, including, but not limited to, information or materials related to the business affairs or conditions of Aetna and its Affiliates; policies and/or procedures; Aetna’s strategies or initiatives; or to the design, programs, flow charts, and documentation of Aetna’s data processing applications and software, whether or not such applications and software are owned by Aetna. “Aetna Confidential Information” also includes any reports, notes, summaries, excerpts, work product, or other documents utilizing or incorporating Aetna Confidential Information whether in whole or in part, and oral presentations or discussions describing, elaborating upon, or otherwise relating to Aetna Confidential Information. Should Aetna disclose to Supplier or a Supplier employee, or should Supplier or Supplier employee learn of Aetna Confidential Information, Supplier agrees that neither Supplier nor the Supplier employee shall, at any time during or after the term of this Agreement, disclose such information to any individual, company or other entity or agency, nor use such Aetna Confidential Information for Supplier’s own advantage other than in performance of this or any subsequent similar Agreement with Aetna.

For the purpose of this Agreement, “Supplier Confidential Information” shall include the Program(s), Supplier Technology and other proprietary inventions, source codes, trade secrets, proprietary processes and formulae, patents, financial information, or any other document based thereon which is labeled “Confidential” (or, if disclosed orally, is identified at the time of such oral disclosure as “Confidential” and within five (5) days followed with written notice that such disclosure is Confidential). Should Supplier disclose to Aetna or an Aetna employee, or should Aetna or Aetna employee learn of Supplier Confidential Information, Aetna agrees that neither Aetna nor the Aetna employee shall, at any time during or after the term of this Agreement, disclose such information to any individual, company or other entity or agency, nor use such Supplier Confidential Information for Aetna’s own advantage other than in performance of this or any subsequent similar Agreement with Supplier.

- D. Non-Disclosure of Confidential Information. The receiving Party agrees to use the Confidential Information solely for the purpose stated above and shall limit disclosure of the Confidential Information solely to those employees who are required to access the Confidential Information. Copying and reproduction shall be done to the minimum extent necessary. Neither Party shall copy, reproduce, sell, assign, license or disclose any Confidential Information it receives from the other Party to any other person, Affiliate, firm, or corporation, or

other entity or agency. Each Party warrants that it will apply commercially reasonable safeguards to protect the Confidential Information received from the other Party against unlawful or otherwise unauthorized access, use and disclosure and to take any other steps reasonably necessary to safeguard Confidential Information. Within thirty (30) days of receipt of written request from the other Party, each Party agrees to return to the other Party, or to destroy and to delete from any of its electronic storage devices, all Confidential Information received from the other, in whatever form.

- E. Electronic Transmission. Both Parties acknowledge that neither Party has control over the performance, reliability, availability, or security of Internet e-mail. Supplier will submit Supplier’s policies and procedures on Internet communications to Aetna for its review to ensure that such policies and procedures meet Aetna’s security and confidentiality requirements. Supplier agrees to follow prudent, industry standard, best practices with regards to maintaining the security of electronic transmissions. In the event that Aetna has not reviewed and accepted Supplier’s policies, no Confidential Information shall be transmitted via the Internet.

- F. Exceptions. The Parties hereto agree that information shall not be deemed proprietary and each Party shall have no obligation with respect to any information which:

- i. is or falls into the public domain through no wrongful act of the receiving Party;
 - ii. is rightfully received from a third party without restriction and without breach of this Agreement;
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iii. is approved for release by written authorization of an officer of the disclosing Party; or

iv. is already in receiving Party's possession as evidenced by its records and is not the subject of a separate non-disclosure agreement.

The receiving Party retains the right to disclose the Confidential Information pursuant to the requirements of a governmental agency or operation of law. If legally permissible and to the extent possible, the receiving Party will give prior notice to the disclosing Party of such disclosure, so that disclosing Party, at disclosing Party's discretion, may seek confidential or protected status for such Confidential Information. If notice to disclosing Party is not legally permissible, receiving Party shall use reasonable efforts to receive confidential or protected status for such Confidential Information.

- G. Remedies. Both Parties expressly agree that a breach of any confidentiality obligations by the receiving Party, its Affiliates or subsidiaries, or an employee is highly likely to cause significant, irreparable harm to the disclosing Party and that the disclosing Party shall be entitled, in that case, to temporary, preliminary and/or injunctive relief, or any other equitable remedy deemed appropriate by the reviewing court, to protect its interests in its Confidential Information. Should the receiving Party learn of a breach of this Agreement, the receiving Party shall immediately notify the disclosing Party of the nature of the breach and the Confidential Information that has been disclosed. The receiving Party shall take all necessary steps to immediately cure such breach and to ensure no further release of any Confidential Information. Should either Party learn of a disclosure of the other Party's Confidential Information, such Party shall immediately notify the other Party of the nature of the breach and the Confidential Information that has been disclosed. Such Party shall take all necessary steps to immediately cure such breach and to ensure no further release of any Confidential Information.
- H. Survivability. It is expressly agreed by the Parties that the provisions of this Section shall survive the expiration or termination, for any reason, of this Agreement and shall be binding on each Party, its successors and assigns for the benefit of the other Party and its Affiliates, successors and assigns.

6. OWNERSHIP OF MATERIALS

- A. Except as otherwise noted in an applicable Schedule, Aetna shall retain all right, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights), and will have the right to use for any purpose, all Materials and Aetna Data. Supplier acknowledges that any portions of such Materials which contain or reflect information or materials which were given or disclosed to Supplier by Aetna and information specific to Aetna's employees or business operations contained in the Materials, any proprietary information of Aetna which is incorporated into the Materials, and any conclusions or recommendations therein which are specific to Aetna shall be owned by Aetna. It is the intent of
- this Agreement to vest full and exclusive ownership rights of all such portions of the Materials in Aetna, including but not limited to the right to copy and prepare derivative works. Supplier agrees to execute any documents reasonably requested by Aetna to fully vest such rights in Aetna.
- B. Supplier shall retain all right, title and interest in Supplier Technology (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights), and will have the right to use for any purpose, in and to all Supplier Technology, all generic text in the Materials, and the format, sequence and structure of the Materials, provided that such materials do not contain any Confidential Information or Aetna Data. Rights and ownership by Supplier of original technical designs, methods, ideas, concepts, know-how, and techniques shall not extend to or include all or any part of Aetna's Data or Confidential Information. Notwithstanding the foregoing, any information specific to Aetna's employees or business operations, confidential Information, and information which a third party provides to Supplier on Aetna's behalf, finding, or recommendations and conclusions which are specific to Aetna, which Supplier incorporates into the Materials shall remain the sole property of Aetna.
- C. To the extent that Supplier may include in the Materials any Supplier intellectual property, Supplier agrees that Aetna shall be deemed to have a license subject to the license grant and restrictions on use set forth in the Software License Attachment.
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- D. Pre-existing Work Product. Nothing contained in this Agreement shall restrict a Party from the use of methods, ideas, concepts, know-how, techniques, program organization, or database structuring techniques that have been previously developed by that Party or in the in the public domain. The developing party may continue to use such methods, concepts, or techniques for its own purposes subject to the confidentiality obligations set forth herein.

7. WARRANTIES AND LIMITATION OF LIABILITY

- A. Authority to Contract. Both Parties warrant that they are corporations duly organized, validly existing and in good standing under the laws of the State set forth in the opening paragraph above. The Parties represent and warrant that the Agreement has been duly authorized by all necessary corporate action and constitutes a valid obligation, binding and enforceable in accordance with the terms hereof. Supplier warrants that it has the full and unrestricted power and authority to execute and deliver the Agreement and to carry out the transactions contemplated hereby. Supplier warrants that the execution of this Agreement and Supplier's performance hereunder will not conflict with or violate any commitment, agreement or understanding Supplier has or will have with any other person or entity and there is nothing that will prevent Supplier from performing its obligations under the terms and conditions imposed on it by the Agreement.
- B. Standard of Work. Supplier agrees to render all work in a professional and timely manner. Supplier warrants that qualified personnel shall perform all work provided hereunder in a good and workmanlike manner in accordance with professional practices applicable to the work being performed. In the event of a breach of this warranty, Supplier agrees to timely engage in the re-performance of such work at no extra charge until the work performed is in accordance with this warranty. Supplier will perform the work in the capacity of an independent contractor and not as an employee or agent of Aetna.
- C. Warranty Limitation. EXCEPT FOR THE WARRANTIES PROVIDED IN THIS AGREEMENT, THE PARTIES SPECIFICALLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.
- D. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED [*] UNDER THE AGREEMENT DURING [*].
- E. Exclusion of Consequential Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS, OR FOR ANY SPECIAL, OR PUNITIVE, DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- F. Limitation of Action. Except for actions to enforce either Party's intellectual property rights, no action (regardless of form) arising out of this Agreement may be commenced by either Party more than [*] ([*]) [*] after the cause of action has accrued. Each Party shall have a duty to mitigate damages for which the other Party is responsible.
- G. Exclusions on Limitations. The foregoing limitations set forth in Sections 7.D, E and F above will not apply to:
- i. Claims by either Party for bodily injury or damage to real property or tangible, personal property for which such Party, its agents or assigns, is legally responsible; or
 - ii. Claims for breach of confidentiality stated in Section 5, *Confidentiality*, of this MBA; or
 - iii. To the extent applicable under this Agreement, a Party's obligations to indemnify the other Party as stated in Section 8, *Indemnification*.

8. INDEMNIFICATION. Supplier hereby represents and warrants that it has all the right, title and interest in any goods, Services and/or Deliverables procured under this Agreement. Supplier represents and warrants that any Services performed, Deliverables produced by Supplier, and/or goods procured under this Agreement will not violate any publicity or privacy right, patent, copyright, trade secret or other proprietary or intellectual property right or confidential relationship of any third party.

Supplier shall at its own expense indemnify, defend, settle and hold harmless Aetna and its officers, agents, employees, customers and all persons claiming under Aetna from and against any and all claims, actions, injunctions, damages, losses, liabilities, costs and expenses (including legal fees, costs and expenses) arising in any

way out of any claim, suit, proceeding or allegation that the goods, Services and/or Deliverables procured under this Agreement infringe upon or violate patents, copyrights, trade secrets or other proprietary or intellectual property rights of a third party, whether or not such claim, suit, proceeding or allegation is successful. Aetna agrees to send Supplier written notice of any claim, suit, proceeding or allegation relating to such infringement promptly after Aetna receives written notice of the same. Following such notice of a claim or a suit, Supplier shall, upon written notice to Aetna, at Supplier's expense, (i) procure for Aetna the right to continue using the affected Deliverable or Services (ii) replace or modify the affected Deliverable or Services with a functional equivalent so that it does not infringe, or, if either (i) or (ii) is not commercially feasible, (iii) terminate the licenses and refund the fees received for the affected Services or Deliverable on a pro rata basis based upon the date the claim is made.

Supplier shall have no liability for any third party claim of infringement based upon (i) use of other than the then current, unaltered version of the applicable Program made available to Aetna, unless the infringing portion is also in the then current, unaltered release; (ii) use, operation or combination of the applicable Program with non-Supplier programs, data, equipment or Documentation not authorized by Supplier or used or combined with Supplier's knowledge if such infringement would have been avoided but for such use, operation or combination; or (iii) any third party software not provided by Supplier or not embedded in the applicable Program.

In addition, Supplier agrees to indemnify and hold Aetna and its directors, officers, employees, agents, and Affiliates harmless from and against any damages, loss, claim or expense (including reasonable legal and other fees and expenses incurred in investigating and defending against the same) incurred by Aetna, its directors, officers, employees, agents and Affiliates resulting from any negligence, recklessness or willful misconduct of Supplier or its partners, officers, employees, agents, or Affiliates in connection with the provision of the Services, except to the extent that such loss or damage is solely caused by Aetna or its directors, officers, employees, agents or Affiliates.

Aetna agrees to indemnify, defend, and hold Supplier and its partners, directors, officers, employees, agents and Affiliates harmless from and against any damages, loss, claim or expense (including reasonable legal and other fees and expenses incurred in investigating and defending against the same) incurred by Supplier, its partners, directors, officers, employees, agents and Affiliates resulting from any negligence, recklessness, or willful misconduct of Aetna or its directors, officers, employees, agents, or Affiliates in connection with the Services except to the extent that such loss or damage is caused solely by Supplier or its partners, directors, officers, employees, agents or Affiliates.

9. FORCE MAJEURE. Neither Party shall be liable or deemed to be in default for any delay or failure in performance of any obligation under the Agreement or interruption of service resulting directly or indirectly from a Force Majeure. The Party claiming such Force Majeure event shall give timely written notice to the other Party and shall use due diligence to mitigate the situation. Such Force Majeure shall not relieve the non-performing Party of liability in the event of its concurrent negligence, in the event of its failure to use due diligence to remove the cause of the Force Majeure in an adequate manner and with all reasonable dispatch, or in the event such default or delay could have been prevented by reasonable precautions or could have been circumvented by the non-performing Party through the use of alternate sources, work around plans or other means. Notwithstanding any provision contained in this Section to the contrary, Supplier's compliance with its Business Continuity Plan shall be deemed to be conclusive proof of Supplier's compliance with the due diligence requirement set forth in the previous sentence. Aetna may visit Supplier's site to review the Business Continuity Plan.

10. INSURANCE

- A. **Specifications.** Supplier agrees, at its expense and during the term of the Agreement, to procure and maintain at a minimum the following insurance with insurance companies that have an A.M. Best rating of at least A. The insurance coverages and limits set forth do not constitute limitations of the liability the Supplier has assumed under this Agreement.
- i. **Workers' Compensation.** Workers' compensation insurance sufficient to meet statutory liability limits in the state wherein the work is to be performed and employer's liability insurance with minimum limits of \$[*] each accident for bodily injury by accident and \$[*] each employee for bodily injury or disease and a policy limit of \$[*].
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- ii. General Liability. Simplified ISO commercial general liability insurance with coverage on a primary, non-contributing, occurrence basis not endorsed to exclude coverage. The minimum limit for bodily injury and property damage shall be \$[*] each occurrence, \$[*] aggregate.
- iii. Automobile. Commercial automobile liability insurance covering all owned, non-owned, hired or leased automobiles to be used by Supplier in furtherance of the work with a minimum limit of \$[*] each accident for bodily injury and property damage.
- iv. Property. Supplier shall also provide all risk-replacement cost property insurance coverage on tools, equipment, etc., owned or rented by Supplier while on Aetna property, the capital value of which is not included in the cost of the work or service. Such insurance coverage shall include an endorsement providing that the underwriters and Supplier waive their rights of subrogation against Aetna.
- v. Subcontractors. Aetna recognizes that the Supplier may have the need to utilize subcontractor(s) or supplementary provider(s) in providing certain Services pursuant to this Agreement. Subcontractor(s) or supplementary provider(s) shall be bound by all the Insurance provisions of this Agreement otherwise applicable to the Supplier. Should the Subcontractor(s) or supplementary provider(s) insurance not apply for any reason, the Supplier's insurance becomes primary.

B. Certificate of Insurance. After execution of this Agreement and upon Aetna's request, Supplier shall furnish a Certificate of Insurance evidencing the required insurance. Such certificate shall indicate that cancellation or non-renewal of such insurance shall not be effective sooner than thirty (30) days after Aetna receives written notice. The Certificate of Insurance must state that Aetna and its Affiliates are named as an additional insured per the terms and conditions of Supplier's commercial general liability insurance policy for their interests in the work, service, project or operations for the duration of the Agreement. In the event Supplier fails to furnish such certificates or fails to continue to maintain such insurance during the term of this Agreement, Aetna shall have the right to withhold any or all payments under this Agreement until Supplier has complied with the requirements of this Section.

11. REGULATORY COMPLIANCE & GOVERNING LAW

- A. Compliance with Laws. Supplier represents and warrants that work rendered or delivered under any applicable Attachment or Schedule pursuant to this MBA are and will be manufactured, produced, sold and rendered in conformity with all applicable laws, ordinances, orders, directions, rules and regulations of the Federal, state, county and municipal governments applicable thereto, all as they may be amended from time to time including, without limitation, Section 1033 of the Violent Crime Control and Law Enforcement Act of 1994 and all federal and state wage-hour laws. Further, Supplier agrees that it will use its best efforts not to offer to Aetna the services of any person who has been convicted of any criminal felony involving dishonesty or a breach of trust or who has been convicted of an offense involving dishonesty or breach of trust while engaged in the business of insurance or who has been convicted of any offense under 18 U.S.C. Sec. 1033 of the Violent Crime Control and Law Enforcement Act of 1994. Supplier warrants that all Deliverables and/or work acquired hereunder shall conform to the safety regulations established by the Occupational Safety and Health Act of 1970, as amended.
 - B. Regulatory Approvals. Supplier agrees and covenants that it will obtain all necessary regulatory approvals applicable to its business and all necessary licenses, approvals, and permits, and will comply with any regulatory or legal requirements applicable to the performance of the work.
 - C. Equal Opportunity Employment. If the Agreement is subject to the requirements of Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, or the Vietnam Era Veterans' Readjustment Act of 1974, Supplier agrees to comply with the equal employment opportunity clause set out at 41 C.F.R. 60-1.4 and the requirements for affirmative action for veterans and disabled persons set out at 41 C.F.R. 60-250.4 and 60-741.4, respectively, which clauses are incorporated herein by reference, and to maintain, provide, or control facilities that are not segregated.
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- D. Compliance with Employment Laws. Supplier employees shall not be employees of Aetna for any purpose, including, without limitation, federal, state and local taxes, including the Federal Insurance Contribution Act and the Federal Unemployment Tax and all insurance coverage, unemployment compensation and workers' compensation benefits. Supplier represents and warrants that for all Supplier employees, Supplier shall withhold and pay all applicable federal, state and local employment taxes and assessments, including the Federal Insurance Contribution Act and the Federal Unemployment Tax, and that Supplier shall provide any or all applicable insurance coverage, unemployment compensation and workers' compensation benefits. Supplier shall indemnify and hold Aetna harmless from any and all liabilities, complaints, demands, damages, losses, causes of action or suits of any kind or nature whatsoever, including court costs and attorneys' fees, arising out of the breach of these representations and warranties by Supplier.
- E. Compliance with Wage Payment and Work Authorization Laws. Supplier shall comply with all applicable federal and state laws regarding payment of employee wages. In addition, all Supplier's employees must have a valid social security number. Supplier further represents and warrants that Supplier's employees are authorized to work in the United States at the job and location to which they are assigned, and that Supplier is in compliance with the Immigration Reform and Control Act of 1986 (IRCA), as amended, with respect to such Supplier's employees.
- F. Governing Law. The formation and performance of this Agreement shall be governed and interpreted by the laws of the State of Connecticut, disregarding, however, any applicable conflicts of law provisions that would

require the application of the law of another state. If either Party initiates litigation relating to this Agreement, then, in addition to complying with any applicable statutory notice requirements, such Party shall give the other Party notice thereof by certified mail, return receipt requested, at the most recent address provided by such Party in accordance with Section 15, *Notices*. Supplier consents to the jurisdiction of the courts of Connecticut with respect to any legal action commenced therein arising from or related to this Agreement.

12. DISPUTE RESOLUTION AND BINDING ARBITRATION

- A. Dispute Resolution. Prior to the initiation of binding arbitration as detailed below, the Parties shall first attempt to resolve their dispute informally. Every effort should be made to resolve all disputes at the lowest possible level of authority. The Parties will use their best efforts to arrange personal meetings and/or telephone conferences as needed. Each negotiator will have the authority to negotiate and enter into a settlement of the dispute on their respective company's behalf.
- B. Binding Arbitration. Any controversy or claim arising out of or relating to the Agreement or the breach, termination, or validity thereof not settled through informal dispute resolution, except for temporary, preliminary, or permanent injunctive relief or any other form of equitable relief which shall be subject to the ruling of an applicable court of competent jurisdiction, shall be settled by binding arbitration in Hartford, Connecticut administered by the American Arbitration Association ("AAA") and conducted by a sole arbitrator in accordance with the AAA's Commercial Arbitration Rules ("Rules"). The Federal Arbitration Act, 9 U.S.C. Sec. 1-16, shall govern the arbitration to the exclusion of state laws inconsistent therewith or that would produce a different result, and any court having jurisdiction thereof may enter judgment on the award rendered by the arbitrator. Except as may be required by law or to the extent necessary in connection with a judicial challenge, or enforcement of an award, neither a party nor the arbitrator may disclose the existence, content, record, or results of an arbitration. At least fourteen (14) calendar days before the hearing, the Parties will exchange and provide to the arbitrator: (a) a list of witnesses they intend to call (including any experts) with a short description of the anticipated direct testimony of each witness and an estimate of the length thereof and (b) premarked copies of all exhibits they intend to use at the hearing. The arbitrator may award only monetary relief and is not empowered to award damages other than compensatory damages. A short statement of the reasoning on which the award rests shall accompany an award for \$250,000.00 or more.

13. ASSIGNMENT. Neither Party may assign its rights or delegate its obligations under the Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either Party may assign its rights and obligations under the Agreement, in whole or in part, to a parent or Affiliate or in the event of a merger or sale of a business unit or majority stock ownership, and such assignment will be effective without the consent of the other Party, provided that the Party assuming obligations agrees to do so in writing and has adequate resources to meet its obligations hereunder. Any attempted assignment not in accordance with this subsection shall be null and void. Upon completion of any assignment under

this subsection, the assigning Party shall have no further liability with respect to any of the rights or obligations assigned.

14. DIVESTITURE. Subject to the usage limits provided in this Agreement, the Divested Entity and/or Aetna on behalf of the Divested Entity shall have the use of the Services or Programs provided hereunder for a period of up to [*] ([*]) [*] following divestiture. Such use shall be limited to the [*] and shall be governed by the terms and conditions of this Agreement. At the end of the [*] ([*]) [*] period, the Divested Entity shall [*]. In consideration of Aetna's acquisitions, for a period of up to [*] ([*]) [*] following divestiture, a Divested Entity shall [*]. Aetna shall have no liability whatsoever, whether arising in contract, tort, indemnification or by statute, for any loss or damage arising out of the use of Supplier's Programs or Services by a Divested Entity through an agreement extended by Supplier, where Aetna is not a party to such agreement.

15. OUTSOURCING. Aetna will have the right to designate one or more outsourcers as Aetna's agent(s) for the administration of the relevant purchase or acquisition, including, as way of illustration and not of limitation, the outsourcing of such relevant purchase or acquisition to suppliers of information technology and communication services. Aetna shall also have the right to designate one or more outsourcers as Aetna's agent(s) for the administration of this Agreement, and the receipt of such relevant purchase or acquisition under this Agreement from Supplier. Such a designation shall not adversely affect any of Aetna's rights under this Agreement and Supplier shall deal with the designated outsourcer(s) in the same manner and in accordance with this Agreement as it would have dealt with Aetna.

16. NOTICES. All legal notices and other communications required or permitted hereunder shall be in writing and delivered in person, by United States certified mail, return receipt requested, by facsimile with confirmation sheet, or by overnight express mail to the Parties at their addresses set forth below or to such other address as either Party may so designate in writing at least ten (10) days prior to such notice or communication.

If to Aetna: Aetna Life Insurance Company
151 Farmington Avenue
Hartford, CT 06156
Attn. Cost Management, RW51

If to Supplier: Benefitfocus.com, Inc.
100 Benefitfocus Way
Charleston, South Carolina
Attn: Mason Holland

17. NON-RECRUITMENT AND NON-HIRE. Both Parties recognize that each Party and its respective Affiliates has made substantial efforts and incurred substantial expense to recruit, employ and train personnel. A Party, and its Affiliates, shall not, without the other Party's prior written consent, actively recruit and employ any person who is employed by the other Party during the term of a Schedule, for a period of [*] ([*]) [*] following termination of such Schedule or within [*] ([*]) [*] of termination of such employment. The following activities will not constitute "active recruitment":

- a. a Party receives an unsolicited resume for an employee of the other party, either directly from the employee or from an employment agency or recruiter, and thereafter interviews or negotiates employment with such employee. Resumes shall be unsolicited unless a Party specifically identifies a particular employee by name in its request for resumes; or
- b. a Party places a recruiting advertisement directed at the general public and thereafter interviews or negotiates employment with an employee responding to such advertisement; or
- c. a Party discusses employment with an employee of the other party prior to the applicable Attachment or Schedule Effective Date and thereafter interviews or negotiates employment with such employee. An affidavit by such employee to the effect that employment was actually discussed on a certain date prior to such Effective Date shall be conclusive proof of this fact.

In the event of a breach of this Section, the injured Party shall have the right to (i) seek an injunction against further violations of this Section; or (ii) pursue whatever other remedies are available under this MBA. In the event of dissolution or cessation of the business of a Party or if Party is in material default of this Agreement, such Party waives all rights in this Section and the other Party may actively recruit and employ such Party's employees.

18. ACCESS. Supplier shall make all Aetna related contracts, copy, files, records, accounts and other documents and materials, including any applicable financial records, in Supplier's possession or under Supplier's control available for Aetna's examination upon at least two (2) business days prior notice during Supplier's regular business hours during the term of an applicable Attachment or Schedule and for a period of one (1) year after the termination

of such. Upon Aetna's request, Supplier shall provide Aetna with three years (e.g. 2003, 2004, & 2005) of Supplier's annual audited financial statements.

19. WAIVER. The failure or delay of either Party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of the Agreement or to exercise any right, power or privilege under the Agreement, shall not operate or be construed as a relinquishing of future performance or as a waiver of any of the same or similar rights, powers or privileges in the future, and the obligation of the other Party with respect to such future rights or performance shall continue in full force and effect as if such failure or delay never occurred.

20. SEVERABILITY. In the event that any one or more of the provisions, or parts thereof, contained in the Agreement shall for any reason be held to be unenforceable in any respect by a court of competent jurisdiction or arbitrator, such unenforceability shall not affect any other provisions, or parts thereof, but shall then be construed as if such unenforceable provision, or parts thereof, had never been contained herein.

21. PARAGRAPH HEADINGS. Paragraph headings used herein are for reference purposes only and shall not be interpreted to limit or affect in any way the meaning of the language contained in such paragraphs.

22. NO CONSTRUCTION AGAINST THE DRAFTER. The Parties agree that the Agreement is the result of careful negotiations between the Parties. Any principle of construction or rule of law that provides that, in the event of any inconsistency or ambiguity in such agreement, an agreement shall be construed against the drafter of the agreement, shall not apply to the terms and conditions of the Agreement.

23. USE OF NAME OR MARK. Neither Party shall use the name, trade name, service marks, trademarks, trade dress or logo of the other in customer lists, publicity releases, advertising, promotional materials, direct mail, seminars, on the other Party's Web site, or in other communications without the express prior written consent of the other's duly authorized representative. Neither Party shall have, or acquire, rights on the trademarks or logos of the other Party.

24. SUPPLIER DIVERSITY PROGRAM. Supplier shall comply with the requirements of Aetna's Supplier Diversity Program as detailed in the Supplier Diversity Exhibit D. Supplier shall submit to Aetna a quarterly report as described in the M/WBE Quarterly Results Report Exhibit.

25. SURVIVABILITY. The provisions which by their respective nature are meant to survive the termination, cancellation or expiration of this Agreement or any Schedule shall survive the termination, cancellation or expiration of the Agreement or Schedule. Such provisions shall be binding on either Party, its successors and assigns for the benefit of the other Party and its Affiliates or subsidiaries and their successors and assigns. Both Parties recognize and acknowledge that breach of such provisions will cause irreparable harm inadequately compensable in damages and that accordingly, the other Party may seek injunctive relief against a breach or threatened breach of the provisions contained in each paragraph in connection with the exercise of any remedies available to such Party at law or in equity pursuant to this MBA.

26. ENTIRE AGREEMENT. The Parties agree that this Agreement, together with its Attachments and Schedules, shall constitute the entire agreement between Supplier and Aetna with respect to the subject matter hereof and supersedes all prior or contemporaneous oral and written proposals, negotiations, representations, commitments and other communications between the Parties, including the Memorandum of Understanding dated October 26, 2006. All prior negotiations between the Parties regarding the subject matter described herein have been merged into the Agreement, and there are no understandings, representations, or agreements, oral or written, express or implied, regarding the subject matter described herein, other than those set forth herein. The Agreement may not be amended, released, discharged, changed, or modified except in a written instrument signed by duly authorized representatives of both Parties that expressly intends such release, discharge, change or modification. The terms and conditions of this Agreement, and any amendment hereto, shall be binding on the Parties, their successors, assigns or other transferees for the benefit of the other Party and its Affiliates and their successors and assigns. All terms and conditions of this Agreement shall be incorporated in and made a part of all Attachments and Schedules. In the event of a conflict between this Agreement, an Attachment or a Schedule, or any other document made a part of this Agreement, the documents shall control in the following priority: the applicable Schedule, the applicable Attachment(s), the MBA, then any other documents.

IN WITNESS WHEREOF, the Parties have hereto by their duly authorized representatives executed this Agreement.

Aetna Life Insurance Company

By: _____
(Authorized Signature)

Name: _____
(Print Name)

Title: _____

Date: _____

Benefitfocus.com, Inc.

By: _____
(Authorized Signature)

Name: _____
(Print Name)

Title: _____

Date: _____

Taxpayer ID #: 57-1099948

Health Insurance Portability and Accountability Act

THIS EXHIBIT is to the Master Business Agreement dated November 28, 2006 (the "Agreement") between Aetna Life Insurance Company (the "Covered Entity") and Benefitfocus.com, Inc. (the "Business Associate"). In conformity with the regulations at 45 C.F.R. Parts 160-164 (the "Privacy and Security Rules") Covered Entity will under the following conditions and provisions have access to, create, maintain, transmit and/or receive certain Protected Health Information (as defined below). Business Associate will have access to, create, maintain, transmit, and/or receive certain Protected Health Information in conjunction with the Services being provided under the Agreement, thus necessitating a written agreement that meets the applicable requirements of the Privacy and Security Rules;

NOW THEREFORE, Covered Entity and Business Associate agree as follows:

1. Definitions. The following terms shall have the meaning set forth below:
 - (a) C.F.R. "C.F.R." means the Code of Federal Regulations.
 - (b) Designated Record Set. "Designated Record Set" has the meaning assigned to such term in 45 C.F.R. 164.501.
 - (c) Electronic Protected Health Information. "Electronic Protected Health Information" means information that comes within paragraphs 1(i) or 1(ii) of the definition of "Protected Health Information", as defined by 45 C.F.R. 160.103
 - (d) Individual. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as personal representative in accordance with 45 C.F.R. 164.502 (g).
 - (e) Protected Health Information. "Protected Health Information" shall have the same meaning as the term "Protected Health Information," as defined by 45 C.F.R. 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
 - (f) Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. 164.501
 - (g) Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
 - (h) Security Incident. "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. 164.304.
 - (i) Standard Transactions. "Standard Transactions" means the electronic health care standard transactions for which HIPAA standards have been established, as set forth at 45 C.F.R. Parts 160-162.
 2. Obligations and Activities of Business Associate
 - (a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Exhibit or as Required By Law. Business Associate shall also comply with any further limitations on uses and disclosures agreed by Covered Entity in accordance with 45 C.F.R. 164.522 provided that such agreed upon limitations have been communicated to Business Associate according with Section 4.1(c) of this Exhibit.
 - (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Exhibit.
 - (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Exhibit.
 - (d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Exhibit.
 - (e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Exhibit to Business Associate with respect to such information. In no event shall Business Associate, without Covered Entity's prior written approval, provide Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity to any employee or agent, including a subcontractor, if such employee, agent or subcontractor receives, processes, or otherwise has access to the Protected Health Information outside of the United States.
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- (f) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. 164.524. Covered Entity's determination of what constitutes "Protected Health Information" or a "Designated Record Set" shall be final and conclusive. If Business Associate provides copies or summaries of Protected Health Information to an Individual it may impose a reasonable, cost-based fee in accordance with 45 C.F.R. 164.524 (c)(4).
- (g) Business Associate agrees to make any Amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity. Business Associate shall not charge any fee for fulfilling requests for Amendment. Covered Entity's determination of what Protected Health Information is subject to Amendment pursuant to 45 C.F.R. 164.526 shall be final and conclusive.
- (h) Business Associate agrees to make (i) internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, and (ii) policies, procedures, and documentation relating to the safeguarding of Electronic Protected Health Information available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy and Security Rules.
- (i) Business Associate agrees to document such disclosures of Protected Health Information as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.
- (j) Business Associate agrees to provide to Covered Entity, in the time and manner described below, the information collected in accordance with Section 2(i) of this Exhibit, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528. Business Associate agrees to provide such information to Covered Entity through a quarterly report.
- (k) Business Associate acknowledges that it shall request from the Covered Entity and so disclose to its Affiliates, subsidiaries, agents and subcontractors or other third parties, only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted hereunder.
- (l) With respect to Electronic Protected Health Information, Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity, as required by 45 C.F.R. Part 164, Subpart C.
- (m) With respect to Electronic Protected Health Information, Business Associate shall ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information, agrees to implement reasonable and appropriate safeguards to protect it.
- (n) Business Associate shall report to Covered Entity any Security Incident of which it becomes aware.
- (o) If Business Associate conducts any Standard Transactions on behalf of Covered Entity, Business Associate shall comply with the applicable requirements of 45 C.F.R. Parts 160-162.

3. Permitted Uses and Disclosures by Business Associate

3.1 General Use and Disclosure. Except as otherwise limited in this Exhibit, Business Associate may use or disclose Protected Health Information to perform its obligations under the Agreement, provided that such use or disclosure would not violate the Privacy and Security Rules if done by Covered Entity.

3.2 Specific Use and Disclosure Provisions

- (a) Except as otherwise prohibited by this Exhibit, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - (b) Except as otherwise prohibited by this Exhibit, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
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Attn: W121 Aetna Legal Support Services
Fax: (860) 907-3017

Each Party named above may change its address upon thirty (30) days written notice to the other Party.

8. Miscellaneous

- (a) Regulatory References. A reference in this Exhibit to a section in the Privacy and Security Rules means the section as in effect or as amended, and for which compliance is required.
- (b) Amendment. Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, the safeguarding of Electronic Protected Health Information, or the publication of any decision of a court of the United States or any state relating to any such law or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, either Party may, by written notice to the other Party, amend the Agreement and this Exhibit in such manner as such Party determines necessary to comply with such law or regulation. If the other Party disagrees with such Exhibit, it shall so notify the first Party in writing within thirty (30) days of the notice. If the Parties are unable to agree on an Exhibit within thirty (30) days thereafter, then either of the Parties may terminate the Agreement on thirty (30) days written notice to the other Party.
- (c) Survival. The respective rights and obligations of Business Associate under Sections 5(c) and 6 of this Exhibit shall survive the termination of this Exhibit.
- (d) Interpretation. Any ambiguity in this Exhibit shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy and Security Rules. In the event of any inconsistency or conflict between this Exhibit and the Agreement, the terms, provisions and conditions of this Exhibit shall govern and control.
- (e) No third party beneficiary. Nothing express or implied in this Exhibit or in the Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
- (f) Governing Law. This Exhibit shall be governed by and construed in accordance with the same internal laws as that of the Agreement

IN WITNESS WHEREOF, the Parties hereto have executed this Exhibit to the Agreement.

AETNA LIFE INSURANCE COMPANY

BENEFITFOCUS.COM, INC.

By: _____
(Authorized Signature)
Name: _____
Title: _____
Date: _____

By: _____
(Authorized Signature)
Name: _____
Title: _____
Date: _____

Gramm-Leach-Bliley Act

THIS EXHIBIT is to the Master Business Agreement dated November 28, 2006 (the “Agreement”) between Aetna Life Insurance Company (the “GLBA Licensee”) and Benefitfocus.com, Inc. (the “Service Provider”). In conformity with the Safeguard Regulations (the “Safeguard Rules”), Service Provider will under the following conditions and provisions have access to, create, maintain, transmit and/or receive certain Protected Financial Information (as defined below). Service Provider will have access to, create, maintain, transmit, and/or receive certain Protected Financial Information in conjunction with the Services being provided under the Agreement, thus necessitating a written exhibit that meets the applicable requirements of the Safeguard Rules;

WHEREAS, various state departments of insurance have promulgated regulations regarding the safeguarding of certain customer information (“the Safeguard Rules”), as required by the federal Gramm-Leach-Bliley Act (“GLBA”);

WHEREAS, GLBA Licensee, as a licensee of state departments of insurance (“DOI”), is required to comply with the Safeguard Rules;

WHEREAS, Service Provider may maintain, process, or otherwise be permitted access to customer information pursuant to an agreement to provide services to GLBA Licensee (the “Business Agreement”) and GLBA Licensee desires that Service Provider maintain, process and access such customer information consistent with the Safeguard Rules.

NOW THEREFORE, GLBA Licensee and Service Provider agree as follows:

1. **Definitions.** The following terms shall have the meanings set forth below:
 - (a) **Customer Information.** “Customer Information” means nonpublic personal financial and health information about a customer, whether in paper, electronic or other form. Customer Information includes any such information provided by the customer as part of a request for information about, or an application for, a GLBA Licensee insurance product or service, even if no such insurance product or service is subsequently provided to the customer.
 - (b) **Service Provider.** “Service Provider” means any person or entity that provides services to GLBA Licensee and maintains, processes or otherwise is permitted access to GLBA Licensee’s Customer Information.
 2. **Obligations of Service Provider.**
 - (a) Service Provider represents and warrants that it has implemented a comprehensive written information security program that includes administrative, technical and physical safeguards for the protection of Customer Information that are appropriate to Service Provider’s size, complexity, nature and scope of activities, and that is designed to:
 - (i) ensure the integrity and confidentiality of Customer Information;
 - (ii) protect against any anticipated threats or hazards to the security or integrity of Customer Information; and
 - (iii) protect against unauthorized access to, or use of, Customer Information that could result in substantial harm or inconvenience to any customer.
 - (b) Service Provider agrees to ensure that any agent, including a subcontractor, to whom it provides Customer Information received from, or created or received by Service Provider on behalf of GLBA Licensee, agrees to the same restrictions and conditions that apply through this Agreement to Service Provider with respect to such Customer Information.
 - (c) In no event shall Service Provider, without GLBA Licensee’s prior written approval, provide Customer Information (received from, or created or received by Service Provider on behalf of GLBA Licensee) to any employee or agent, including a subcontractor, if such employee, agent or subcontractor receives, processes, or otherwise has access to the Customer Information outside of the United States.
 - (d) Service Provider agrees to make policies, procedures, and documentation relating to the safeguarding of Customer Information available to the GLBA Licensee, or at the request of the GLBA Licensee to a DOI, in a time and manner designated by the GLBA Licensee or DOI, for purposes of the DOI determining GLBA Licensee’s compliance with GLBA.
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- (e) Service Provider agrees to affirm in writing, upon request from GLBA Licensee from time to time, Service Provider's continued compliance with its representations, warranties and obligations under this Agreement.

3. Term and Termination

- (a) Term. The provisions of this Exhibit shall take effect on the Agreement's Effective Date and shall terminate when all of the Customer Information provided by GLBA Licensee to Service Provider, or maintained, processed or otherwise accessed by Service Provider, is destroyed or returned to GLBA Licensee, or, if it is infeasible to return or destroy Customer Information, protections are extended to such information, in accordance with the provisions of this Agreement.
- (b) Termination for Cause. Without limiting the termination rights of the Parties pursuant to the Business Agreement and upon GLBA Licensee's knowledge of a material breach of this Agreement by Service Provider, GLBA Licensee shall either:
- (i) Provide an opportunity for Service Provider to cure the breach or end the violation, or terminate the Business Agreement if Service Provider does not cure the breach or end the violation within a reasonable time specified by GLBA Licensee; or
 - (ii) Immediately terminate the Business Agreement, if cure of such breach is not possible.
- (c) Effect of Termination.
- (i) Except as provided in Section 3(c), upon termination of the Business Agreement, for any reason, Service Provider shall return or destroy all Customer Information received from GLBA Licensee, or maintained, processed or otherwise accessed on behalf of GLBA Licensee. This provision shall apply to Customer Information that is in the possession of subcontractors or agents of Service Provider. Service Provider shall retain no copies of the Customer Information.
 - (ii) In the event the Service Provider determines that returning or destroying the Customer Information is infeasible, Service Provider shall provide to GLBA Licensee notification of the conditions that make return or destruction infeasible and the purposes of Service Provider's continued use. Upon mutual agreement of the Parties that return or destruction of Customer Information is infeasible and Service Provider has a legitimate purpose in continued use of the Customer Information, Service Provider shall extend the protection of this Agreement to such Customer Information and limit further uses and disclosures of such Customer Information to those purposes that make the return or destruction infeasible for so long as Service Provider maintains such Customer Information.

4. Indemnification. Service Provider shall indemnify and hold harmless GLBA Licensee and any of GLBA Licensee's Affiliates, directors, officers, employees and agents from and against any claim, cause of action, liability, damage, cost or expense (including reasonable attorneys' fees) arising out of or relating to any failure to safeguard Customer Information, or other breach of this Agreement by Service Provider or any Affiliate, director, officer, employee, agent or subcontractor of Service Provider.

5. Notices. Any notices or communications to be given under this Amendment shall be made to the address and/or fax to the fax numbers given below:

If to Service Provider, to: Attention: Benefitfocus GLBA Services
Fax: 843-849-9485

If to GLBA Licensee, to: Aetna Legal Support Services
151 Farmington Avenue
Hartford, CT 06156
Attn: W121 Aetna Legal Support Services
Fax: (860) 907-3017

Each Party named above may change its address upon thirty (30) days written notice to the other Party.

6. Miscellaneous.

- (a) Regulatory References. A reference in this Exhibit to a section in the Safeguard Rules means the section as in effect or as amended, and for which compliance is required.
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- (b) Amendment. Upon the enactment of any law or regulation affecting the safeguarding of Customer Information, or the publication of any decision of a court of the United States or any state relating to any such law or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, either Party may, by written notice to the other Party, amend the Agreement in such manner as such Party determines necessary to comply with such law or regulation. If the other Party disagrees with such amendment, it shall so notify the first Party in writing within thirty (30) days of the notice. If the Parties are unable to agree on an amendment within thirty (30) days thereafter, then either of the Parties may terminate the Agreement on thirty (30) days written notice to the other Party.
 - (c) Survival. The respective rights and obligations of Service Provider under Sections 3(c) and 4 of this Exhibit shall survive the termination of this Exhibit.
 - (d) Interpretation. Any ambiguity in this Exhibit shall be resolved to permit GLBA Licensee to comply with GLBA state regulations. In the event of any inconsistency or conflict between this Exhibit and the Agreement between the Parties, the terms, provisions and conditions of this Exhibit shall govern and control.
 - (e) No third party beneficiary. Nothing express or implied in this Exhibit is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
 - (f) Governing Law. This Exhibit shall be governed by and construed in accordance with the same internal laws as that of the Agreement.
-

IN WITNESS WHEREOF, the Parties hereto have executed this Exhibit to the Agreement.

AETNA LIFE INSURANCE COMPANY

BENEFITFOCUS.COM, INC.

By: _____
(Authorized Signature)
Name: _____
Title: _____
Date: _____

By: _____
(Authorized Signature)
Name: _____
Title: _____
Date: _____

SUPPLIER DIVERSITY

1. Supplier Diversity Commitment. It is Aetna's policy to promote and increase participation of M/WBE's in its purchasing and contractual business. Aetna's corporate goal is that a minimum of 10% of all goods and services will be acquired from M/WBE firms. Maximum practicable opportunity shall be given to M/WBEs to participate as Aetna suppliers, but in order to achieve this goal, Aetna is committed to provide additional opportunities for M/WBEs by requiring M/WBE Participation Plans from our suppliers who are not M/WBE firms. Please complete the M/WBE Participation Plan below outlining your M/WBE goals and specific and detailed plans to achieve those goals. Prior to the execution of a Schedule, you must submit a new, or update an existing, Participation Plan for the current fiscal year. For assistance, please call **Kristen Hickey** of Aetna Supplier Diversity at **860-273-6541**.

Possible subcontracting opportunities in state business type area in direct support of Aetna's Business include:

- To be determined while working with Aetna

The subcontracting plan should include, but not be limited to:

- a. The estimated percentage of total subcontracting dollars your company intends to spend with MBE/WBE/SBE firms annually across your entire business.
- b. Your corporate plan for progressively increasing utilization of MBE/WBE/SBEs in direct support of Aetna's business.
- c. The principal goods and services to be subcontracted to MBE/WBE/SBEs.
- d. A statement agreeing to maintain, if awarded business, all necessary documents and records to support your efforts to achieve the estimated MBE/WBE/SBE subcontracting goals.
- e. The individual responsible for administering the subcontracting plan and submitting quarterly reports. Quarterly reports are due by the end of the first week following the close of each quarter using the form attached in the M/WBE Report.

Supplier agrees to cooperate in any investigation, studies or audits conducted by Aetna or Aetna's agent to determine Supplier's compliance with this section. Supplier further agrees to provide any documentation required by Aetna to determine compliance. Supplier agrees that the falsification or misrepresentation of, or failure to report a disqualifying change in the M/WBE status of Supplier or any subcontractor utilized by Supplier shall constitute a breach of the Agreement. Supplier agrees that Aetna's right to terminate for failure to comply with the provisions of this Section is absolute and unconditional and that Aetna shall not be subject to liability nor shall Supplier have any right to sue for damages as a result of such termination.

2. Definition. For acquisitions under this Agreement, Aetna defines a Minority Business Enterprise/Women Business Enterprise (M/WBE) as a company which is at least 51 percent owned, controlled, operated and managed by members of a minority group or non-minority women. Minority groups include African-Americans, Hispanic Americans, Native Americans, Asian-Indian Americans and Asian-Pacific Americans. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means actively involved in the day-to-day management of the business.

3. Certification. Aetna requires that minority and women business enterprises be certified as M/WBEs to participate in Aetna's Supplier Diversity Program. We prefer certification from the National Minority Supplier Development Council (NMSDC), the Women's Business Enterprise National Council (WBENC), or their affiliates. We will evaluate certification from other third-party organizations.

4. Documentation & Supplier Diversity Subcontracting Plan. Supplier agrees that it will maintain and make available to Aetna all necessary documents and records to support its efforts to achieve its M/WBE participation goal(s). Supplier also acknowledges responsibility for identifying and soliciting certified subcontractors.

Supplier Name	Benefitfocus.com, Inc.
Compliance Contact Information	843-849-7476
Goods/Services Provided	Software Development

Corporate Supplier Diversity Goals	As of the date of this Agreement, Supplier does not have a formal Diversity Program.
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Supplier Diversity Goals in support of Aetna's business

Supplier acknowledges that this program is important to Aetna and Supplier agrees to work with the Aetna Supplier Diversity contact to ensure the goals are met to satisfy the program requirements.

Name: (printed)

Title: Benefitfocus/Aetna Supplier Diversity Administrator

Authorized signature:

Date:

Telephone number: 843-849-7476

E-mail address:

M/WBE QUARTERLY RESULTS REPORT

Second Tier Request Year 200

Note: Subcontracting results should reflect ONLY M/WBE dollars directly traceable to Aetna purchases during the report quarter.

Date: _____ Estimated Annual Value of Contract: _____
 Company Name: _____ Services Provided: _____
 M/WBE Program Contact Name: _____ Aetna Procurement Services Rep. _____
 Telephone No./ Fax No.: _____ Aetna Project/Job Order Number: _____
 Email Address: _____
 Address: _____

Name of MBE	Product/Service	Certification Agency	Dollars Procured (\$)

Name of WBE	Product/Service	Certification Agency	Dollars Procured (\$)

Total M/WBE purchases for the quarter: _____ 0

Your Company's YTD Total First-Tier purchases supporting Aetna's business needs with:

M/WBE	Ttl YTD	Plan	% of Plan	% of Total Procurement
Minority owned businesses:				
Women-owned businesses:				
Total M/WBE YTD	0			

Your Company's YTD Overall Total First-Tier purchases with:

M/WBE	Ttl YTD	Plan	% of Plan	% of Total Procurement
Minority owned businesses:				
Women-owned businesses:				
Total M/WBE YTD	0			

REVIEW/APPROVAL PROCESS

Prepared By: _____ Date: _____
 Approved By Responsible Customer Management: _____ Date: _____
 Aetna Cost Center Number: _____ Date: _____

Please forward to your respective Aetna representative each quarter or after project completion with an e-mail copy to: Kristen Hickey, Procurement—Supplier Diversity, hickeyk@aetna.com. Please address any questions to Kristen Hickey at (860) 273-6541.

HOSTING SERVICES ATTACHMENT

This HOSTING SERVICES ATTACHMENT (this "Attachment") to the Master Business Agreement dated November 28, 2006 (the "MBA"), is entered into as of the November 28, 2006 (the "Effective Date"), by and between Aetna Life Insurance Company, a Connecticut corporation with its principal place of business located at 151 Farmington Avenue, Hartford, Connecticut 06156 ("Aetna") and Benefitfocus.com, Inc. a South Carolina corporation with its principle place of business located at 100 Benefitfocus Way, Charleston, South Carolina, 29492, ("Supplier"); (individually referred to as "Party"; collectively the "Parties"). The terms and conditions of this Attachment, in conjunction with each applicable Schedule, are hereby incorporated into and made a part of the Agreement. In case of a conflict, the terms and conditions of this Attachment will control and prevail over those contained in the MBA.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein recited and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledges, the Parties, intending to be legally bound, agree as follows:

1. DEFINITIONS. Capitalized terms not otherwise herein defined shall have the meanings ascribed to them in the Agreement. The terms set forth in this Attachment shall have the following meaning:

- A. "Aetna Data" means all information and data, provided by Aetna or an Authorized User in relation to the Hosting Services, any data generated by the Program or Hosting Services in response to such information or data, and any data relating to Aetna or an Authorized User otherwise captured by the Hosting Services.
 - B. "Guaranteed Response Time" means the time elapsed for Supplier to contact Aetna after a Hosting Support request has been received by Supplier.
 - C. "Holiday" means a legal holiday as defined by Aetna on an annual basis in advance.
 - D. "Hosting Services" means the services required to host, operate and support a Program licensed under the Software License Attachment ("SLA"), as more fully described in an applicable Schedule, that are made available to Aetna by means of the Internet or through other electronic means.
 - E. "Planned Downtime" means any period outside of the Primary Services Hours for which Supplier gives [*] ([*]) [*] or more notice that the Program will be unavailable.
 - F. "Primary Service Hours" mean the hours for member services, which are Monday through Friday 8:30 AM – 5:30 PM local time in the continental United States., excluding Holidays.
 - G. "Program" means those certain applications, operating systems, programs, and software that Supplier shall make accessible to Authorized Users through the Hosting Services pursuant to the license granted under the SLA.
 - H. "Resolution Time" means the time elapsed between the Guaranteed Response Time to a support issue and the time the Program is returned to operational status.
 - I. "Servers" means the Application Servers and Infrastructure Servers on which the Program is installed and the Hosting Services support. "Application Server" means any Server whose primary purpose is to serve the Program, other application software or databases. "Infrastructure Server" means any Server whose primary purpose is to serve infrastructure services, including data communication (including via SMTP), gateways, directory services, and system management.
 - J. "Severity Level 1 Problems (Critical)" means (i) the production system, or environment, or a major portion of the system or environment, is down resulting in an inability to login to the Program or a major portion of the Program or (ii) a Severity 2 problem has remained unresolved for [*]; or (iii) a Severity 3 problem has remained unresolved for [*].
 - K. "Severity Level 2 Problems" means (i) production system, or environment, or a major portion of the system or environment, is degraded, impeding critical business processing and/or causing disruption to normal production work flow; (ii) development is down, disrupting critical development; or (iii) a Severity 3 problem has remained unresolved for [*].
 - L. "Severity Level 3 Problems" means non-critical production system, or environment, or a major portion of the system or environment, is down, is degraded, or is experiencing problems.
 - M. "Severity Level 4 Problems" means non-critical production system, or environment, or a major portion of the system or environment is degraded, or minor production problems and/or questions exist.
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- N. “System Software” means those programs and programming (including the supporting documentation, media, on-line help facilities and tutorials) that perform tasks basic to the functioning of the Servers and which are required to operate the Program or Hosting Services. System Software includes operating systems, systems utilities and database software.
- O. “User Documentation” means all materials supplied under this Attachment, including, without limitation, any and all installer’s, operator’s and user’s manuals, training materials, sales and marketing literature, “technical white papers”, guides, functional and/or technical specifications, listings and other materials, (including, without limitation, all materials describing the interoperability of the Hosting Services with other hardware or software), in any or all media, for use in conjunction with the Hosting Services.

2. MAINTENANCE. All technical support provided in connection with the Programs hosted hereunder shall be provided as part of Maintenance as defined in the SLA and applicable Schedule(s).

3. HOSTING SERVICES AVAILABILITY

A. System Availability and Service Interruption. Supplier shall make [*] to provide 24 hours, 7 days a week availability and access to the Hosting Services, excluding the hours of [*], or during Planned Downtime, and will continuously and proactively monitor the Hosting Services and its related environment. Aetna will notify Supplier of service interruptions or delays that may be known to Aetna. Supplier will provide Aetna’s technical contact with notice of any Service Outage (as defined in Section 5.C. below) of the Hosting Services after Supplier becomes aware of such Service Outage. Aetna will provide access to its designated contacts to assist Supplier with correcting any Service Outage problems in a timely manner. Supplier will also provide updates to Aetna until the Service Outage has been corrected. Upon learning of any Service Outage, Supplier will correct the Service

Outage and restore Hosting Services availability. Supplier guarantees [*] percent Program availability excluding the hours of [*], Planned Downtime, and any Force Majeure as measured monthly.

B. Average Server Response Time. Supplier shall make [*] to provide an average Server response time of [*]. Server response time is defined as the elapsed time the Program Application Server spends processing an application request. Average response times are measured each calendar month. Notwithstanding the stated average Server response time, Supplier will endeavor to reasonably assist Aetna with diagnosis and remedy of performance issues.

C. Hosting Support and Guaranteed Response Times. Supplier warrants that Aetna’s calls for service will be responded to and resolved in accordance with the terms and conditions set forth below. Aetna and Supplier shall reasonably determine the Severity Level of the problem when Aetna places a service call to Supplier. Supplier warrants that it will use qualified technical personnel with the appropriate technical experience in the operation of the particular Program or resolution of the problem.

- i. *Support:* Supplier will provide telephone or pager support 24 hours per day, 7 days per week for Severity 1 problems, [*] a.m. to [*] p.m. Eastern Time, [*] through [*] for Severity 2 problems and, for Severity 3 and Severity 4 problems, [*] a.m. to [*] p.m. Eastern Time, [*] through [*].
- ii. *Timeframe for Resolution:* Supplier’s service technician will respond to service calls as follows:

<u>Severity</u>	<u>Response Timeframe from receipt of service call</u>	<u>Resolution Timeframe from receipt of service call</u>
Severity 1	[*]	[*]
Severity 2	[*]	[*]
Severity 3	[*]	[*]
Severity 4	[*]	[*]

If Aetna reaches a recorded message when it makes the service call, Supplier must respond back to Aetna by personal telephone call within the Response Timeframe to notify Aetna that Supplier received the service call and Supplier is working on a resolution. If Supplier reaches a recorded message when it responds to Aetna with a resolution within the required Resolution Timeframe, the obligation of Supplier shall be deemed satisfied and Supplier shall not be held further liable so long as Supplier leaves a message with the resolution or otherwise sends the resolution to Aetna within the time frame.

D. Credits. As a Performance Credit, as defined in Section 5.H. below, Supplier will credit to Aetna [*] ([*]) [*] of pro-rated [*] fees for each incident that Supplier fails to meet (a) the Guaranteed Response Time, (b) the average Server response time set forth in Section 3.B., or (c) the guaranteed availability percentage as defined in Section 3.A. with a maximum credit equal to [*]% of the [*] fees for such [*].

E. Reports. Supplier will provide Aetna a service level report at the end of each calendar month, which will include, among other things, an outline of the Aetna's usage of the Hosting Services, as well as the average Server response time for that calendar month.

4. COMPLIANCE WITH AETNA BRAND STANDARDS. If Supplier is performing any Services which would require the use of Aetna's corporate design and/or brand, Supplier shall adhere to Aetna's standards in the completion of the Services. Supplier shall be required to access and to comply with the requirements posted on Aetna's style guide website: <http://www.aetna.com/info>

Additionally, Supplier may be required to complete brand standards training sessions coordinated through the Aetna Head of Design Communications, prior to beginning the Services, and shall participate in periodic, on going web based training at the request of Aetna Head of Design Communications. In addition, all Supplier-generated artwork must be submitted to the Aetna Head of Design Communications for approval prior to releasing such artwork to any Aetna Project Coordinator.

5. HOSTING SERVICES

A. Provision of Hosting Services. When Aetna desires to obtain Hosting Services from Supplier, Aetna and Supplier will prepare a Schedule that shall include a detailed description of the Hosting Services, the fee for the Hosting Services, the dates for performance of the Hosting Services, and such other information the Parties deem necessary and appropriate. Supplier shall commence providing the Hosting Services to Aetna no later than the dates set forth in an applicable Schedule and in accordance with the terms of the Agreement.

B. Supplier Employees. If Aetna reasonably determines that a Supplier employee who has significant contact with Aetna is not performing in a reasonably satisfactory manner, then Aetna shall give Supplier written notice to that effect, requesting that the Supplier employee be replaced and stating the reason therefor. Promptly after its receipt of such a request by Aetna, Supplier shall replace that Supplier employee as soon as reasonably practicable with a person of suitable ability and qualifications. Nothing in this provision shall be deemed to give Aetna the right to require Supplier to terminate any Supplier employee's employment; rather it is intended to give Aetna only the right to request that Supplier discontinue using a Supplier employee in the performance of the Services for Aetna. Supplier agrees that it will not offer to Aetna the services of any person whose background report indicates that such person has been convicted of any criminal felony involving dishonestly or a breach of trust, or convicted of any offense involving dishonesty or a breach of trust while engaged in the business of insurance or convicted of any offense under 18 U.S.C. 1033 of the Violent Criminal Control and Law Enforcement Act of 1994. Supplier also agrees that it will not offer to Aetna the services of any person whose background report indicates that within the past seven (7) years such person has been convicted of or released from incarceration or probation for a crime involving injury or threat of injury to a person, a crime of violence or threat of violence, including, but not limited to, crimes in which a weapon was used in the commission of the crime, or a computer-related crime under state or federal law or a crime in which a computer was used in the commission of the crime.

C. Availability Standard. Supplier shall make the Hosting Services available as stated in Section 3.A. Under exceptional circumstances, Supplier may experience the need for emergency Maintenance during which time the Hosting Services will be unavailable to Aetna ("Service Outage"). Supplier will use reasonable efforts to notify Aetna a minimum of [*] ([*]) [*] prior to a Service Outage.

D. Hosting Support. During the Term of this Attachment, as part of the Hosting Services, [*] Aetna or its Affiliates, Supplier shall provide Aetna with technical support in connection with the Hosting Services ("Hosting Support"), Supplier shall not engage in any Hosting Support, upgrades, replacement of Services or System Software, or any other activity that may result in Aetna's inability to use or unavailability to access the Hosting Services, according to the System availability definitions set forth in this Attachment or in any applicable Schedule.

E. Rights of Use. Aetna shall have the following rights of use to the Programs, User Documentation and Hosting Services:

- i. to use the Programs and related User Documentation and have multi-user access to the Hosting Services on an unlimited number of computers or equipment, and at an unlimited number of sites;
 - ii. when a Program is installed at Aetna, to have multiple authorized Aetna employees use the licensed Program(s) hereunder, including use by authorized Aetna employees on a local area network (“LAN”);
 - iii. when a Program is installed at Aetna, to reproduce, from master media provided directly to Aetna by Supplier, Programs and/or User Documentation for distribution at Aetna and/or the right to have third parties provide reproduction and distribution services; and,
 - iv. to reproduce the User Documentation and other related materials for its own use provided that all titles, logos and copyrights are also reproduced.
- F. Ownership. Not including the Program, System Software or User Documentation, all intellectual property rights in and related to the Aetna Data, any research, or results generated by Aetna shall be the property of Aetna. Supplier acknowledges that any copyrightable works prepared or delivered by Supplier defined as a “work for hire” or any software customized for Aetna’s use in any applicable Schedule shall be the property of Aetna. Full and exclusive ownership rights in and to all such materials, including without limitation, whether in whole or in part, any and all intellectual property developed, produced, or generated regardless of the status of any then current copyright related to the Hosting Services being provided to Aetna under this Attachment and any applicable Schedule, shall be vested solely in Aetna. Aetna hereby reserves the exclusive right to copy and prepare derivative works, as that term is defined pursuant to 17 U.S.C. Supplier agrees to execute any documents reasonably requested by Aetna to fully vest such rights in Aetna. Nothing contained in this Attachment and any applicable Schedule shall restrict either a Party from the use of methods, ideas, concepts, know-how, techniques, program organization or database structuring techniques that have been previously developed by such that Party or are from in the public domain. The developing party may continue to use such methods, concepts, or techniques for its own purposes subject to the confidentiality obligations set forth in the MBA.
- G. Change Procedure. Either Party may request changes to the scope of the Hosting Services at any time. When a change could affect the cost, delivery schedule or other terms of the Schedule, both Aetna and Supplier must approve the change before the change is implemented. If either Party wishes to make a change, it shall notify the other Party of the requested change in writing, including sufficient details to enable the other Party to evaluate the change. Within a reasonable period of time, Supplier shall deliver a Change Request to Aetna. Upon acceptance and execution of the Change Request by Aetna and Supplier, the Change Request shall be incorporated into the Services. Both Parties shall continue to proceed in accordance with the agreed upon terms and conditions then in effect while Change Requests are being reviewed and approved.
- H. Failure to Meet Performance Criteria. Supplier and Aetna agree that the damage resulting from Supplier’s failure to meet performance criteria with regards to the Materials and /or Services being rendered provided under this Attachment or an applicable Schedule may be difficult to calculate. In the event that Supplier fails to meet certain performance criteria in conjunction with this Attachment, Supplier and Aetna agree that, as liquidated damages for such failure and not as a penalty, Aetna shall be entitled to receive, with respect to each such failure, a credit as set forth in an applicable Schedule (“Performance Credits”). The Performance Credits shall not be Aetna’s sole and exclusive remedy for such failure. Aetna may, in its sole discretion, waive acceptance of and not receive any Performance Credits relating to such failure and may terminate and pursue any other remedies that may be available to it in law or equity pursuant to the Agreement.
- I. Alpha/Beta Site. Aetna is not, and will not be, an alpha or beta site for the Hosting Services without the prior written consent of Aetna.
- J. Security. The parties expressly recognize that it is impossible to maintain flawless security, but Supplier agrees to adhere to Aetna security standards, to prevent security breaches in Supplier’s Server interaction with resources or users outside of any firewall that may be built into Supplier’s Server(s). The Aetna security standards will be provided to Supplier no later than 30 days after execution of this Attachment, and annually thereafter, unless changes are made prior to that annual distribution. If changes are made to the Aetna security standards, then, Supplier agrees to be compliant with any such change within [*] of receiving the change. Aetna agrees that it will only access and use the Hosting Services via authorized access provided by Supplier (e.g. password protected access).
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- K. Accuracy Disclaimer. Aetna is solely responsible for the accuracy and integrity of the Aetna Data. Supplier or third parties may provide links to other World Wide Web sites or resources as part of the Hosting Services. Supplier does not endorse and is not responsible for any data, software, or other content available from such sites or resources. Aetna acknowledges and agrees that Supplier shall not be liable for any damage or loss relating to Aetna's use of or reliance on such data, software or other content unless such damage or loss was directly as a result of a function of or error in the Program or Hosting Services.

6. DOCUMENTATION

- A. Delivery. Unless otherwise provided in writing and mutually agreed to, Supplier shall deliver to Aetna two (2) copies of all User Documentation in printed form and one (1) copy in a reproducible electronic form reasonably acceptable to Aetna on or before the date the Hosting Services are first made available to Aetna. If at any time such original User Documentation is revised or supplemented by additional User Documentation, Supplier shall promptly deliver to Aetna copies of such revised or additional User Documentation at no charge, in the quantities and forms set forth above.
- B. Copies. Aetna may make such additional copies of the User Documentation as it may deem necessary for its use, and for backup and disaster recovery purposes, provided that Aetna shall not obscure or delete any copyright, trademark and other proprietary notices included therein by Supplier.

7. CUSTOMIZATION & TRAINING

- A. Upon Aetna's request, Supplier shall perform customization services, with respect to the Hosting Services pursuant to a mutually agreed-upon Schedule.
- B. Supplier shall provide training to Aetna sufficient to adequately train the Authorized Users in the use of the Hosting Services as further described in a Schedule.

8. TESTING & ACCEPTANCE

- A. Testing. Supplier shall notify Aetna when the Hosting Services are available for testing and Aetna shall have [*] ([*]) [*], or such other time set forth in a Schedule, to conduct testing of the Program(s) and/or Hosting Services. Supplier shall assist in such testing at no additional cost. If such Program(s) and/or Hosting Services pass all such tests to Aetna's reasonable satisfaction, Aetna shall give Supplier written notice of acceptance of such Program(s) and/or Hosting Services. The Program(s) and/or Hosting Services shall not be deemed accepted unless and until Aetna provides Supplier with written notice of such acceptance, Aetna begins to use Program(s) and/or Hosted Services in a production environment, or the period of time granted to Aetna for rejection has elapsed.
- B. Failure and Correction. If the Program(s) and/or Hosting Services fail to pass [*] ([*]) [*] of Aetna's tests or otherwise fails to function properly or in conformity with the User Documentation, Aetna shall notify Supplier and Supplier shall correct such defect within [*] ([*]) [*] of receipt of such notice. If the Program(s) and/or Hosting Services do not perform to the service levels contained herein, Aetna may, in its sole discretion and in addition to any other rights and remedies available to it under the Agreement, (i) immediately terminate this Attachment or the applicable Schedule without any further obligation or liability of any kind under this Attachment and Supplier shall immediately refund to Aetna [*] paid by Aetna for managed Services under the applicable Schedule; or (ii) require Supplier to continue to attempt to correct the deficiencies until the Program(s) and/or Hosting Services successfully pass all tests and functions to Aetna's reasonable satisfaction in accordance with the applicable Schedule, reserving the right to terminate this Attachment at any time in accordance with clause (i) above.

9. TERM & TERMINATION. In addition to the terms and conditions in Section 4, *Term & Termination*, of the MBA, the following terms and conditions shall govern any Schedules for Hosting Services.

- A. Term. The term for each Hosting Service provided by Supplier to Aetna shall be set forth in the applicable Schedule.
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B. Termination Transition. In connection with the expiration or termination of this Attachment and any applicable Schedule prior to completion of Services, Supplier will comply with Aetna's reasonable directions to effect the orderly transition and migration of Aetna Data or the Program to Aetna or Aetna's designee from Supplier of all Services then being performed by Supplier or which Supplier is then responsible for performing under this Attachment or any Schedule (the "Termination Transition"). Supplier will assist in the Termination Transition for a period mutually agreed upon in writing by Aetna and Supplier. Aetna, Aetna's designee and its employees and agents will cooperate in good faith with Supplier in connection with Supplier's obligations under this section and Aetna's designee will perform its obligations under any approved transition plan developed by Aetna. Supplier will develop and submit to Aetna for approval a transition plan setting forth the respective tasks to be accomplished by each Party in connection with the orderly transition and a schedule pursuant to which the tasks are to be completed.

C. Effect of Termination. Within [*] ([*]) [*] after termination of this Attachment or any Schedule for Hosting Services for any reason, Supplier shall promptly refund to Aetna any prepaid, monthly fees associated with this Attachment and/or any managed services under the applicable Schedule. There shall be [*] of any kind [*] Attachment and/or any applicable Schedule. Promptly upon termination of this Attachment, or at any time upon Aetna's request, Supplier shall promptly return [*] to Aetna, or, at Aetna's option, destroy, all (or, if Aetna so requests, any part) of Aetna's Confidential Information and/or Aetna Data, and all copies thereof and other materials containing such Confidential Information and/or Aetna Data, and Supplier shall certify in writing its compliance with the foregoing. Additionally, upon such termination of this Attachment and/or applicable Schedule, and if Aetna has a perpetual license with the Supplier or the term of the license has not yet expired, Supplier shall promptly return the Program to Aetna in a manner, method and format immediately accessible and fully usable by Aetna.

10. FEES. All Hosting Services fees due hereunder, as set forth in an applicable Schedule, shall be invoiced by Supplier upon the Schedule Effective Date, and are due and payable in accordance with the terms and conditions of Section 3 of the MBA. Payment of the Hosting Services fees shall entitle Aetna to have the right to utilize and have access to the Hosting Services and all relevant User Documentation for the duration of the Term. Such right of utilization shall not be contingent upon additional fees of any kind whatsoever unless mutually agreed to in a Schedule or Change Request.

11. EXPENSES. If approved by Aetna in an applicable Schedule, Aetna will reimburse Supplier for reasonable and verifiable Out-Of-Pocket expenses in accordance with Exhibit A. Aetna shall reimburse such Out-Of-Pocket expenses at cost, no mark-up shall be accepted.

12. REPRESENTATIONS, WARRANTIES, COVENANTS & INDEMNIFICATION. In addition to the warranties in the Agreement, Supplier hereby represents, warrants and covenants to Aetna as follows:

A. User Documentation. Supplier warrants that the User Documentation shall be of sufficient detail so as to allow Aetna's employees to comprehend the operation of the Hosting Services, and Supplier shall, at no additional cost to Aetna, correct any User Documentation that does not conform to this warranty.

B. Disabling Devices. Supplier warrants that it has successfully tested the Programs and warrants that the Hosting Services and the Programs and System Software utilized in the performance of such do not contain threats known as software viruses, time or logic bombs, Trojan horses, worms, timers or clocks, trap doors, keys, node locks, time-outs or other functions, instructions, devices or techniques whether implemented by electronic, mechanical or other means that can or were designed to erase data or programming, infect, disrupt, damage, disable, shut down a computer system or any component of such computer system, including, but not limited to, its security or user data, or otherwise cause any Programs to become inoperable or incapable of being used in accordance with the User Documentation (hereinafter "Disabling Devices").

C. Hosting Services Performance Warranty. During the Term of an applicable Schedule, the Hosting Services and System Software shall function properly and be performed without any malfunction or defect and in conformity with the User Documentation, in accordance with this Attachment, and any specifications set forth in the applicable Schedule.

D. Program Warranties. All warranties, representations, and covenants set forth in Section 8 of the Software License Attachment pursuant to this Agreement are applicable to this Attachment and shall be in full force and effect.

13. BUSINESS CONTINUITY

- A. **Business Continuity and Disaster Recovery Plans.** Supplier is required to have adequate business continuity protection in place that minimizes the impact of disruptions to Aetna's critical business processes, provides coordinated responses to potential or actual disruptions, and coordinates restoration activities once a disruption has ended. Plans must include disaster backup and recovery plans for critical information technology infrastructure (data centers, hardware, software, power systems, etc.) and critical voice, data and e-commerce communications links and plans to restore production capability within [*] of the point of failure. Additionally, Supplier agrees to have in place business continuity plans for critical personnel, equipment, facilities and third party providers. Supplier shall also have credible plans in place to limit the amount of critical data lost to a maximum of [*]. It is Supplier's responsibility to ensure that plans are in place for any outsourced or subcontracted activity that could impact critical processes and that such third party plans also meet the same standards as required of Supplier. Upon execution of this Attachment may visit the Supplier site and view their Business Continuity Plan that identifies alternate work sites/ hot site contracts and a summary of the testing program, test schedule, and test results.
- B. **Implementation of Plans.** In the event the Supplier is unable to, or is likely to become unable to, perform the Services for any reason, including physical damage to equipment and/or facilities, equipment malfunction, telecommunications links and devices or software failure, Supplier is required to make a best faith effort to notify the appropriate personnel at Aetna within [*] ([*]) [*] of the actual or potential incident or outage. Supplier shall test their Disaster Backup and Business Continuity Plans at least annually and provide written notification to Aetna of test plan and results. In the event that Supplier is unable to comply with the stipulations of their Disaster Backup and Recovery or Business Continuity plans or the stipulations of this Attachment, then they are to notify Aetna in writing promptly, but not to exceed, [*] ([*]) [*], as to the reason and provide a timetable as to when the plans will again be functional.

14. CONTINUITY OF SERVICES. Supplier acknowledges that the performance of its obligations, including without limitation any Hosting Services or Maintenance, pursuant to this Attachment is critical to the business and operations of Aetna and its Affiliates. Accordingly, in the event of a dispute between Aetna or an Affiliate (as the case may be) and Supplier, Supplier shall continue to perform its obligations, including without limitation the Hosting Services, Maintenance under this Attachment in good faith during the resolution of such dispute, as stated in Section 3.C. of the MBA, unless and until this Attachment is terminated in accordance with the provisions hereof.

15. ADDITIONAL ESCROW REQUIREMENTS. In addition to the Escrow Requirements detailed elsewhere in the Agreement, Supplier shall, at Aetna's sole cost and expense, place one (1) complete copy of all object codes and executables with Aetna's escrow agent. Such placement will be governed by the same requirements as the placement of the source code.

16. AUDIT. Supplier shall maintain complete, accurate and detailed records regarding the fees charged to Aetna, and any additional documentation detailed in an applicable Schedule under this Attachment. Supplier shall retain such records and make them available for inspection and audit by Aetna during normal working hours with reasonable advance written notice (or in the case of external regulatory audits, such lesser amount of prior notice given by the applicable regulators or inspectors), to verify compliance with the terms of the Attachment, the integrity and security of Aetna's proprietary Confidential Information and the Aetna Data and to examine the systems that process, store, support and transmit that data during the Term and for a period of [*] ([*]) [*] thereafter. If discrepancies or questions arise with respect to such records, Supplier shall preserve such records until an agreement is reached with Aetna regarding their disposition.

17. SUBCONTRACTORS. Aetna recognizes that Supplier may have the need to utilize subcontractor(s) or supplementary provider(s) in performance of Services pursuant to the applicable Schedule. Subcontractor(s) or supplementary provider(s) may be utilized only upon prior written approval of Aetna, which shall not be unreasonably withheld. The cost of any subcontractor(s) and/or supplementary provider(s) employed or retained by Supplier shall be the sole responsibility of Supplier and shall, in no instance, be in addition to the fees hereunder. Upon Aetna's request, Supplier shall provide a detailed report to Aetna of the Services rendered by such subcontractor(s) or supplementary provider(s) pursuant to this Schedule. Subcontractors shall be bound by all the provisions of this Attachment and applicable Schedule as if they were Supplier's employees and shall execute all required documents requested by Aetna.

IN WITNESS WHEREOF, the Parties have hereto by their duly authorized representatives executed this Agreement.

Aetna Life Insurance Company

By: _____
(Authorized Signature)

Name: _____
(Print Name)

Title: _____

Date: _____

Benefitfocus.com, Inc.

By: _____
(Authorized Signature)

Name: _____
(Print Name)

Title: _____

Date: _____

Taxpayer ID #: 57-1099948

SUPPLIER TRAVEL EXPENSE REIMBURSEMENT GUIDELINES

Supplier Employees traveling on behalf of Aetna are required to comply with the following guidelines for the Supplier to receive reimbursement. Whenever possible, travelers must use Aetna's preferred air, hotel and rental car Suppliers. All expenses are subject to audit.

Air Travel. Supplier will be reimbursed for air travel at coach rates only. Wherever possible, trips by Supplier should be planned and booked at least 2 weeks in advance in order to receive the maximum discount rate from the airlines. To reduce costs, all tickets must be the lowest airfare available within 2 hours of stated requested departure time, non-refundable and issued in electronic form whenever possible. No traveler may refuse this option. Supplier Employees must retain electronic or faxed confirmations and submit with reimbursement request in order to be compensated. Airport departure taxes paid in connection with business travel are reimbursable. Excess baggage fees are not reimbursable unless the excess is required specifically for business equipment or supplies. Unused tickets (unless cancellation is directed by Aetna) and/or lost tickets are the Supplier's responsibility. Airline headphones for movies/radio are not reimbursable. Delay en route charges are reimbursable for business purposes only, not for passenger convenience or personal reasons.

Hotel. Supplier will be reimbursed for expenses incurred for hotel costs while traveling in connection with the Services. A standard room (single room rate) is required and is reimbursable. Suites, concierge floor rooms, upgraded rooms or similar luxury accommodations are not reimbursable. Room service is reimbursable as part of the meal allowance described below. Mini-bars, health clubs, safe rentals, valet, concierge services, club memberships, dry cleaning, and movies are not reimbursable and are considered personal expenses. Taxes associated with the daily room rate (i.e. local, county and state) are reimbursable. If engagement is expected to exceed 6 weeks, consultants must use corporate housing as arranged by Aetna.

Car Rental. Supplier will be reimbursed for auto rental at intermediate car rates only, unless 5 or more Supplier Employees are sharing the same auto. The guidelines for the maximum-size car that can be rented depends on the number of people who will be using such vehicle:

Number of people	Car Size	Example
1-2 people	Compact	Ford Focus
3-4 people	Midsize (Intermediate)	Ford Contour
5	Full-size	Ford Taurus

If 6 or more Supplier Employees are traveling on behalf of Aetna, then a second car may be rented using the guidelines above. Supplier Employees must waive all additional insurance when using the preferred vendor. Additional insurance is not reimbursable when using a non-preferred vendor. Insurance is built into the Aetna corporate rate. Supplier Employees should waive the refueling option and return cars fully fueled. Refueling charges incurred with the car vendor are not reimbursable. All rental cars must be returned to the original pick-up location. Many Aetna preferred hotels have shuttle services to and from the airport. The shuttle option should be used instead of renting a car whenever possible.

Meals and Incidentals. Aetna will reimburse the actual cost of meal and incidental expenses up to the dollar limits listed below.

Meals. The actual cost of meals is reimbursed only in conjunction with an overnight stay up to a maximum of \$40 per day (including tips). Alcoholic beverages are not reimbursable.

Parking. Reasonable business-related expenses are reimbursable (e.g., airport parking, hotel parking, etc.).

Tips. Reasonable tips are reimbursable up to a maximum of \$5.00 per day (excluding meal tips).

Tolls. Highway tolls, whether incurred with a rental or personal car, are reimbursable.

Taxi. Business-related expenses are reimbursable (e.g., airport shuttles, vans) when the lowest option available is used. Aetna will not reimburse for limousine or car service.

Receipts. Supplier must include full explanation and original receipts for all expenses over \$10 in order to receive reimbursement from Aetna.

PROFESSIONAL SERVICES ATTACHMENT

This Attachment to the Master Business Agreement dated November 28, 2006 (the "MBA"), for the performance of Professional Services (this "Attachment") is entered into as of the November 28, 2006 (the "Services Effective Date") by and between Aetna Life Insurance Company ("Aetna"), a Connecticut corporation with its principal place of business located at 151 Farmington Avenue, Hartford, Connecticut 06156 and Benefitfocus.com, Inc., a South Carolina corporation with its principal place of business located at 100 Benefitfocus Way, Charleston, South Carolina, 29492 ("Supplier"). The terms and conditions of this Attachment, in conjunction with each applicable Schedule, are hereby incorporated into and made a part of the Agreement. In the event of a conflict between the MBA, this Attachment or a Schedule, or any other document made a part of this Attachment, the documents shall control in the following priority: the applicable Schedule, this Attachment, the MBA, then any other documents.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein recited and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, warrant, covenant, understand and agree as follows:

1. DEFINITIONS. Capitalized terms not otherwise herein defined shall have the meanings ascribed to them in the Agreement. The terms set forth in this Section shall have the following meaning:

- A. "Change Request" means a written instrument by which either Party may request a change or modification to the Services which shall detail the cost of the change and impact of the change on the total cost of the Services, the impact of the change on the Schedule and the technical description or specification of the requested change.
- B. "Out-Of-Pocket Expenses" shall mean, but is not limited to, reasonable and verifiable coach class travel, hotel accommodations, meal expenses and other related expenses as defined in the Supplier Travel Expense Reimbursement Guidelines, attached hereto and incorporated herein as Exhibit A, which Supplier incurs that are directly related to this Attachment. If approved by Aetna in writing, including email, and that the expenses are within the guidelines of Exhibit A, Aetna will reimburse Supplier for such expenses at cost, no mark-up shall be accepted.
- C. "Services" means professional services provided by the Supplier that shall be as set forth in this Attachment and/or an applicable Schedule.

2. SERVICES

- A. Schedules. On each occasion when Aetna desires to obtain Services from Supplier, Aetna will prepare a Schedule which shall include a detailed description of the Services, the fee for the Services, the name of the key Supplier employee(s), the dates for performance of the Services, assignment location, the name of the Aetna Coordinator, and such other information the Parties deem necessary and appropriate.
- B. Change Procedure. Either Party may request changes to the scope of the Services at any time. When a change could affect the cost, delivery schedule or other terms of the Agreement, both Aetna and Supplier must approve the change before the change is implemented. If either Party wishes to make a change, it shall notify the other Party of the requested change in writing, including sufficient details to enable the other Party to evaluate the change. Within a reasonable period of time, Supplier shall deliver a Change Request to Aetna. Upon acceptance and execution of the Change Request by Aetna and Supplier, the Change Request shall be incorporated into the applicable Schedule. Both Parties shall continue to proceed in accordance with the agreed upon terms and conditions then in effect while Change Requests are being reviewed and approved.
- C. Time of Essence. Supplier understands and agrees that time is of the essence in meeting the Deliverable date(s) set forth in the applicable Schedule and will provide Aetna with periodic updates.

3. COMPLIANCE WITH AETNA BRAND STANDARDS. If Supplier is performing any Services which would require the use of Aetna's corporate design and/or brand, Supplier shall adhere to Aetna's standards in the completion of the Services. Supplier shall be required to access and to comply with the requirements posted on Aetna's style guide website: <http://www.aetna.com/info>.

Additionally, Supplier may be required to complete brand standards training sessions coordinated through the Aetna Head of Design Communications, prior to beginning the Services, and shall participate in periodic, on going training at the request of Aetna Head of Design Communications. In addition, all Supplier-generated artwork must be submitted to the Aetna Head of Design Communications for approval prior to releasing such artwork to any Aetna Project Coordinator.

4. ACCEPTANCE. Unless as otherwise defined in the applicable Schedule, if Aetna does not accept the Services, or a portion thereof, then Aetna shall send written notice to Supplier of such non-acceptance no later than [*] after completion of performance of the Services and/or delivery of the Materials and shall provide reasonable detail of the basis for such non-acceptance. Supplier shall promptly correct the Materials or promptly engage in the re-performance of the Services so that the Services are in conformance with any Acceptance Criteria stated in the applicable Schedule. The Parties shall cooperate and exercise all reasonable efforts for the purpose of resolving and correcting all errors or problems. In the event of such non-acceptance, Supplier shall assign additional technical resources to Aetna, at no additional charge, as necessary, in order to complete the project no more than [*] ([*]) [*] later than the performance date listed in the applicable Schedule. If Aetna does not accept the Services, or a portion thereof, the [*] due to Supplier [*] such deficiencies. For Services as it relates to customized code or Programs for Aetna, if Supplier cannot cure deficiencies within [*] ([*]) [*] of notice of such, then Aetna will be entitled to a refund of all fees and expenses paid to Supplier under the applicable Schedule and/or pursue other remedies that may be available to it in law or equity pursuant to the Agreement.

5. FAILURE TO MEET PERFORMANCE CRITERIA. Supplier and Aetna agree that the damage resulting from Supplier's failure to meet performance criteria with respect to Services being provided under this Attachment or an applicable Schedule may be difficult to calculate. In the event that Supplier fails to meet certain performance criteria in conjunction with a Schedule, Supplier and Aetna agree that, as liquidated damages for such failure and not as a penalty, Aetna shall be entitled to receive, with respect to each such failure, a credit as set forth in an applicable Schedule ("Performance Credits"). The Performance Credits shall not be Aetna's sole and exclusive remedy for such failure. Aetna may, in its sole discretion, waive and not receive any Performance Credits relating to such failure and may terminate and pursue other remedies that may be available to it in law or equity pursuant to the Agreement.

6. FEES & PAYMENT OF SERVICES. In the event that the Parties agree that the fees for performance of Services hereunder shall be calculated on time and materials basis, the billable Services to be provided by Supplier are anticipated to consist of 5 person-days each calendar week, Aetna holidays excluded, and shall be performed only within the Assignment Location specified in the Schedule and during the time periods within Aetna's normal office hours. Services in excess of 40 hours per week ("Overtime") shall be billable only if previously approved by the Aetna Coordinator. If under federal or state laws or regulations the Supplier employee is eligible for Overtime pay rates higher than the hourly fee then, prior to the commencement of Services, Supplier must provide Aetna with written documentation of such eligibility.

7. SUPPLIER PERSONNEL

- A. Supplier Employees. Without diminishing Supplier's obligation to be primarily responsible for the acts and omissions of its employees, if Aetna reasonably determines that a Supplier employee who has significant contact with Aetna is not performing in a reasonably satisfactory manner, then Aetna shall give Supplier written notice to that effect, requesting that the Supplier employee be replaced, and stating the reason therefore. Promptly after its receipt of such a request by Aetna, Supplier may replace that Supplier employee as soon as reasonably practicable with a person of suitable ability and qualifications. Nothing in this provision shall be deemed to give Aetna the right to require Supplier to terminate any Supplier employee's employment; rather it is intended to give Aetna only the right to request that Supplier discontinue using a Supplier employee in the performance of the Services for Aetna.
- B. Safety Requirements. Supplier agrees that its Supplier employees shall at all times comply with the security and safety regulations in effect upon Aetna's premises and maintain security of materials belonging to Aetna. Each Supplier employee shall sign Aetna's I/T Security Statement of Policy, attached hereto as Exhibit C, and Aetna's Code of Conduct, attached hereto as Exhibit D, in advance of the performance of any work.
- C. Background Investigations. Supplier agrees that before deploying any Supplier employee, subcontractor or agent ("Deployed Person") to provide Services to Aetna, Supplier will conduct an investigation of such Deployed Person's background"). Supplier agrees that this investigation will include the following:
- i. Verification of employment, salary and prior job performance as claimed by the Deployed Person for the previous five (5) years;
 - ii. Verification of the Deployed Person's educational attainments (highest degree earned beginning with licenses and/or professional certifications and associates degrees as claimed by the Deployed Person);
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- iii. To the extent permitted by applicable law, review of appropriate federal, state and local records to determine if the Deployed Person has a criminal record. The investigation shall include all addresses where the Deployed Person resided in the previous ten (10) years and all employer locations where the Deployed Person was employed. When conducting a criminal records check for misdemeanor convictions, Supplier shall review records for the preceding seven (7) years, except in California which is limited to five (5) years. A criminal conviction report shall include the type of offense and whether the listed offense is a felony or misdemeanor. All felony convictions that are disclosed during the investigation must be reported regardless of when the conviction occurred. Where a comprehensive statewide search initially indicates a criminal record the details of which are not available in five (5) business days, county searches will be conducted. County searches shall be provided in all other situations where comprehensive and timely statewide searches are not available.

Supplier further agrees that, without prior consultation with and approval from Aetna, it will not deploy to Aetna any Deployed Person for whom the background report indicates either a discrepancy between the criminal record, employment history, educational attainments, licenses and/or professional certifications claimed by the Deployed Person and what has been verified by Supplier. Supplier also agrees that before deploying any person whom the background report indicates has a criminal record, it will inform Aetna of the nature of the criminal record. Aetna shall have sole discretion as to whether such person is suitable for deployment.

In conducting the background investigations, Supplier agrees to comply with all provisions of applicable law, including, but not limited to, the Fair Credit Reporting Act, as amended, and, to obtain the Deployed Person's explicit written authorization to release information from the background investigation to Aetna. Supplier agrees to indemnify, defend, settle and hold Aetna harmless from and against any and all claims, damages, losses, liabilities, costs and expenses arising from background investigations required herein.

In addition, Supplier represents that at all times it will comply with all state and federal laws and regulations with respect to maintaining a drug-free workforce and that it will disclose its drug testing procedures to Aetna upon request.

Notwithstanding the above provisions, Supplier agrees that it will not deploy any person to provide Services to Aetna whose background investigation reveals that such person has been convicted of any criminal felony involving dishonesty or a breach of trust or that such person has been convicted of any offense under 18 U.S.C. Section 1033 of the Violent Crime Control and Law Enforcement Act of 1994, which section is captioned "Crimes by or Affecting Persons Engaged in the Business of Insurance Whose Activities Affect Interstate Commerce". However, Supplier will not be deemed or considered to be in violation of this Section if applicable law limits access to criminal records to the preceding seven (7) years. Such offenses include, by way of illustration and not of limitation, activities by persons in the insurance industry who willfully and materially overvalue any land, property or securities; embezzlement or misappropriation of insurance premiums and other funds; the making of false entries or statements in reports with the intent to deceive another person engaged in the insurance industry; or the use of threat or force in an attempt to corrupt or obstruct administrative proceedings related to the insurance industry.

Upon Aetna's written request, Supplier shall provide to Aetna written certification that Supplier has performed the background investigations required herein. Said certification shall include, but not be limited to, Deployed Person's name, the types of investigations performed, the time period(s) investigated, the geographic area(s) investigated (where appropriate), and the names and addresses of the agency, if any, utilized in performing the required investigations. Supplier and Aetna agree that Supplier's failure to comply with any of the provisions of this Section 7 shall constitute a material breach of the Agreement.

8. SUBCONTRACTORS. Aetna recognizes that Supplier may have the need to utilize subcontractor(s) or supplementary provider(s) in performance of Services. Subcontractor(s) or supplementary provider(s) may be utilized only upon prior written approval of Aetna, which shall not be unreasonably withheld. The cost of any subcontractor(s) and/or supplementary provider(s) employed or retained by Supplier shall be the sole responsibility of Supplier and shall, in no instance, be in addition to the fees hereunder. Upon Aetna's request, Supplier shall provide a detailed report to Aetna of the Services rendered by such subcontractor(s) or supplementary provider(s) pursuant to this Schedule. Subcontractors shall be bound by all the provisions of this Schedule and applicable Schedule as if they were Supplier's employees and shall execute all required documents requested by Aetna.

9. NON-DISCLOSURE STATEMENT. Each Supplier employee shall execute, prior to performing any work, a non-disclosure statement in the form of the Non-Disclosure Statement attached hereto and made a part hereof as Exhibit B.

10. BUSINESS CONTINUITY

- A. Business Continuity and Disaster Recovery Plans. Supplier is required to have adequate business continuity protection in place that minimizes the impact of disruptions to Aetna's critical business processes, provides coordinated responses to potential or actual disruptions, and coordinates restoration activities once a disruption has ended. Plans must include disaster backup and recovery plans for critical information technology infrastructure (data centers, hardware, software, power systems, etc.) and critical voice, data and e-commerce communications links and plans to restore production capability within [*] of the point of failure. Additionally, Supplier agrees to have in place business continuity plans for critical personnel, equipment, facilities and third party providers. Supplier shall also have credible plans in place to limit the amount of critical data lost to a maximum of [*]. It is Supplier's responsibility to ensure that plans are in place for any outsourced or subcontracted activity that could impact critical processes and that such third party plans also meet the same standards as required of Supplier. Upon execution of this Attachment, Aetna may visit the Supplier site and view their Business Continuity Plan that identifies alternate work sites/ hot site contracts and a summary of the testing program, test schedule and test results.
- B. Implementation of Plans. In the event the Supplier is unable to, or is likely to become unable to, perform the Services for any reason, including physical damage to equipment and/or facilities, equipment malfunction, telecommunications links and devices or software failure, Supplier is required to make a best faith effort to notify the appropriate personnel at Aetna within [*] ([*]) [*] of the actual or potential incident or outage. Supplier shall test their Disaster Backup and Business Continuity Plans at least annually and provide written notification to Aetna of test plan and results. In the event that Supplier is unable to comply with the stipulations of their Disaster Backup and Recovery or Business Continuity plans or the stipulations of this Attachment, then they are to notify Aetna in writing promptly, but not to exceed, [*] ([*]) [*], as to the reason and provide a timetable as to when the plans will again be functional.
-

IN WITNESS WHEREOF, the Parties have hereto by their duly authorized representatives executed this Agreement.

Aetna Life Insurance Company

By: _____
(Authorized Signature)

Name: _____
(Print Name)

Title: _____

Date: _____

Benefitfocus.com, Inc.

By: _____
(Authorized Signature)

Name: _____
(Print Name)

Title: _____

Date: _____

Taxpayer ID #: 57-1099948

SUPPLIER TRAVEL EXPENSE REIMBURSEMENT GUIDELINES

Supplier employees traveling on behalf of Aetna are required to comply with the following guidelines for the Supplier to receive reimbursement. Whenever possible, travelers must use Aetna's preferred air, hotel and rental car Suppliers. All expenses are subject to audit.

Air Travel. Supplier will be reimbursed for air travel at coach rates only. Wherever possible, trips by Supplier should be planned and booked at least 2 weeks in advance in order to receive the maximum discount rate from the airlines. To reduce costs, all tickets must be the lowest airfare available within 2 hours of stated requested departure time, non-refundable and issued in electronic form whenever possible. No traveler may refuse this option. Supplier Employees must retain electronic or faxed confirmations and submit with reimbursement request in order to be compensated. Airport departure taxes paid in connection with business travel are reimbursable. Excess baggage fees are not reimbursable unless the excess is required specifically for business equipment or supplies. Unused tickets (unless cancellation is directed by Aetna) and/or lost tickets are the Supplier's responsibility. Airline headphones for movies/radio are not reimbursable. Delay en route charges are reimbursable for business purposes only, not for passenger convenience or personal reasons.

Hotel. Supplier will be reimbursed for expenses incurred for hotel costs while traveling in connection with the Services. A standard room (single room rate) is required and is reimbursable. Suites, concierge floor rooms, upgraded rooms or similar luxury accommodations are not reimbursable. Room service is reimbursable as part of the meal allowance described below. Mini-bars, health clubs, safe rentals, valet, concierge services, club memberships, dry cleaning, and movies are not reimbursable and are considered personal expenses. Taxes associated with the daily room rate (i.e. local, county and state) are reimbursable. **If engagement is expected to exceed 6 weeks, consultants must use corporate housing as arranged by Aetna.**

Car Rental. Supplier will be reimbursed for auto rental at intermediate car rates only, unless 5 or more Supplier Employees are sharing the same auto. The guidelines for the maximum-size car that can be rented depends on the number of people who will be using such vehicle:

<u>Number of people</u>	<u>Car Size</u>	<u>Example</u>
1-2 people	Compact	Ford Focus
3-4 people	Midsized (Intermediate)	Ford Contour
5	Full-size	Ford Taurus

If 6 or more Supplier Employees are traveling on behalf of Aetna, then a second car may be rented using the guidelines above. Supplier Employees must waive all additional insurance when using the preferred vendor. Additional insurance is not reimbursable when using a non-preferred vendor. Insurance is built into the Aetna corporate rate. Supplier Employees should waive the refueling option and return cars fully fueled. Refueling charges incurred with the car vendor are not reimbursable. All rental cars must be returned to the original pick-up location. Many Aetna preferred hotels have shuttle services to and from the airport. The shuttle option should be used instead of renting a car whenever possible.

Meals and Incidentals. Aetna will reimburse the actual cost of meal and incidental expenses up to the dollar limits listed below.

Meals. The actual cost of meals is reimbursed only in conjunction with an overnight stay up to a maximum \$40 per day (including tips). Alcoholic beverages are not reimbursable.

Parking. Reasonable business-related expenses are reimbursable (e.g., airport parking, hotel parking, etc.).

Tips. Reasonable tips are reimbursable up to a maximum of \$5.00 per day (excluding meal tips).

Tolls. Highway tolls, whether incurred with a rental or personal car, are reimbursable.

Taxi. Business-related expenses are reimbursable (e.g., airport shuttles, vans) when the lowest option available is used. Aetna will **not** reimburse for limousine or car service.

Receipts. Supplier must include full explanation and original receipts for all expenses over \$10 in order to receive reimbursement from Aetna.

NON-DISCLOSURE STATEMENT

CONFIDENTIAL INFORMATION

For the purpose of this Attachment, "Aetna Confidential Information" includes information concerning Aetna's providers and/or suppliers performing services or providing products for or on behalf of Aetna's enrollees or members; shall include all financial, technical and other information in any form (including all copies thereof) which is reasonably considered proprietary to Aetna or any of its Affiliates, including, but not limited to, information or materials related to the business affairs or conditions of Aetna and its Affiliates; policies and/or procedures; Aetna's strategies or initiatives; or to the design, programs, flow charts, and documentation of Aetna's data processing applications and software, whether or not such applications and software are owned by Aetna. "Aetna Confidential Information" also includes any reports, notes, summaries, excerpts, work product, or other documents utilizing or incorporating Aetna Confidential Information whether in whole or in part, and oral presentations or discussions describing, elaborating upon, or otherwise relating to Aetna Confidential Information. Supplier shall not use the Aetna Confidential Information for Supplier's own advantage other than in direct performance of this or any subsequent similar agreement with Aetna. Supplier shall limit disclosure of the Aetna Confidential Information solely to those employees who are necessary for and directly involved in the Supplier's exercise of its rights or performance of its obligations under this Attachment. Copying and reproduction shall be done to the minimum extent necessary. Supplier agrees that neither Supplier nor the Supplier employee shall, at any time during or after the term of this Attachment sell, assign, license or disclose any Aetna Confidential Information it receives from Aetna to any other person, Affiliate, firm, corporation or other entity or agency. Supplier warrants that it will apply commercially reasonable safeguards to protect Aetna Confidential Information against unlawful or otherwise unauthorized access, use and disclosure and to take any other steps reasonably necessary to safeguard Confidential Information. Within thirty (30) days of receipt of written request from Aetna, Supplier agrees to return to Aetna, or to destroy, and to delete from any of its electronic storage devices, all Aetna Confidential Information received from Aetna, in the form it was originally given to Supplier.

Exceptions. Information shall not be deemed to be Confidential Information, and Supplier shall have no obligation with respect to any such information, which:

- i. is or falls into the public domain through no wrongful act or negligence of Supplier;
- ii. is rightfully received from a third party without restriction and without breach of this Attachment;
- iii. is approved for release by written authorization of an officer of Aetna; or
- iv. is already in Supplier's possession as evidenced by its records kept in the ordinary course of business and is not the subject of a separate non-disclosure agreement.

Supplier retains the right to disclose Confidential Information pursuant to the requirements of a governmental agency or operation of law. If legally permissible and to the extent possible, Supplier will give prior notice to Aetna of such disclosure so that Aetna, at its discretion, may seek confidential or protected status for such Confidential Information. If notice to Aetna is not legally permissible, Supplier will use reasonable efforts to receive confidential or protected status for such Confidential Information.

It is expressly agreed by you and Supplier that the provisions of this Non-Disclosure Statement shall survive the termination, for any reason, of this Attachment and shall be binding on you and Supplier, its successors and assigns for the benefit of Aetna and its affiliated companies and their successors and assigns.

I hereby acknowledge that I have read, understood and agreed to be bound by this Non-Disclosure Statement.

Consultant name (type/print)

Date

Supplier name (type/print)

Consultant signature

I/T SECURITY STATEMENT OF POLICY

As a consultant working at Aetna, you need to be aware of and follow Aetna's policies and procedures pertaining to the security of our information and information technology resources. Read and follow the policies and procedures set forth below.

POLICY

Aetna will safeguard its information and information technology resources from the risks of accidental or unauthorized loss, theft, modification, disclosure, or destruction.

Aetna information systems are a critical part of our ability to serve our customers efficiently and effectively. Safeguarding our systems and the information they contain is crucial.

Our goal is to ensure that all workers (employees, consultants, temporaries, etc.) protect Aetna's information systems and electronic information. Protecting them means preventing unauthorized access and disclosure, modification, destruction and/or theft of our systems and information.

ALL consultants must:

- Adhere to all Aetna security policies and standards.
- Never use non-Aetna-owned hardware or software on Aetna's network without prior approval of Integrated User Services management.
- Use Aetna provided information technology equipment and materials, including hardware, software and data, only in the performance of your contractual assignment.
- Restrict access to Aetna equipment and materials, whether on card, disk, tape, printout, or computer terminal display, only to those individuals who are authorized and/or have a business need to know. If you are uncertain as to whether a particular individual has proper authorization, assume that that individual is unauthorized and seek clarification from your Aetna project coordinator.
- Protect all authorization codes and mechanism(s) such as passwords from disclosure and/or unauthorized use. You are accountable for all actions performed under your assigned computer accounts.
- Use Aetna's computer systems only to perform your assigned task.
- Follow backup and recovery procedures. If you are uncertain as to what procedures apply to the systems on which you are working, seek clarification from your Aetna project coordinator.
- Immediately report all known, or suspected, security weaknesses or violations to your Aetna project coordinator.
- Never circumvent the security features of any system, even to expedite task completion.
- Return all company assets, including electronically stored programs and data, upon contract termination.

I, _____
 First Middle Initial Last
 (Type/print consultant's name)

acknowledge that I have read and understand Aetna's I/T Security Statement of Policy. I understand that I should discuss any parts that are unclear to me with my Aetna project coordinator. I understand that I am responsible for adhering to I/T security policies, standards and procedures issued for the use and safeguarding of Aetna's information and information technology resources.

 (Consultant's signature)

 (Date)

Return this signed form to the business area coordinator for inclusion in consultant's permanent file.

AETNA CODE OF CONDUCT

Statement 1: Conflict of Interest

Employees must conduct themselves in a manner that avoids actual or apparent conflicts of interest and that protects Aetna's business reputation.

Statement 2: Improper use of Aetna property or resources

Illegal or improper use of Aetna property or resource is prohibited.

Statement 3: Fraud, dishonesty or criminal conduct

Fraud, dishonesty or criminal conduct involving company operations is prohibited.

Statement 4: Safeguarding member health information and other proprietary, confidential or nonpublic information

Member health information and other proprietary, confidential or nonpublic information must be handled properly in order to protect such information from inappropriate access, use and disclosure.

Statement 5: Business and trade practices

All employees are expected to comply fully with all federal and state laws and regulations applicable to Aetna's businesses and with all company policies.

Statement 6: Government contracting

Employees must help Aetna meet its objective to be a responsible and reputable government contractor.

Statement 7: Employment practices

Employment decisions must be based only on an employee's or applicant's qualifications, demonstrated skills and achievements without regard to race, color, sex, national origin, religion, age, disability, veteran status, citizenship, sexual orientation, gender identify or marital status.

Statement 8: Securities transactions

Employees are prohibited from trading securities while in possession of material nonpublic information.

Statement 9: Interacting with the media and other outside parties and organizations

Communications made on behalf of Aetna must be approved by senior management, and personal views must be kept separate from company views.

Statement 10: Intellectual property

Intellectual property used by Aetna, whether owned or licensed from others, is a valuable asset and must be protected from unauthorized use or disclosure.

**AMENDMENT NO. 1
TO THE
PROFESSIONAL SERVICES ATTACHMENT
TO THE
MASTER BUSINESS AGREEMENT
BETWEEN
AETNA LIFE INSURANCE COMPANY
AND
BENEFITFOCUS.COM, INC.**

This amendment ("Amendment") to the Professional Services Attachment ("Attachment" to the Master Business Agreement dated November 28, 2006 ("Agreement")) between Benefitfocus.com, Inc. ("Supplier") and Aetna Life Insurance Company ("Aetna") is made this 1st day of November, 2009 (the "Effective Date"). The following amendments are incorporated into and made part of the Attachment as of the Effective Date. All sections and paragraphs of the Agreement not hereby amended shall remain in full force and effect. Capitalized terms not otherwise herein defined shall have the meanings ascribed to them in the Agreement. In the case of a conflict, the terms of this Amendment will control and prevail over those contained in the Agreement.

The Attachment is amended as follows:

1. Add new Section 11 as follows:

"11. GOVERNANCE OF SIGNIFICANT PROJECTS.

- A. For Schedules executed under this Attachment that require significant expenditure of time and resources, Aetna and Supplier shall form a joint steering committee ("Committee") for purposes of establishing and monitoring timelines and Deliverables and for managing and resolving issues that may arise from time to time.
- B. The Committee shall be comprised of Aetna and Supplier employees, at least one of which shall be an Aetna information technology professional and at least one of which shall be a Supplier information technology professional.
- C. The Committee shall meet on a regular basis through completion or termination of the applicable Schedule at mutually agreed upon times and locations.
- D. Aetna shall assign a Project Coordinator, who shall be a member of the Committee, the primary Aetna business representative, and the single point of contact for project-related status reports, and communication of project-related decisions. Supplier shall assign a counterpart to the Aetna Project Coordinator who shall have the same role and responsibilities.
- E. The Supplier Board of Directors will invite an Aetna representative to attend each meeting of the Board that occurs during the term of the project, provided, however, that such representative shall be accorded no voting rights whatsoever.
- F. Benefitfocus acknowledges that the value of the Integrated Product and Custom Model to Aetna over time, including Aetna's interest in shared royalties, can be maximized to the extent that Benefitfocus takes into account Aetna's perspective when considering such matters as product enhancement priorities, architectural design strategies, and research

and development directions. Benefitfocus will consult with Aetna quarterly concerning these subjects and will attempt in good faith to incorporate Aetna recommendations where commercially reasonable. Aetna will assign technical personnel with the appropriate level of skill and knowledge to participate in such discussions."

IN WITNESS WHEREOF, the parties have hereto by their duly authorized representatives executed this Agreement.

Aetna Life Insurance Company

Benefitfocus.com, Inc.

By: /s/ Michael W. Grise
(Authorized Signature)

By: /s/ Andrew L. Howell
(Authorized Signature)

Name: Michael W. Grise
(Print Name)

Name: Andrew L. Howell
(Print Name)

Title: Sr. Procurement Agent

Title: SVP

Date: 11-24-09

Date: 11/11/09

SOFTWARE LICENSE ATTACHMENT

This Attachment to the Master Business Agreement dated November 28, 2006 (the "MBA"), for the licensing of software (this "Attachment") is entered into as of the November 28, 2006 (the "License Effective Date") by and between Aetna Life Insurance Company ("Aetna"), a Connecticut corporation with its principal place of business located at 151 Farmington Avenue, Hartford, Connecticut 06156 and Benefitfocus.com, Inc., a South Carolina corporation with its principal place of business located at 100 Benefitfocus Way, Charleston, South Carolina, 29492, ("Supplier"). The terms and conditions of this Attachment, in conjunction with each applicable Schedule, are hereby incorporated into and made a part of the Agreement. In case of a conflict, the terms and conditions of this Attachment will control and prevail over those contained in the MBA.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein recited and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. DEFINITIONS. Capitalized terms not otherwise herein defined shall have the meanings ascribed to them in the MBA. The terms set forth in this Section 1 shall have the following meaning:

- A. "Authorized User(s)" means any Aetna employee, consultant, agent or carrier client.
- B. "Improvements" means all versions, releases, revisions, corrections, modifications, upgrades, updates and enhancements to licensed Program, no matter how numbered or named.
- C. "License Term" means the term of the license as set forth in the applicable Schedule.
- D. "Maintenance" means all actions to keep the Programs in, or return Programs to, good operating condition in accordance with Supplier's published specifications and any additional specifications contained or referenced in any Schedule, the provision of all Improvements as may be incorporated into the Programs, correction of malfunctions, telephone consultation via a toll free number, and all updates to the User Documentation.
- E. "Programs" means the proprietary software programs and User Documentation, as defined below, including, without limitation, each individual component or part thereof, supplied hereunder that are identified on the Schedules, including all Improvements.
- F. "Severity 1" means (i) production is down and Aetna is unable to use the Program, resulting in critical impact on operations; (ii) a Severity 2 problem has remained unresolved for [*]; or (iii) a Severity 3 problem has remained unresolved for [*].
- G. "Severity 2" means (i) production is degraded, impeding critical business processing and/or causing disruption to normal production work flow; (ii) development is down, disrupting critical development; or (iii) a Severity 3 problem has remained unresolved for [*].
- H. "Severity 3" means non-critical development is down, critical development is degraded, or non-critical production is experiencing problems.
- I. "Severity 4" means non-critical development is degraded, or minor production problems and/or questions exist.
- J. "User Documentation" shall mean user guides, operation manuals, specifications and other related information and documentation, whether in print or machine readable media, supplied to Aetna hereunder, including all additions, updates and modifications thereto.

2. LICENSE GRANT. Upon mutual execution of a Schedule or the Schedule Effective Date, whichever is earlier, Supplier grants to Aetna a license to: (i) access and allow users to access the Programs specified on a Schedule or (ii) install and use on an irrevocable, nonexclusive, worldwide, non-CPU specific, non-location specific basis the Programs specified on a Schedule, as applicable, on any Supplier supported operating system pursuant to the terms and conditions specified in the Agreement and this Attachment. Supplier represents that the Programs are trade secrets and proprietary to Supplier. Except as otherwise allowed herein or as authorized by law, Aetna agrees not to sell, lease, rent, assign, or disclose any part of the Programs to any other person or firm during or after the License Term. However, Aetna may disclose the Program to outside consultants or other third parties as long as Aetna agrees to be responsible for any improper disclosures by these Parties. The Parties acknowledge and agree that this Attachment includes a "license of intellectual property" and is and shall be subject to Section 365(n) of the United States Bankruptcy Code, and that Aetna shall be entitled to all rights and benefits of such Section 365(n) in accordance with its terms and conditions.

3. RIGHTS OF USE

- A. Specific Rights of Use. Aetna shall have the following rights to use the Programs:
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- i. to distribute User Documentation to Authorized Users and/or the right to have third parties provide distribution services;
 - ii. to use a multi-user access Program by Authorized Users on a local area network ("LAN") in which such copy is installed on one or more servers for workload balancing and is accessed by workstations or Web servers comprising the LAN;
 - iii. to reproduce the User Documentation and other related materials for its own use provided that all titles, logos and copyrights are also reproduced.
- B. Reproduction and Compatibility Testing Right. Aetna shall have the right, at its own discretion and at no additional charge, to reproduce and install the Programs on additional CPUs at an Aetna location or that of any third party, which is of the same operating system or its equivalent replacement, and/or CPUs not owned, controlled or leased by Aetna for purposes of performing back-up, disaster recovery, disaster recovery testing, maintenance and/or compatibility testing activities. In the course of such reproduction, Aetna shall ensure that all proprietary, confidential and copyright notices, markings or legends which appear on the Programs to be placed upon each such copy or reproduction. Such software maintenance and compatibility testing activities include, but are not limited to, the following purpose:
- i. Program Defect Resolution: verification, diagnosis and resolution of potential defects in the Program. Upon resolution, the corrected copy would replace the production copy.
 - ii. Application of Service: installation of program temporary fixes or bypasses on a copy of the Program before it replaces the production copy.
 - iii. New Release Testing: for Programs installed by Aetna, testing of a new release of the Program provided by Supplier to verify that it operates according to specifications before it replaces the production copy.
 - iv. New Operating System or Environment: for Programs installed by Aetna, installation of a new operating system (such as Sysplex, etc.), a new release of an operating system or a third party utility with which the Program must interface to verify that both the new system, release or utility and the Program operate according to specifications before the new operating system or utility is placed into production.
- C. Restrictions on Use. Aetna agrees that neither Aetna or its subcontractors shall (a) reverse engineer, decompile, disassemble or otherwise attempt to determine source code from the Program or disclose the results of Program performance, statistics, or tests to any third party without Supplier's prior written consent or unless otherwise allowed by law; (b) create or attempt to create derivative works from the Program; or (c) remove or modify any Program markings or notices of Supplier's proprietary rights.
- D. Responsibilities of Aetna. Aetna shall: (a) use commercially reasonable efforts to prevent unauthorized access to or use of the Program, and notify Supplier immediately of any such unauthorized use; (b) comply with all applicable local, state, federal, and foreign laws in using the Program.
- E. Usage Guidelines. Aetna agrees to use the Program solely for their business purposes as contemplated by this Agreement, and agree not to use the Program to (i) send spam or any other form of duplicative and unsolicited messages other than marketing and promotional messages to Carrier Clients and prospective clients as contemplated by the Program; (ii) knowingly transmit through or post on the Program unlawful, immoral, libelous, tortuous, infringing, defamatory, threatening or harassing material or material harmful to minors; (iii) knowingly transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs; (iv) knowingly interfere with or disrupt the integrity or performance of the Program or the data contained therein, excluding the intended use of the Program; (v) attempt to gain unauthorized access to the Program, computer systems or networks related to the Program; or (vi) harass or interfere with another person's use of the Program, excluding the intended use of the Program.
- F. Audit. Upon written request by the Supplier, but no more than [*] per year, Aetna will perform a self-audit based on the reasonable requirements provided by the Supplier in accordance with the terms stated in Section 3. Upon completion of this self-audit, the results will be certified by an officer of Aetna and delivered to Supplier. Aetna agrees to promptly remedy any discrepancies or breaches revealed during the audit.
- G. Hosting. Should Aetna desire to install the Program at Aetna's location Aetna will be responsible for the purchase and maintenance of third party software and hardware to support the Program and Services. Supplier will not be held liable for any damages resulting from Aetna's mismanagement of the hosting infrastructure.
4. **FEES.** Payment of the license fee shall entitle Aetna to the right to use the Program for the duration of the License Term. Such right to use the Program shall not be contingent upon additional license fees of any kind whatsoever, including the following, without limitation:
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- i. Program license transfer or relocation fees;
- ii. CPU upgrade fees;
- iii. software operating system upgrade fees; or
- iv. re-licensing fees brought about by the renumbering or renaming of Program enhancements, updates, releases or versions or by the combining of Programs separately licensed hereunder (all "Replaced Programs") with existing or new programs not licensed hereunder ("Replacing Programs"). If Aetna subscribes to Maintenance, then Aetna shall be entitled to the Replacing Programs at no additional charge.

There shall be one annual Maintenance Service fee per Program for which Supplier shall invoice Aetna thirty (30) days prior to the Maintenance Anniversary Date, as defined below in the Section 10, *Maintenance*, regardless of the number of computers on which the Programs are operating or the number of licensed copies of each Program.

5. DELIVERY & INSTALLATION. Supplier agrees that all Programs including the User Documentation and Improvements shall be delivered to Aetna electronically. Installation of the Programs shall be as set forth in an applicable Schedule. During the period the Program(s) are in transit or in possession of Supplier, up to the time of receipt by Aetna, Supplier and its insurers, if any, relieve Aetna of and assume responsibility for all risk of loss or damage to the Programs which shall be shipped F.O.B. destination to the locations specified on an applicable Schedule.

6. ACCEPTANCE. Commencing with successful installation of each Program, Aetna shall have a period of [*] ([*]) [*], or such other time designated in a Schedule, to perform an acceptance test of the newly installed Program (the "Acceptance Period") as may be set forth in the applicable Schedule. Unless otherwise agreed to in the applicable Schedule, in the event that Supplier is unable, within [*] ([*]) [*] of written notice from Aetna, to correct any and all deficiencies, Aetna shall thereupon have the right to terminate this Attachment and/or an applicable Schedule and return the Programs to Supplier at Supplier's expense (provided that Aetna has installed, configured and loaded the Program and data according to Supplier's guidelines on supported third party software and hardware). Upon such termination, Aetna shall have no obligation to Supplier to pay for the Program and, within [*] ([*]) [*], Supplier shall refund to Aetna all monies previously paid for such Program, pursuant to the applicable Schedule. In the event of acceptance of the Program by Aetna, such acceptance is expressly made official by either forwarding a notice of acceptance to Supplier, or by allowing a two (2) business day period following the Acceptance Period to lapse without sending notice of non-acceptance. If there is no notice of acceptance, the Acceptance Date will be the first business date following such two (2) business day acceptance period. Upon such acceptance as set forth, in this Attachment, Aetna shall be obligated to pay as provided in Section 4, *Fees*, of this Attachment, and Section 3.B., *Invoicing and Payment*, of the MBA. Supplier agrees to provide Maintenance as set forth in the Schedule during all Acceptance Testing. Such Services shall be provided at no expense to Aetna.

7. TERM & TERMINATION. Program licenses granted under this Attachment shall continue in effect for the duration of the License Term as specified in a Schedule. The License Term shall commence on the Effective Date specified on the applicable Schedule. For those licenses that are not perpetual, Supplier shall provide a minimum of [*] ([*]) [*] written notice prior to the expiration of the License Term. Aetna shall have [*] ([*]) [*] thereafter to notify Supplier if it does not agree to a renewal of the license under the same terms and conditions ("Renewal Term"). Upon termination, Aetna will promptly destroy all copies of the Program and User Documentation and, upon request by Supplier, will provide Supplier with written confirmation of such destruction.

8. WARRANTIES AND INDEMNIFICATION. In addition to the warranties in the MBA, Supplier provides the following warranties:

- A. User Documentation. Supplier warrants that the User Documentation shall be of reasonably sufficient detail so as to allow Aetna's employees or users to comprehend the operation of the Program, and Supplier shall, at no additional cost to Aetna, correct any User Documentation that does not conform to this warranty.
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- B. Disabling Devices. Supplier warrants that it has successfully tested the Programs to determine if such Programs contain threats known as software viruses, time or logic bombs, trojan horses, worms, timers or clocks, trap doors, keys, node locks, time-outs or other functions, instructions, devices or techniques, whether implemented by electronic, mechanical or other means, that can or were designed to erase data or programming, infect, disrupt, damage, disable, shut down a computer system or any component of such computer system, including, but not limited to, its security or user data, or otherwise cause any Programs to become inoperable or incapable of being used in accordance with the User Documentation (hereinafter “Disabling Devices”). Supplier further warrants that such Programs are free and clear of and contain no Disabling Devices and that Supplier will maintain clean copies that are free and clear of and contain no Disabling Devices. Upon Aetna’s request, Supplier shall provide a clean copy to Aetna for comparison with and correction of copies in Aetna’s custody or possession and, upon Aetna’s request, Supplier shall correct such copies.
- C. Program Warranties. Supplier warrants that, at the time of delivery, the Programs will be true copies of Supplier’s most recently released, standard version of the Programs. For a period of [*] from the Acceptance Date (the “Warranty Period”), and during Maintenance, Supplier warrants that:
- i. the Programs will function as set forth in the User Documentation, including, but not limited to, operating performance, memory requirements, response and run times and timing characteristics, documentation, compatibility and modularity; and
 - ii. an Improvement will not eliminate, reduce, or degrade the performance capabilities of the Programs from the corresponding level of performance or diminish the features or functions of or the specifications of the Programs as they existed on the Acceptance Date; and
 - iii. the Programs will be compatible with the computers and operating systems and their equivalent replacements, as set forth in an applicable Schedule; and
 - iv. Supplier will have completed all prudent testing on Improvements required to maintain such compatibility to ensure that such Improvements are in compliance with the foregoing warranties; and
 - v. during the Warranty Period and Maintenance, in accordance with (ii) immediately above, each new Improvement will be compatible with the immediate prior version of that particular Program(s).

For a period of [*] ([*]) [*] after the date a new Improvement has been released, Supplier shall provide maintenance for the Program(s) in the form in effect immediately prior to the release of the new Improvement. Aetna agrees to insure that it will not fall more than two major releases behind Supplier’s release upgrade schedule. Supplier warrants that it shall continue to maintain the Programs in a form compatible with the most current equivalent form of the third party software or operating system supported by, interfaced with or supporting the Program(s) and that Improvements incorporating changes to maintain such compatibility shall be made available to Aetna within a period of [*] ([*]) [*] following the general availability of such changes in the third party licensor software or operating system.

- D. Date Related Warranties. Supplier represents and warrants that all deliverables will accurately recognize and process (including, but not limited to, calculating, comparing and sequencing) calendar related (date/time) data.

9. REMEDIES. In the event that the Program fails to satisfy any warranties in the Agreement or Supplier ceases to provide Maintenance for the Programs in accordance with this Attachment or applicable Schedule(s), Supplier shall, at Aetna’s sole discretion: (a) promptly replace the Program with software that satisfies all such warranties and that conforms to the specifications set forth in the Schedule and User Documentation; (b) repair the Program, at Supplier cost, so that it satisfies all such warranties and conforms to the specifications set forth in the Schedule and User Documentation in accordance with the resolution time frames shown in Section 10, *Maintenance*, below for the relevant severity level or (c) refund the license fee and other monies received by Supplier for the Program. In the event Supplier fails to comply with these remedies, or in the event of a material breach of the Agreement, Aetna may exercise all available rights and remedies under the MBA.

10. MAINTENANCE

A. **Maintenance Term and Fee.** Supplier covenants that it will provide Maintenance for the Programs without charge to Aetna during the Warranty Period and thereafter so long as Aetna has contracted with Supplier for Maintenance. Upon expiration of the Warranty Period, and if the Program resides in either a Supplier hosted environment dedicated to Aetna, or an Aetna environment, Aetna shall have the option to receive Maintenance by payment of the annual Maintenance fee set forth in the applicable Schedule. If Aetna exercises such option, Supplier will continue to provide Maintenance for the designated Programs. Warranty Periods shall expire individually on the [*] anniversary of the Acceptance Date of each Program. Notwithstanding the foregoing, all Programs shall have a common, coterminous Maintenance anniversary date (the "Anniversary Date") that shall be the date that Aetna's payment for Maintenance is due and payable. The Anniversary Date shall be the anniversary of the initial Acceptance Date under this Attachment. On the Anniversary Date, the Maintenance fee for all Programs, which, at Aetna's election, are to receive Maintenance during the subsequent 12 months, shall be determined as follows:

- a) for Programs no longer within the Warranty Period, an amount equal to the annual Maintenance fee, plus;
- b) for Programs still within the Warranty Period, a portion of the annual Maintenance fee, prorated on the basis of the number of full months during the Maintenance Period that the Warranty Period for such Programs will have expired.

Supplier may increase the annual Maintenance fee for the Programs on each Anniversary Date with at least [*] prior written notice to Aetna. In no event shall the annual Maintenance fee (i) increase more frequently than [*], and (ii) increase more than [*]% over the previous year's charge.

B. **Termination & Reinstatement of Maintenance.** At the expiration of annual Maintenance period, Aetna shall have the option to terminate Maintenance for individual Program licenses or for entire Schedules with [*] ([*]) [*] prior written notice to Supplier. Aetna may subsequently recommence Maintenance and shall be responsible for full payment of Maintenance including the lapsed period.

C. **Program Maintenance Service Levels.** Supplier warrants that Aetna's calls for service will be responded to and resolved in accordance with the terms and conditions set forth below. Aetna and the Supplier shall reasonably determine the severity level of the problem when Aetna places a service call to Supplier. Supplier warrants that it will use qualified technical personnel with the appropriate technical experience in the operation of the particular Program or resolution of the problem.

- i. **Support:** Supplier will provide telephone or pager support 24 hours per day, 7 days per week for Severity 1 problems, 8:00 a.m. to 8:00 p.m. Eastern Time, Monday through Friday for Severity 2 problems and, for Severity 3 and Severity 4 problems, 8:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday.
- ii. **Resolution:** Problem resolution is defined as a reasonable workaround to restore production services or a permanent fix.
- iii. **Timeframe for Resolution:** Supplier's service technician will respond to service calls as follows:

<u>Severity</u>	<u>Response Timeframe from receipt of service call</u>	<u>Resolution Timeframe from receipt of service call</u>
Severity 1	[*]	[*]
Severity 2	[*]	[*]
Severity 3	[*]	[*]
Severity 4	[*]	[*]

If Aetna reaches a recorded message when it makes the service call, or pages the Supplier, Supplier must respond back to Aetna by personal telephone call within the Response Timeframe to notify Aetna that Supplier received the service call and Supplier is working on a resolution. If Supplier reaches a recorded message when it responds to Aetna with a resolution within the required Resolution Timeframe, the obligation of Supplier shall be deemed satisfied and Supplier shall not be held further liable so long as Supplier leaves a message with the resolution or otherwise sends the resolution to Aetna within the time frame.

Supplier will provide Aetna with a patch or adequate work-around to the problem while working on resolution during the initial response to the service call. Such patch or work-around shall render the Program usable until a permanent resolution is provided by Supplier.

D. **Performance Credits.** Supplier and Aetna agree that the damage resulting from Supplier's failure to meet the Service Levels set forth herein may be difficult to calculate. If Supplier fails to meet such Service Levels, Supplier and Aetna agree that, as liquidated damages for such failure, and not as a penalty, Aetna shall be entitled to receive, with respect to each such failure, an amount specified on the applicable Schedule (each a "Performance Credit") for each [*] Supplier is not in compliance with the Maintenance Resolution Time Frames. Performance Credits will begin to accrue at [*] from Supplier's receipt of the service call for Severity 1 problems, [*] from a Severity 2 service call, and [*] for Severity 3 problems. Such Performance Credits may, at Aetna's sole discretion, be paid by Supplier to Aetna as a credit to be applied against the Maintenance fee next due. Aetna may, in its sole discretion, waive acceptance of, and not receive, any Performance Credits relating to such failure and may pursue any other remedies that may be available to it in law or equity or otherwise.

11. TRAINING & OWNERSHIP OF TRAINING MANUAL. Training and ownership of any training manuals, including, but not limited to, Aetna's right to copy such manuals, shall be as specified in the Schedules.

12. OPEN SOURCE. Supplier understands that Aetna carefully manages and controls the use of open source program code ("Open Source") in the Aetna systems environment. Supplier shall notify Aetna, in writing, of any Open Source in any Programs.

13. ESCROW REQUIREMENTS. Supplier shall place one (1) complete copy of the source code, including all compilation and execution procedures, identity of required third party software, necessary compilers, passwords or encryption keys and User Documentation necessary for the use thereof (the "Source Code") and at no additional cost from Supplier to Aetna and under the terms and conditions of Aetna's source code escrow agreement, (i) for the current version of each Program within [*] of the Effective Date of each Schedule licensing Aetna's first order of such Program and (ii) for all Improvements to the Programs within [*] of release of the Improvements, with Aetna's escrow agent who will, in writing, notify Aetna upon receipt of such Source Code. Aetna shall assume all costs associated with such escrow. Aetna shall have the right at any time to verify that the copy of the Source Code placed in escrow is the correct version and functions in accordance with the User Documentation applicable Schedule and Supplier shall cooperate fully with such verification.

Within 15 days of the occurrence of any of the following, Aetna shall, without charge, receive its copy of the Source Code from Aetna's escrow agent: (a) dissolution or other cessation of business of Supplier; (b) Supplier is in material breach of this Attachment and such breach is not cured as provided herein; (c) Maintenance is no longer made available by Supplier prior to the agreed term in the applicable Statement of Work for a reason other than Aetna's refusal of Maintenance or non-payment; or (d) Aetna prevails on its quiet enjoyment rights under Section 14, *Quiet Enjoyment*, of this Attachment. After receiving its copy of the Source Code, as provided in this Section,

Aetna, its agents, third party maintenance providers, and/or employees shall have the right to alter and use the Source Code as Aetna deems appropriate in accordance with the terms and conditions of the Agreement. If Aetna obtains the Source Code, then any license of the Program from Supplier hereunder shall automatically be converted to a perpetual license at the costs that are identified in the fees section of the applicable Schedule.

14. QUIET ENJOYMENT. Aetna shall be entitled during the License Term to use the Program and any part thereof without disturbance subject only to its obligation to abide by the terms and conditions of this Agreement. In the event of dissolution or other cessation of business of Supplier, or in the event Supplier terminates Maintenance prior to the agreed term in the applicable Statement of Work for a reason other than Aetna's refusal of Maintenance or non-payment and there is no successor in interest by merger, assignment or otherwise, Supplier warrants Aetna's right to continued, uninterrupted use of the Program as set forth in the applicable Schedule. If there is a successor in interest by merger, operation of law, assignment, purchase or otherwise, Supplier warrants that such merger, or such other event, shall not affect the terms and conditions of this Agreement, which shall remain in full force and effect unless Aetna and Supplier's successor mutually agree to modify or amend them. Termination of this Agreement for any reason, except as provided herein for Aetna's default, shall not affect Aetna's right to quiet enjoyment and use of the Programs.

15. TRANSFER OF LICENSES. In addition to the terms of Section 13, *Assignment*, of the MBA, Aetna may transfer individual Program licenses and any and all terms and conditions of the Agreement and this Attachment to an assignee so long as (i) the assignee agrees in writing to be bound by the terms and conditions that govern the Program, (ii) the terms of the Agreement remain in effect, and (iii) any required customizations for assignee's use of

the Program may require additional fees by assignee to Supplier. This Attachment will continue to govern Aetna's remaining Program licenses and future Program acquisitions.

16. GOVERNING LAW, UCITA OPT-OUT. The terms and conditions of this Attachment shall be governed by and construed in accordance with the laws of the State of Connecticut without regard or reference to principles of conflicts of laws. For the purpose of enforcing the rights and remedies of the Parties under Article 2 of the Uniform Commercial Code, it is mutually agreed and the Parties hereby stipulate that all Programs shall be deemed and construed to constitute goods and that all licenses shall be deemed to constitute sales transactions in goods. THE PARTIES HERETO VOLUNTARILY, EXPRESSLY, IRREVOCABLY AND PERPETUALLY OPT-OUT OF ANY AND ALL APPLICABLE PROVISIONS OF THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT AND ALL SUCCESSOR OR AMENDED ACTS WHICH ARE OR MAY BE ADOPTED IN ANY JURISDICTION.

17. OTHER SUPPLIER LICENSE AGREEMENTS. The Parties agree that the MBA together with this Attachment and the relevant Schedules shall constitute the entire Agreement between Supplier and Aetna with respect to the subject matter hereof and supersedes all other license agreements, now or in the future, including any shrink-wrap agreement, click-wrap, or "click to approve" agreement or other terms and conditions which may appear when electronically downloading the Programs, irrespective of whether such license agreement has been proposed prior to or after this Agreement is signed or that it is delivered with or affixed to the Program(s).

IN WITNESS WHEREOF, the Parties have hereto by their duly authorized representatives executed this Agreement.

Aetna Life Insurance Company

By: _____
(Authorized Signature)

Name: _____
(Print Name)

Title: _____

Date: _____

Benefitfocus.com, Inc.

By: _____
(Authorized Signature)

Name: _____
(Print Name)

Title: _____

Date: _____

Taxpayer ID #: 57-1099948

**AMENDMENT NO. 1
TO THE
SOFTWARE LICENSE ATTACHMENT
TO THE
MASTER BUSINESS AGREEMENT
BETWEEN
AETNA LIFE INSURANCE COMPANY
AND
BENEFITFOCUS.COM, INC.**

This amendment ("Amendment") to the Software License Attachment ("License Attachment") to the Master Business Agreement dated November 28, 2006 between Benefitfocus.com, Inc. ("Supplier") and Aetna Life Insurance Company ("Aetna") is made this 1st day of November, 2009. The following amendments are incorporated into and made part of the Agreement. All sections and paragraphs of the Agreement not hereby amended shall remain in full force and effect. Capitalized terms not otherwise herein defined shall have the meanings ascribed to them in the Agreement. In the case of a conflict, the terms of this Amendment will control and prevail over those contained in the Agreement.

The License Attachment is amended as follows:

1. In section 1, insert the following new definitions alphabetically and re-letter the existing definitions accordingly:

"Aetna Competitor" means [*] and [*], including any current or future respective Competitor Affiliates.

"Competitor Affiliate" means any company that (i) Controls, (ii) is Controlled by or (iii) is under common Control with an Aetna Competitor or its parent corporation.

"Control" means the power to direct or cause the direction of the management or policies of a company, whether through ownership of voting securities, by contract, or otherwise."

2. In section 13, second paragraph, fifth line, before "(d)", delete "or".

3. In section 13, second paragraph, delete the period at the end of the first sentence and append the following:

"; or (e) Supplier is acquired by, merges with, or otherwise comes under the Control of an Aetna Competitor."

IN WITNESS WHEREOF, the parties have hereto by their duly authorized representatives executed this Agreement.

Aetna Life Insurance Company

Benefitfocus.com, Inc.

By: /s/ Michael W. Grise
(Authorized Signature)

By: /s/ Andrew L. Howell
(Authorized Signature)

Name: Michael W. Grise
(Print Name)

Name: Andrew L. Howell
(Print Name)

Title: Sr. Procurement Agent

Title: SVP

Date: 11-24-09

Date: 11/11/09

**AMENDMENT NO. 1
TO
MASTER BUSINESS AGREEMENT
BETWEEN
AETNA LIFE INSURANCE COMPANY
AND
BENEFITFOCUS.COM, INC.**

This amendment ("Amendment") to the Master Business Agreement dated November 28, 2006 between Benefitfocus.com, Inc. ("Supplier") and Aetna Life Insurance Company ("Aetna") ("Agreement") is made on this 29th day of December, 2008. The following amendments are incorporated into and made a part of the Agreement. All sections and paragraphs of the Agreement not hereby amended shall remain in full force and effect. Capitalized terms not otherwise herein defined shall have the meanings ascribed to them in the Agreement. In the case of a conflict, the terms of this Amendment will control and prevail over those contained in the Agreement.

WHEREAS, the parties agree to add the following language to the above referenced Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree to amend the Agreement as follows:

1. The language in Section, 18, *Access* is hereby deleted in its entirety and replaced with the following:

"ACCESS. Supplier shall maintain and make all Aetna related contracts, copy, files, records, accounts and other documents and materials, including any applicable records regarding the fees charged to Aetna and any other applicable financial records, in Supplier's possession or under Supplier's control, available for Aetna's examination upon five (5) business days advance written notice (or in the case of external regulatory audits, such lesser amounts of prior notice given by the applicable regulators or inspectors) during Supplier's regular business hours during the term of an applicable Schedule and for a period of one (1) year thereafter. Upon Aetna's request, Supplier shall provide Aetna with three years (e.g. 2005, 2006 & 2007) of Supplier's audited financial statements. If discrepancies or questions arise with respect to such records, Supplier shall preserve such records until an agreement is reached with Aetna regarding the disposition.

In addition, when Supplier maintains or has access to Aetna Confidential Information, Supplier agrees that Aetna shall have access to all data and information obtained, created, or collected by Supplier related to such Confidential Information. Supplier further agrees that Aetna shall have the right to audit Supplier to assure that Aetna's Confidential Information is adequately protected. During an audit, Supplier shall: (i) permit Aetna and/or any applicable party, including but not limited to federal, state and local governmental authorities having jurisdiction to conduct operational, performance, and/or security inspections: (ii) provide Aetna reasonable assistance and access to all books, records, and other papers (including, but not limited to, medical and financial records and contracts) and information relating to the Agreement and to the services rendered or deliverables provided by Supplier, and (iii) permit Aetna to interview Supplier or Supplier's employees as reasonably necessary to complete an audit. Following an audit, Supplier and Aetna may conduct an exit conference to inform Supplier of any deficiencies identified during audit. Supplier shall promptly make available to Aetna the results of any additional reviews or audits conducted by or on behalf of Supplier (including internal and external auditors) relating to Supplier's operating practices and procedures to the extent relevant to Aetna.

Further, Supplier agrees that, upon Aetna's request and at Aetna's expense, Supplier shall have an independent third party audit Supplier's statements in a security survey and/or attestation documents completed as part of Aetna's HIPAA and GLBA requirements and shall provide Aetna the results of said audit within 45 days of completion of said audit."

The effective date of this Amendment No. 1 is December 29, 2008.

The Agreement shall remain in full force and effect, and except as hereby amended, is ratified and confirmed.

IN WITNESS WHEREOF, the Parties have hereto by their duly authorized representatives executed this Agreement.

Aetna Life Insurance Company

By: _____
(Authorized Signature)

Name: _____
(Print Name)

Title: _____

Date: _____

Benefitfocus.com, Inc.

By: /s/ Andrew L. Howell
(Authorized Signature)

Name: Andrew L. Howell
(Print Name)

Title: SVP

Date: 12/29/08

Taxpayer ID#: 57-1099948

**AMENDMENT NO. 2
TO THE
MASTER BUSINESS AGREEMENT
BETWEEN
AETNA LIFE INSURANCE COMPANY
AND
BENEFITFOCUS.COM, INC.**

This amendment (“Amendment”) to the Master Business Agreement dated November 28, 2006 (“MBA”) between Benefitfocus.com, Inc. (“Supplier”) and Aetna Life Insurance Company (“Aetna”) is made this 1st day of November, 2009 (the “Effective Date”). The following amendments are incorporated into and made part of the Agreement as of the Effective Date. All sections and paragraphs of the Agreement not hereby amended shall remain in full force and effect. Capitalized terms not otherwise herein defined shall have the meanings ascribed to them in the Agreement. In the case of a conflict, the terms of this Amendment will control and prevail over those contained in the Agreement.

The MBA is amended as follows:

1. In Section 1.D, replace “may mean” with “means”.
2. In Section 3 B, third line, change the payment terms to read, “Payment terms are sixty (60) days calculated from the date the invoice was received at Aetna’s Accounts Payable Department.”
3. In Section 4.C, third line, replace “under” with “hereunder”.
4. Amend section 8 as follows: Replace the first paragraph of Section 8 in its entirety with the following:
“8 INDEMNIFICATION. Supplier hereby represents and warrants that its delivery of Services, Materials and/or Deliverables under this Agreement will not violate any publicity or privacy right, patent, copyright, trade secret or other proprietary or intellectual property right or confidential relationship of any third party.”

In the fourth line of paragraph 2, replace “goods, Services and/or Deliverables” with “Services, Materials and/or Deliverables”.

Replace the last sentence of paragraph 2 in its entirety with the following:

“Following such notice of a claim or suit, Supplier shall, upon written notice to Aetna, at Supplier’s expense, (i) procure for Aetna the right to continue using the affected Services, Materials and/or Deliverable, (ii) replace or modify the affected Services, Materials and/or Deliverable with a functional equivalent so that it does not infringe, or, if neither (i) nor (ii) is commercially feasible, (iii) terminate the licenses and refund the fees received for the affected Services, Materials and/or Deliverable on a pro rata basis beginning from the date the claim is made.”

5. In Section 11.E., replace the last sentence in its entirety with following language:

“Supplier further represents and warrants that Supplier’s employees are authorized to work in the United States at the job and location to which they are assigned, and that Supplier is in compliance with the Immigration Reform and Control Act of 1986 (IRCA), as amended, including the E-Verify rules at 48 C.F.R. 22.1800 *et seq.*; 48 C.F.R. 52.222-54, with respect to such Supplier’s employees.”

6. Add the following sentence at the end of Section 22, *Use of Name*:

“Each party shall have the right to revoke any permission granted hereunder, whereupon the other party shall promptly cease and desist from the revoked use.”

7. Replace Exhibit A in its entirety with the following:

EXHIBIT A

BUSINESS ASSOCIATE AGREEMENT
HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

This Business Associate Agreement (the "Agreement") is made and entered into this 1st day of November, 2009 (the "Effective Date"), by and between Aetna Life Insurance Company ("Aetna"), a corporation organized under the laws of Connecticut and having its principal address at 151 Farmington Avenue, Hartford, CT 06156 (hereinafter, the "Covered Entity") and Benefitfocus.com, Inc., a corporation organized under the laws of South Carolina and having its principal address at 100 Benefitfocus Way, Charleston, South Carolina 29492 (hereinafter, the "Business Associate"). In conformity with the regulations at 45 C.F.R. Parts 160-164 (the "Privacy and Security Rules"), Covered Entity will provide Business Associate with access to, or have Business Associate create, maintain, transmit and/or receive certain Protected Health Information (as defined below), thus necessitating a written agreement that meets the applicable requirements of the Privacy and Security Rules. Covered Entity and Business Associate agree as follows:

1. Definitions. The following terms shall have the meaning set forth below:

- (a) ARRA. "ARRA" means the American Recovery and Reinvestment Act of 2009.
 - (b) C.F.R. "C.F. R." means the Code of Federal Regulations.
 - (c) Designated Record Set. "Designated Record Set" has the meaning assigned to such term in 45 C.F.R. 160.501.
 - (d) Discovery. "Discovery" shall mean the first day on which a Security Breach is known to Business Associate (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of Business Associate), or should reasonably have been known to Business Associate, to have occurred.
 - (e) Electronic Health Record. "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed and consulted by authorized health care clinicians and staff.
 - (f) Electronic Protected Health Information. "Electronic Protected Health Information" means information that comes within paragraphs 1 (i) or 1 (ii) of the definition of "Protected Health Information", as defined in 45 C.F.R. 160.103.
 - (g) Individual. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as personal representative in accordance with 45 C.F.R. 164.502 (g).
 - (h) Protected Health Information. "Protected Health Information" shall have the same meaning as the term "Protected Health Information", as defined by 45 C.F.R. 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
 - (i) Required by Law. "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. 164.501.
 - (j) Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
 - (k) Security Breach. "Security Breach" means the unauthorized acquisition, access, use or disclosure of Protected Health Information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. Security Breach does not include:
 - (i) any unintentional acquisition, access, or use of Protected Health Information by an employee or individual acting under the authority of Business Associate if:
 - (I) such acquisition, access or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with Business Associate; and
 - (II) such information is not further acquired, accessed, used or disclosed by any person; or
 - (ii) any inadvertent disclosure from an individual who is otherwise authorized to access Protected Health Information at a facility operated by Business Associate to another similarly situated individual at the same facility; and
 - (iii) any such information received as a result of such disclosure is not further acquired, accessed, used or disclosed without authorization by any person.
 - (l) Security Breach Compliance Date. "Security Breach Compliance Date" means the date that is thirty (30) days after the Secretary publishes interim final regulations to carry out the provisions of Section 13402 of Subtitle D (Privacy) of ARRA.
 - (m) Security Incident. "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. 164.304.
 - (n) Standard Transactions. "Standard Transactions" means the electronic health care transactions for which HIPAA standards have been established, as set forth in 45 C.F.R., Parts 160-162.
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- (o) Unsecured Protected Health Information. “Unsecured Protected Health Information” means Protected Health Information that is not secured through the use of a technology or methodology specified by guidance issued by the Secretary from time to time.

2. Obligations and Activities of Business Associate

- (a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law. Business Associate shall also comply with any further limitations on uses and disclosures agreed to by Covered Entity in accordance with 45 C.F.R. 164.522 provided that such agreed upon limitations have been communicated to Business Associate according with Section 4.1(c) of this Agreement.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not allowed by this Agreement of which it becomes aware.
- (e) Beginning on the later of the Effective Date of this Agreement or the Security Breach Compliance Date, Business Associate agrees to report to Covered Entity any Security Breach of Unsecured Protected Health Information without unreasonable delay and in no case later than sixty (60) calendar days after Discovery of a Security Breach. Such notice shall include the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate, to have been, accessed, acquired, or disclosed In connection with such Security Breach. In addition, Business Associate shall provide any additional information reasonably requested by Covered Entity for purposes of investigating the Security Breach. Business Associate’s notification of a Security Breach under this section shall comply in all respects with each applicable provision of Section 13400 of Subtitle D (Privacy) of ARRA and related guidance issued by the Secretary from time to time.
- (f) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. In no event shall Business Associate, without Covered Entity’s prior written approval, provide Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, to any employee or agent, including a subcontractor, if such employee, agent or subcontractor receives, processes or otherwise has access to the Protected Health Information outside of the United States.
- (g) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. 164.524. Covered Entity’s determination of what constitutes “Protected Health Information” or a “Designated Record Set” shall be final and conclusive. If Business Associate provides copies or summaries of Protected Health Information to an Individual it may impose a reasonable, cost-based fee in accordance with 45 C.F.R. 164.524 (c)(4).
- (h) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity. Business Associate shall not charge any fee for fulfilling requests for amendments. Covered Entity’s determination of what Protected Health Information is subject to amendment pursuant to 45 C.F.R. 164.526 shall be final and conclusive.
- (i) Business Associate agrees to make (i) internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, and (ii) policies, procedures, and documentation relating to the safeguarding of Electronic Protected Health Information available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity’s compliance with the Privacy and Security Rules.
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- (j) Business Associate agrees to document such disclosures of Protected Health Information as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.
- (k) Business Associate agrees to provide to Covered Entity, in the time and manner designated by Covered Entity, the information collected in accordance with Section 2(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528. In addition, with respect to information contained in an Electronic Health Record, Business Associate shall document, and maintain such documentation for three (3) years from date of disclosure, such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of information contained in an Electronic Health Record, as required by Section 13405(c) of Subtitle D (Privacy) of ARRA and related regulations issued by the Secretary from time to time.
- (l) Business Associate acknowledges that it shall request from the Covered Entity and so disclose to its affiliates, agents and subcontractors or other third parties, only (i) the information contained in a "limited data set," as such term is defined at 45 C.F.R. 164.514(e)(2), or, (ii) if needed by Business Associate, to the minimum necessary to accomplish the intended purpose of such requests or disclosures. In all cases, Business Associate shall request and disclose Protected Health Information only in a manner that is consistent with guidance issued by the Secretary from time to time.
- (m) With respect to Electronic Protected Health Information, Business Associate shall implement and comply with (and ensure that its subcontractors implement and comply with) the administrative safeguards set forth at 45 C.F.R. 164.308, the physical safeguards set forth at 45 C.F.R. 310, the technical safeguards set forth at 45 C.F.R. 164.312, and the policies and procedures set forth at 45 C.F.R. 164.316 to reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate acknowledges that, effective the later of the Effective Date of this Agreement or February 17, 2010, (i) the foregoing safeguards, policies and procedures requirements shall apply to Business Associate in the same manner that such requirements apply to Covered Entity, and (ii) Business Associate shall be liable under the civil and criminal enforcement provisions set forth at 42 U.S.C. 1320d-5 and 1320d-6, as amended from time to time, for failure to comply with the safeguards, policies and procedures requirements and any guidance issued by the Secretary from time to time with respect to such requirements.
- (n) With respect to Electronic Protected Health Information, Business Associate shall ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information, agrees to implement reasonable and appropriate safeguards to protect it.
- (o) Business Associate shall report to Covered Entity any Security Incident of which it becomes aware.
- (p) If Business Associate conducts any Standard Transactions on behalf of Covered Entity, Business Associate shall comply with the applicable requirements of 45 C.F.R. Parts 160-162.
- (q) During the term of this Agreement, Business Associate may be asked to complete a security survey and/or attestation document designed to assist Covered Entity in understanding and documenting Business Associate's security procedures and compliance with the requirements contained herein. Business Associate's failure to complete either of these documents within the reasonable timeframe specified by Covered Entity shall constitute a material breach of this Agreement.
- (r) Business Associate acknowledges that, effective the later of the Effective Date of this Agreement or February 17, 2010, it shall be liable under the civil and criminal enforcement provisions set forth at 42 U.S.C. 1320d-5 and 1320d-6, as amended from time to time, for failure to comply with any of the use and disclosure requirements of this Agreement and any guidance issued by the Secretary from time to time with respect to such use and disclosure requirements.

3. Permitted Uses and Disclosures by Business Associate

3.1 General Use and Disclosure Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform its obligations and services to Covered Entity, provided that such use or disclosure would not violate the Privacy and Security Rules if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

3.2 Specific Use and Provisions

- (a) Except as otherwise prohibited by this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (b) Except as otherwise prohibited by this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures

are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached in accordance with the Security Breach and Security Incident notifications requirements of this Agreement.
- (c) Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an individual without Covered Entity's prior written approval and notice from Covered Entity that it has obtained from the individual, in accordance with 45 C.F.R. 164.508, a valid authorization that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by Business Associate. The foregoing shall not apply to Covered Entity's payments to Business Associate for services delivered by Business Associate to Covered Entity.
- (d) Except as otherwise prohibited by this Agreement, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 42 C.F.R. 164.504(e)(2)(i)(B).
- (e) Business Associate may use Protected Health Information to report violation of law to appropriate Federal and State authorities, consistent with 164.502(j)(1).

4. Obligations of Covered Entity.

4.1 Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

- (a) Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. 164.520 (as well as any changes to that notice), to the extent that such limitation(s) may affect Business Associate's use or disclosure of Protected Health Information.
- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes affect Business Associate's use or disclosure of Protected Health Information.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

4.2 Permissible Request by Covered Entity. Except as may be set further in Section 3.2, Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy and Security Rules if done by Covered Entity.

5. Term and Termination

- (a) Term. The provisions of this Agreement shall take effect on the Agreement's Effective Date and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created, maintained, transmitted or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, in accordance with Section 5(c)(2).
 - (b) Termination for Cause. Without limiting the termination rights of the parties pursuant to the Agreement and upon either party's knowledge of a material breach of this Agreement by the other party, , the non-breaching party shall provide an opportunity for the breaching party to cure the breach or end the violation, or terminate the Agreement, if the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party, or immediately terminate this Agreement, if, in the non-breaching party's reasonable judgment, cure is not possible.
 - (c) Effect of Termination.
 - (1) Except as provided in Section 5(c), upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created, maintained, transmitted or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
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(2) In the event the Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of Protected Health Information is infeasible, per Section 5(a) above, Business Associate shall continue to extend the protection of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information for so long as Business Associate maintains such Protected Health Information.

6. **Indemnification.** Business Associate shall indemnify and hold harmless Covered Entity and any of Covered Entity's affiliates, directors, officers, employees and agents from and against any claim, cause of action, liability, damage, cost or expense (including reasonable attorneys' fees) arising out of or relating to any non-permitted use or disclosure of Protected Health Information, failure to safeguard Electronic Protected Health Information, or other breach of this Agreement by Business Associate or any affiliate, director, officer, employee, agent or subcontractor of Business Associate.

7. **Notices.** Any notices or communications to be given under this Agreement shall be made to the address and/or fax numbers given below:

To Covered Entity:

Aetna Legal Support Services
151 Farmington Avenue- Attn: W121
Hartford, CT 06156
Fax: (860) 907-3017

To Business Associate:

Benefitfocus.com, Inc.
100 Benefitfocus Way
Charleston, SC 29492
Phone: (843) 849-7476
Fax: (843) 849-9298

Each party named above may change its address upon thirty (30) days written notice to the other party.

8. **Miscellaneous.**

- (a) **Regulatory References.** A reference in this Agreement to a section in the Privacy and Security Rules means the section as in effect or as amended.
- (b) **Amendment.** Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, the safeguarding of Electronic Protected Health Information, or the publication of any decision of a court of the United States or any state relating to any such law or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, either party may, by written notice to the other party, amend the Agreement in such manner as such party determines necessary to comply with such law or regulation. If the other party disagrees with such amendment, it shall so notify the first party in writing within thirty (30) days of the notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, then either of the parties may terminate the Agreement on thirty (30) days written notice to the other party.
- (c) **Survival.** The respective rights and obligations of Business Associate under Sections 5(c) and 6 of this Agreement shall survive termination of this Agreement.
- (d) **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules. In the event of any inconsistency or conflict between this Agreement and any other agreement between the parties, the terms, provisions and conditions of this Agreement shall govern and control.
- (e) **No third party beneficiary.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.
- (f) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of Connecticut.

IN WITNESS WHEREOF, the Parties have hereto by their duly authorized representatives executed this Agreement.

Aetna Life Insurance Company

Benefitfocus.com, Inc.

By: /s/ Michael W. Grise
(Authorized Signature)

By: /s/ Andrew L. Howell
(Authorized Signature)

Name: Michael W. Grise
(Print Name)

Title: Sr. Procurement Agent

Date: 11-24-09

Name: Andrew L. Howell
(Print Name)

Title: SVP

Date: 11/11/09

Taxpayer ID#: 57-1099948

SCHEDULE NO. 8
to the
MASTER BUSINESS AGREEMENT (“MBA”)
between
AETNA LIFE INSURANCE COMPANY (“AETNA”)
and
BENEFITFOCUS.COM, INC. (“Supplier” or “Benefitfocus”)

The Parties agree that the terms and conditions of the MBA dated November 28, 2006, the Professional Services Attachment dated November 28, 2006 and the Software License Attachment dated November 28, 2006 shall govern this Schedule, except that, in the event of a conflict between the relevant documents, the terms and conditions of this Schedule shall control and prevail over the applicable Attachment and the MBA. Furthermore, in the event of a conflict between the applicable Attachment and the MBA, the terms and conditions of this Attachment shall control and prevail over the MBA.

1. **Effective Date:** November 1, 2009

2. **Aetna** [*]

Coordinators:

[*]

3. **Assignment Description:** The parties are concurrently executing and delivering three schedules (Schedules 8, 9 and 10). Together, these Schedules express an overall relationship under which the parties will collaborate on enhancing and extending Benefitfocus' current offerings as more fully described in these Schedules and the accompanying Statements of Work. Aetna will pay Benefitfocus a fixed price of \$[*] for the collection of services and software licenses described in detail in the three Schedules. Schedules 9 and 10 respectively address the subjects of software licensing and hosting to be supplied by Benefitfocus.

The subject of this Schedule 8 is Services and software development work. In the initial phase, Benefitfocus shall provide subject matter experts in information technology design, development, and deployment in sufficient numbers and with sufficient knowledge and expertise to work with Aetna in the development of the specification of the information technology components of the Business Needs Analysis (“BNA”) documents for Chunk 1 of the projects identified in the Integrated Product Statement of Work, dated October 5, 2009, and as the parties subsequently may expand or modify (“Integrated Product Statement of Work”), attached hereto and incorporated herein by reference as Exhibit B. In later phases, using the BNA results, Benefitfocus shall contribute subject matter experts in information technology design, development, and deployment in sufficient numbers and with sufficient knowledge and expertise to define and develop application solutions that meet the needs defined in the BNAs.

The Business Needs Analysis shall conform to the Aetna project development framework, a template for which is attached hereto as Exhibit A.

“Integrated Product” shall mean (1) the collection of products, functionality, services and features which support an integrated “Aetna experience” from the perspective of current or prospective Aetna brokers, plan sponsors and members, (collectively, the “Constituents”), combined with (2) the technical capability to host those services and features within the Aetna environment. The Integrated Product Statement of Work expresses the parties' shared vision for the Integrated Product as the parties are able to express it at this time. The parties jointly are committed to modifying the Integrated Product Statement of Work as needed during the course of development as needed to realize that shared vision.

“Chunk 1” means the following Projects (Ref. Chunk 1 details in Statement of Work):

[*]

“Chunk 2” means the following Projects (Ref. Chunk 2 details in Statement of Work):

[*]

“Chunk 3” means the following Projects (Ref. Chunk 3 details in Statement of Work):

[*]

4. Materials:

Material 1: Provide all Benefitfocus product knowledge necessary to enable Aetna to define High Level Business Needs (HLBNs) and Expanded Business Needs ("EBNs) for each Project component of Chunk 1 of the Integrated Product to complete the BNAs. Participate in working sessions via teleconference and on-site at Aetna. Draft components of the HLBNs and EBNs as requested by Aetna.

Material 2: Using the completed BNAs, define application solutions for each Project component of Chunk 1 and develop a delivery schedule for completion of the application solutions. The delivery schedule will establish Supplier's Deliverables and Materials obligations under the subsequent Schedule for Phase IV through VII of Chunk 1.

5. **Delivery Schedule:** In accordance with the agreed upon Program Plan.

6. **Acceptance:** Material 1 and Material 2 will be accepted in accordance with the Aetna Project Life Cycle ("APLC") process.

7. **Fees:** Aetna will pay Benefitfocus \$6.6 million for the development Services contemplated by this Schedule 8 and the accompanying Integrated Product Statement of Work. For this Schedule 8, \$[*] is due upon contract execution and receipt of a correct invoice, in accordance with the payment terms in Section 3.B. of the MBA. The Parties will agree to a payment stream for the remaining \$[*] as more specifically set forth in subsequent development Schedules. Such payment stream will be tied to completion and acceptance of Services, Deliverables, Materials, and/or significant milestones. The current anticipated allocation of payments is:

2009:	\$	[*]
2010:	\$	[*]
2011:	\$	[*]
2012:	\$	[*]
Total:	\$	6,600,000

8. Supplier Employee(s):

A. Names and Title of Supplier Employee(s) assigned under this Schedule:

B. Supplier Employee Type:

i. Supplier intends on utilizing one or more H-1b employee(s) in the performance of this Schedule.

Yes No

ii. If "Yes", this/these employee(s) will be on Aetna's site(s) for thirty (30) days or more.

Yes No

Supplier must comply with all applicable laws and regulations regarding the utilization of H-1 b employee(s).

9. **Sales & Use Taxes.** Supplier is not currently registered to collect sales tax in the state of Connecticut, where the Services will be delivered. Aetna will self-assess and remit the appropriate use tax to the taxing jurisdiction. Within a reasonable time after execution of this Schedule, Supplier will register with the state of Connecticut. Supplier will provide notice to Aetna when it is registered in Connecticut. Upon registration in Connecticut, Supplier will include in all invoices and collect the tax at the current rate of 1%.

10. **Access to Health Care Benefits.** N/A - Benefitfocus completed Aetna Supplier Health Care Survey in November 2008.

11. **Aetna Notification Addresses:** Electronic Invoices
AWBII

Business Notices
151 Farmington Avenue
Procurement, RT32
Hartford, CT 06156

12. Other Provisions

A. **Termination.**

1. *Aetna's Right to Terminate Without Cause.* Notwithstanding any other provision in the MBA, its Attachments or Schedules, Aetna may terminate Schedule 8 and/or Schedule 10 at any time for convenience after Aetna has paid in full all of the License Fees identified in Schedule 9. Any termination shall be effective [*] ([*]) [*] from the date of notice. If Aetna terminates Schedule 8 for convenience, Aetna shall pay for any work performed through the notice date and ordered after the notice date but shall not be obligated to order any further work performed under this schedule for the subsequent [*] ([*]) [*]. If Aetna terminates Schedule 10 for convenience, Aetna shall pay the hosting fees due under Schedule 10 for the [*] ([*]) [*] notice period.
2. *Cross Default.* Any material breach by Benefitfocus of its obligations under either Schedule 8 or Schedule 10 shall, at Aetna's election, constitute a default under the Agreement. In the event of such default, Aetna may terminate [*] in accordance with the rights and obligations in [*].

B. Exclusivity And Royalty

1. Definitions.
 - 1.1 "Aetna Competitor" means [*], and [*], including any Competitor Affiliates.
 - 1.2 "Aetna Processes" means Aetna software, business processes and requirements that support the administration of health (including dental and behavioral health), life, and disability benefit plans, pet insurance plans or other insurance products or related services. Aetna Processes may or may not be unique to Aetna, but are exclusive of any software or services provided to Aetna by Benefitfocus prior to the date of this Agreement.
 - 1.3 "Custom Model" means (i) the combination of a substantial amount of the Software, Services, Materials and Deliverables described in the Integrated Product Statement of Work which supports or enables a unified user experience from the perspective of any of a carrier's brokers, plan sponsors and members, and is seamlessly and tightly integrated with a customer's infrastructure, or (ii) a set of services, product features or functions, including, without limitation, the integration of Benefitfocus products with a customer's infrastructure, which provides substantially equivalent capabilities.
 - 1.4 "Standard Model" means (i) any Benefitfocus customer business solution currently sold or marketed together with any updates, modifications, routine enhancements or patches provided as part of the regular maintenance schedule to Benefitfocus' clients, and (ii) any subsequent Benefitfocus customer business solution that is not a Custom Model.
 2. Exclusivity.
 - 2.1 This is a limited exclusivity restriction intended to be consistent with two goals: (1) Enable Aetna to obtain "first mover" competitive advantage as to Aetna Competitors from the Integrated Product resulting from the Aetna-Benefitfocus collaboration; and (2) Permit Benefitfocus to market its Standard Model without limitation and permit Benefitfocus to market the Integrated Product except to Aetna Competitors. Accordingly, the parties agree that (i) until November 1, 2011 (the "Exclusivity Period"), Benefitfocus will not enter into any agreement with, an Aetna Competitor to develop a Custom Model, or conduct work for any Aetna Competitor, or take any other steps toward, the creation of a Custom Model for any Aetna Competitor; but (ii) Benefitfocus shall have complete freedom to take any steps toward marketing, selling or delivering a Standard Model to any customer, including any Aetna Competitor.
 - 2.2 During the Exclusivity Period, Benefitfocus shall notify Aetna not less than [*] ([*]) [*] before Benefitfocus enters into any agreement with any Aetna Competitor ("Competitor Agreement). A press release or similar communication concerning any relationship between Benefitfocus and an Aetna Competitor shall be treated as a Competitor Agreement.
 - 2.3 If Aetna determines in good faith that a Competitor Agreement would conflict with Benefitfocus' exclusivity undertaking in Section 2.1, above, Aetna may so advise Benefitfocus. Upon receipt of such advice, and whether or not it agrees with Aetna's determination, Benefitfocus shall immediately cease and desist from taking any action in furtherance of such Competitor Agreement until such time (if any) that (i) Aetna comes to believe that the Competitor Agreement would not conflict with Benefitfocus' exclusivity undertaking in Section 2.1, above after following dispute resolution procedures in Section 12.A. of the MBA, or (ii) an arbitration panel convened pursuant to the procedures specified in Section 12.B. of the MBA determines that the Competitor Agreement would not conflict with Benefitfocus' exclusivity undertaking in Section 2.1, above.
-

3. **Royalty.** The parties anticipate that the collaboration between Benefitfocus and Aetna will enable Benefitfocus to generate substantial sales from the Integrated Product and/or the Custom Model and agree that Aetna should share in that resulting revenue.

Accordingly, Benefitfocus shall pay Aetna a royalty of [*]% of all license fees and [*]% of all other fees (including development fees and ongoing servicing and maintenance fees) of revenues Benefitfocus earns from sales of a Custom Model (i) to customers other than Aetna Competitors, on any sale made in the first [*] ([*]) [*] following the deployment of the Integrated Product; and (ii) to Aetna Competitors, on any sale made in the first [*] ([*]) [*] following end of the Exclusivity Period.

- C. **Resolution of Existing Disputes.** Schedules 8, 9, and 10 shall replace all schedules currently in effect between Benefitfocus and Aetna (the “Existing Schedules”). Any and all disputed claims for fees between the parties relating to services provided by Benefitfocus to Aetna under the Existing Schedules will be settled by and upon the execution of Schedules 8, 9, and 10. Neither party will be obligated to pay any amounts to the other party for such fees in the Existing Schedules under the terms of this settlement.
-

IN WITNESS WHEREOF, the parties have hereto by their duly authorized representatives executed this Agreement.

Aetna Life Insurance Company

By: /s/ Joseph C. Black
(Authorized Signature)

Name: Joseph C. Black
(Print Name)

Title: Chief Procurement Officer

Date: 11-24-09

Benefitfocus.com, Inc.

By: /s/ Shawn A. Jenkins
(Authorized Signature)

Name: Shawn A. Jenkins
(Print Name)

Title: President and CEO

Date: 11/11/09

**AMENDMENT NO 1
TO
SCHEDULE NO. 8
To The
MASTER BUSINESS AGREEMENT (“MBA”)
BETWEEN
AETNA LIFE INSURANCE COMPANY (“Aetna”)
AND
BENEFITFOCUS.COM, INC. (“Supplier”)**

This amendment (the “Amendment”) to Schedule No. 8 to the Master Business Agreement (the “Agreement”) dated November 28, 2006, the Professional Services Attachment dated November 28, 2006 and the Software License Attachment dated November 28, 2006 between Benefitfocus.com Inc. (the “Supplier”) and Aetna Life Insurance Company (“Aetna”) is made as of this 17th day of May, 2010. The following revisions supplement and are incorporated into and made a part of Schedule No. 8. All sections and paragraphs of Schedule No. 8 not hereby appended shall remain in full force and effect. Capitalized terms not otherwise herein defined shall have the meanings ascribed to them in the Agreement. In case of a conflict, the terms of this Amendment will control and prevail over those contained in Schedule No. 8.

WHEREAS, pursuant to Paragraph 7 of Schedule No. 8, the Parties shall agree to a payment stream for the remaining \$[*] as more specifically set forth in subsequent development Schedules; and

WHEREAS, such payment stream will be tied to completion and acceptance of Services, Deliverables, Materials, and/or significant milestones; and

WHEREAS, the parties desire to establish the payment stream for calendar year 2010 tied to the completion and acceptance of certain Services, Deliverables, Materials, and significant milestones.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree to amend Schedule 8 of the MBA as follows:

1. The parties previously anticipated within Section 7 of Schedule 8 that \$[*] would be allocated to 2010, which, upon payment, shall be deducted from the amounts due for services under Schedule 8.
2. Milestones, related deliverables, and associated amounts due are shown in Exhibits A-N to this Amendment 1, attached hereto and incorporated by reference.
3. The parties acknowledge and agree that the following is the anticipated monthly payment schedule based upon the underlying milestones and deliverables defined by Benefitfocus and associated with each Aetna project Chunk as those amounts are itemized within the attached Exhibits A through N:

a. January 31, 2010:	\$ [*]
b. February 28, 2010:	\$ [*]
c. March 31, 2010	\$ [*]
d. April 30, 2010:	\$ [*]
e. May 31, 2010:	\$ [*]
f. June 30, 2010:	\$ [*]
g. July 31, 2010:	\$ [*]
h. August 31, 2010:	\$ [*]
i. September 30, 2010:	\$ [*]
j. October 31, 2010:	\$ [*]
k. November 30, 2010:	\$ [*]
l. December 31, 2010:	\$ [*]
Total	\$ [*]

4. The above payment schedule reflect the approximate dates on which Supplier will achieve certain milestones and provide the associated deliverables as detailed in Exhibits A through N, and shall be entitled to invoice Aetna for the above 2010 fees. As with any project, these dates may change from time to time depending on the progress of the project, therefore, actual deliverables and payments will be tied to the latest Project Plan that is in effect and mutually agreed to by the parties in writing as well as any mutual written agreements in accordance with change control procedures. For each invoice noted above, Aetna shall reasonably cooperate with Supplier to review deliverables and milestones related thereto and to accept or reject each deliverable or milestone as appropriate according the respective acceptance criteria.
5. Each milestone and related deliverable shall be accompanied by an Acceptance Form, substantially in the form attached hereto as Exhibit O.
6. Acceptance of the individual deliverables will be determined by review and sign off provided by the Aetna Coordinator. By accepting the respective milestones and deliverables, Aetna agrees to pay Benefitfocus in accordance with Section 3 above. If, after acceptance, Aetna determines that these deliverable and milestones do not meet the requirements set forth in this Agreement, Aetna shall be entitled to the rights and remedies set forth in the Agreement, including Section 7, *Warranties and Limitation of Liability*, subsection B. *Standard of Work* of the MBA and Section 9, *Remedies* of the Software License Attachment.
7. Upon acceptance of each milestone or deliverable, Supplier shall invoice Aetna the respective amount, and Aetna shall pay such amount in accordance with the payment terms outlined in Amendment 2, Section 2 to the MBA.
8. The effective date of this Amendment No. 001 is May 17, 2010.

All Sections, terms and conditions not appended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have hereto by their duly authorized representatives executed this Amendment.

Aetna Life Insurance Company

Benefitfocus.com, Inc.

By: /s/ Michael W. Grise
(Authorized Signature)

By: /s/ Andrew L. Howell
(Authorized Signature)

Name: Michael W. Grise
(Print Name)

Name: Andrew L. Howell
(Print Name)

Title: Sr. Procurement Agent

Title: SVP

Date: 5-27-10

Date: 5/25/10
Taxpayer ID # 57-1099948

Attachments

- Exhibit A: eBilling 'Third billing cycle' (8019a)
 - Exhibit B: AGI/iCAP iMax integration (7542e)
 - Exhibit C: AGI/iCAP gMax integration (7842a)
 - Exhibit D: eBilling for Individual (BEAR 7934b)
 - Exhibit E: eDirect for Individual (BEAR 7934c)
 - Exhibit F: AGI/iCAP Service Fee Billing (7597a)
 - Exhibit G: Enterprise Portal Framework (8166a) November 2010 Release
 - Exhibit H: Plan Sponsor Portal (8167a) November 2010 Release
 - Exhibit I: Broker Portal (8168a) November 2010 Release
 - Exhibit J: eSales for Small Group segment (8176a) February 2011 Release
 - Exhibit K: Enhanced eEnrollment (8180a) February 2011 Release
 - Exhibit L: Enterprise Portal Framework (8166b) February 2011 Release
 - Exhibit M: Plan Sponsor Portal (8167b) February 2011 Release
 - Exhibit N: Broker Portal (8168b) February 2011 Release
 - Exhibit O: Sample of Acceptance Form
-

**AMENDMENT NO 2
TO
SCHEDULE NO 8
To The
MASTER BUSINESS AGREEMENT (“MBA”)
BETWEEN
AETNA LIFE INSURANCE COMPANY (“Aetna”)
AND
BENEFITFOCUS.COM, INC. (“Supplier”)**

This Amendment (the “Amendment”) to Schedule No. 8 to the Master Business Agreement (the “Agreement”) dated November 28, 2006 between Benefitfocus.com Inc. (the “Supplier”) and Aetna Life Insurance Company (“Aetna”) is made as of this March 8, 2011. The following revisions supplement and are incorporated into and made a part of Schedule No. 8. All sections and paragraphs of Schedule No. 8 not hereby appended shall remain in full force and effect. Capitalized terms not otherwise herein defined shall have the meanings ascribed to them in the Agreement. In case of a conflict, the terms of this Amendment will control and prevail over those contained in Schedule No. 8.

WHEREAS, pursuant to Paragraph 7 of Schedule No. 8, the Parties shall agree to a payment stream for the remaining \$[*] as more specifically set forth in subsequent development Schedules; and

WHEREAS, such payment stream will be tied to completion and acceptance of Services, Deliverables, Materials, and/or significant milestones; and

WHEREAS, the parties desire to establish the payment stream for calendar year 2011 tied to the completion and acceptance of certain Services, Deliverables, Materials, and significant milestones.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree to amend Schedule 8 of the MBA as follows:

1. The parties previously anticipated within Section 7 of Schedule 8 that \$[*] would be allocated to 2011, which upon payment shall be deducted from the amounts due for services under Schedule 8.
2. The parties have agreed to defer to 2011, certain payments due in 2010 pursuant to Amendment No. 1 to Schedule No. 8 in the amount of \$[*], for the project milestones known as BEAR 2010 Deferred (Feb & May 2011) and Aetna has agreed to pay those amounts according to the terms contained herein.
3. Milestones, related deliverables, and associated amounts due are shown in Exhibit A to this Amendment 2 (Payment Schedule and Anticipate Milestones), attached hereto and incorporated by reference.
4. The parties acknowledge and agree that the following is the anticipated monthly payment schedule based upon the underlying milestones and deliverables defined by Benefitfocus and associated with each Aetna project Chunk as those amounts are itemized within the attached Exhibits A:

a. February 28, 2011:	\$ [*]	
b. March 31, 2011:	\$ [*]	
c. April 30, 2011:	\$ [*]	
d. May 31, 2011:	\$ [*]	
e. June, 2011	[*]	
f. July 31, 2011:	\$ [*]	
g. August 31, 2011:	\$ [*]	
h. September, 2011	[*]	
i. October 31, 2011:	\$ [*]	To be paid on the sooner of Code Drop or October 31, 2011
j. November 30, 2011:	\$ [*]	
k. December 31, 2011:	\$ [*]	To be paid on the sooner of Code Release or December 31, 2011
TOTAL	\$ [*]	

5. The above payment schedule reflect the approximate dates on which Supplier will achieve certain milestones and provide the associated deliverables as detailed in Exhibits A, and shall be entitled to invoice Aetna for the above 2011 fees. As with any project, these dates may change from time to time depending on the progress of the project, therefore, actual deliverables and payments will be tied to the latest Project Plan that is in effect and mutually agreed to by the parties in writing as well as any mutual written agreements in accordance with change control procedures. For each invoice noted above, Aetna shall reasonably cooperate with Supplier to review deliverables and milestones related thereto and to accept or reject each deliverable or milestone as appropriate according the respective acceptance criteria.
6. Each milestone and related deliverable shall be accompanied by an Acceptance Form, substantially in the form attached hereto as Exhibit B.
7. Acceptance of the individual deliverables will be determined by review and sign off provided by the Aetna Coordinator. By accepting the respective milestones and deliverables, Aetna agrees to pay Benefitfocus in accordance with Section 3 above. If, after acceptance, Aetna determines that these deliverable and milestones do not meet the requirements set forth in this Agreement, Aetna shall be entitled to the rights and remedies set forth in the Agreement, including Section 7, Warranties and Limitation of Liability, subsection B. Standard of Work of the MBA and Section 9, Remedies of the Software License Attachment.
8. Upon acceptance of each milestone or deliverable, Supplier shall invoice Aetna the respective amount, and Aetna shall pay such amount in accordance with the payment terms outlined in Section 3 to the MBA.
9. The effective date of this Amendment No. 2 to Schedule No. 8 shall be January 1, 2011.

All Sections, terms and conditions not appended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have hereto by their duly authorized representatives executed this Amendment.

Aetna Life Insurance Company

Benefitfocus.com, Inc.

By: /s/ Wanda Borotto
(Authorized Signature)

By: /s/ Andrew L. Howell
(Authorized Signature)

Name: Wanda Borotto
(Print Name)

Name: Andrew L. Howell
(Print Name)

Title: Procurement Manager

Title: COO

Date: Apr 12, 2011

Date: Apr 12, 2011

Taxpayer ID # 57-1099948

Exhibit A: Payment Schedule and Anticipate Milestone

Project/Activity	Weight	2010 Deferred	Feb-11	Mar-11	Apr-11	May-11	Jul-11	Aug-11	TBD* Code Drop *Paid before or in Oct 2011	Nov-11	TBD* Release	*Paid before or in Dec 2011
BEAR 2010 Deferred (Feb & May 2011)		\$680,000										
7934f May Release Code Drop 1 to JCT – 2/15/11	10%		\$ 68,000									
7934f May Release Code Drop 2 to JCT – 3/18/11	10%			\$ 68,000								
7934j November Release Design Signoff – 4/7/11	10%				\$ 68,000							
7934k February Release Design Signoff – 5/6/11	10%					\$ 68,000						
7934j November Release Code Drop to JCT – 7/15/11	20%						\$136,000					
7934i August Release UAT Signoff – 8/15/11	20%							\$136,000				
7934j November Release UAT Signoff – 11/4/11	20%									\$136,000		
Totals			\$ 68,000	\$ 68,000	\$ 68,000	\$ 68,000	\$136,000	\$136,000	\$ 0	\$136,000	\$ 0	\$ 0
Plan Sponsor Portal	20%		\$380,000									
7842b eEnrollment	10%			\$190,000								
Core Small Group Release	35%					\$665,000						

7842c eEnrollment			\$	16,625.00					
eSales			\$	16,625.00					
Broker Portal			\$	16,625.00					
eBilling			\$	16,625.00					
May Release Follow-up/	10%		\$	190,000					
Learning									
eSales Follow-on	10%		\$	95,000	\$	95,000			
2 nd Edition			\$	47,500.00	\$	47,500.00			
3 rd Edition			\$	47,500.00	\$	47,500.00			
eEnrollment Enhancements	5%		\$	47,500.0	\$	47,500.0			
SG Follow-up				\$11,875.00		\$11,875.00			
Middle Market				\$35,625.00		\$35,625.00			
Enhancements									
Portal Follow-on			\$	95,000	\$	95,000			
Middle Market Capabilities			\$	9,500.00	\$	9,500.00			
Totals		<u>\$380,000</u>	<u>\$190,000</u>	—	<u>\$665,000</u>	—	<u>\$190,000</u>	<u>\$237,500.0</u>	—
<i>Percent of 2011 total</i>		20%	10%		35%		10%	12.5%	—
Cumulative Percent of 2011 Total		20%	30%		65%		75%	88%	100%

Grand Total \$ 448,000 \$ 258,000 \$ 68,000 \$ 733,000 \$ 136,000 \$ 326,000 \$ 237,500 \$ 136,000 \$ 237,500 \$ 2,580,000

EXHIBIT B – ACCEPTANCE FORM

For Use Only With Schedule No. 8 To The Master Business Agreement Between Aetna Life Insurance Company (“Aetna”) And Benefitfocus.Com, Inc. (“Benefitfocus”) Dated November 1, 2009

PLEASE PROCESS THIS FORM WITHIN FIVE (5) DAYS OF THE DATE SUBMITTED

<u>DATE</u>	<u>PROJECT NAME</u>	<u>BENEFITFOCUS MILESTONE</u>	<u>DELIVERABLE NAME AND DESCRIPTION</u>	<u>ACCEPTANCE CRITERIA</u>	<u>AMOUNT COMPLETED & EARNED</u>	<u>APPROVAL*</u>
<Enter the date of delivery.>	<Enter the Aetna project name and number .>	<List the Benefitfocus milestone that has been met qualifying the deliverable for submission.>	<List the deliverable and any references that point to the deliverable that is being submitted. State the receiving individual or organization.>	<List the acceptance (success) criteria for the deliverable.>	<List the amount completed and earned under the Benefitfocus Project Schedule for this discrete milestone.>	<input type="checkbox"/> Accepted <input type="checkbox"/> Rejected
						<input type="checkbox"/> Accepted <input type="checkbox"/> Rejected
						<input type="checkbox"/> Accepted <input type="checkbox"/> Rejected
						<input type="checkbox"/> Accepted <input type="checkbox"/> Rejected

* Any rejection must be accompanied by an explanation for the reasons for the rejection including specific references to those portions of the Schedule, Milestone, Deliverable and Acceptance Criteria which are the basis for the rejection, including identifying those deficiencies that must be corrected in order for the Deliverable to be accepted. AETNA shall not offer as the basis for any rejection, and Benefitfocus shall not be required to correct, any minor imperfections or defects that do not materially impair the operation or utility of any Deliverable

By accepting the respective Milestones and Deliverables, Aetna agrees that Benefitfocus has performed the work identified herein and has fully earned the amounts specified. For these deliverable and milestones accepted, rights to further reject, refund, offset, rebate or discount of the amounts earned related to these milestones are hereby waived.

Accepted on behalf of Aetna by:

Date Submitted: _____ Print Name _____

Benefitfocus Project Manager: _____ Print Title _____

Due Date: _____ Signature: _____

AMENDMENT NO. 03
TO
SCHEDULE NO 8
To The
MASTER BUSINESS AGREEMENT (“MBA”)
BETWEEN
AETNA LIFE INSURANCE COMPANY (“Aetna”)
AND
BENEFITFOCUS.COM, INC. (“Supplier”)

This Amendment (the “Amendment”) to Schedule 8 to the Master Business Agreement (the “Agreement”) dated November 28, 2006 between Benefitfocus.com Inc. (the “Supplier”) and Aetna Life Insurance Company (“Aetna”) is made as of April 14, 2012. The following revisions supplement and are incorporated into and made a part of Schedule No. 8. All sections and paragraphs of Schedule No. 8 not hereby appended shall remain in full force and effect. Capitalized terms not otherwise herein defined shall have the meanings ascribed to them in the Agreement. In case of a conflict, the terms of this Amendment will control and prevail over those contained in Schedule No. 8.

WHEREAS, pursuant to Paragraph 7 of Schedule No. 8, the Parties shall agree to a payment stream for the remaining \$[*] as more specifically set forth in subsequent development Schedules; and

WHEREAS, such payment stream will be tied to completion and acceptance of Services, Deliverables, Materials, and/or significant milestones; and

WHEREAS, the parties desire to establish the payment stream for calendar year 2010 tied to the completion and acceptance of certain Services, Deliverables, Materials, and significant milestones

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree to amend Schedule 8 of the MBA as follows:

1. The parties previously anticipated within Section 7 of Schedule 8 that \$[*] would be allocated to 2012, which upon payment shall be deducted from the amounts due for services under Schedule 8.
2. Milestones, related deliverables, and associated amounts due are shown in Exhibit A to this Amendment (Payment Schedule and Anticipate Milestones), attached hereto and incorporated by reference.
3. The parties acknowledge and agree that the following is the anticipated monthly payment schedule based upon the underlying milestones and deliverables defined by Benefitfocus and Aetna and associated with each Aetna project Chunk as those amounts are itemized within the attached Exhibit A:

a. January 31, 2012	\$ [*]
b. February 29, 2011:	\$ [*]
c. March 31, 2011:	\$ [*]
d. April 30, 2011:	\$ [*]
e. May 31, 2011:	\$ [*]
f. August 31, 2011:	\$ [*]
g. November 30, 2011:	\$ [*]
TOTAL	\$ [*]

4. The above payment schedule reflect the approximate dates on which Supplier will achieve certain milestones and provide the associated deliverables as detailed in Exhibits A, and shall be entitled to invoice Aetna for the above 2011 fees. As with any project, these dates may change from time to time depending on the progress of the project, therefore, actual deliverables and payments will be tied to the latest Project Plan that is in effect and mutually agreed to by the parties in writing as well as any mutual written agreements in accordance with change control procedures. For each invoice noted above, Aetna shall reasonably cooperate with Supplier to review deliverables and milestones related thereto and to accept or reject each deliverable or milestone as appropriate according the respective acceptance criteria.
5. Each milestone and related deliverable shall be accompanied by an Acceptance Form, substantially in the form attached hereto as Exhibit B.
6. Acceptance of the individual deliverables will be determined by review and sign off provided by the Aetna Coordinator. By accepting the respective milestones and deliverables, Aetna agrees to pay Benefitfocus in accordance with Section 3 above. If, after acceptance, Aetna determines that these deliverable and milestones do not meet the requirements set forth in this Agreement, Aetna shall be entitled to the rights and remedies set forth in the Agreement, including Section 7, Warranties and Limitation of Liability, subsection B. Standard of Work of the MBA and Section 9, Remedies of the Software License Attachment.
7. Upon acceptance of each milestone or deliverable, Supplier shall invoice Aetna the respective amount, and Aetna shall pay such amount in accordance with the payment terms outlined in Section 3 to the MBA.
8. The Effective Date of this Amendment No. 3 is January 1, 2012.

All Sections, terms and conditions not appended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have hereto by their duly authorized representatives executed this Amendment.

Aetna Life Insurance Company

Benefitfocus.com, Inc.

By: /s/ Benjamin Diamond
(Authorized Signature)

By: /s/ Andrew L. Howell
(Authorized Signature)

Name: Benjamin Diamond
(Print Name)

Name: Andrew L. Howell
(Print Name)

Title: Senior Contract Agent

Title: COO

Date: Apr 19, 2012

Date: Apr 19, 2012

Taxpayer ID # 57-1099948

Attachments

Exhibit A: Payment Schedule and Anticipate Milestones
Exhibit B: Acceptance Form

EXHIBIT A
2012 Payment Schedule
Schedule 8 Deliverables

eBusiness													
Project	Weight	Jan 2012	Feb 2012	Mar 2012	Apr 2012	May 2012	Jun 2012	Jul 2012	Aug 2012	Sep 2012	Oct 2012	Nov 2012	Dec 2012
eSales 2011 State Rollout Completion	10%	\$132,000											
7842g (Service Areas) + 8388 Go-Live	15%		\$198,000										
2012.1 Release Items (PSP, Broker Portal HCR item)	5%			\$66,000									
7842g (Categories Go- Live)	5%				\$66,000								
2012.2 Release Items	5%					\$66,000							
Support Allstate Integration (this is dependent on Allstate participation. This could be rebalanced if Allstate doesn't fully engage)	20%							\$264,000					
2012.3 Release Items –eSales	5%							\$66,000					
2012.3 Release Items – enrollment	5%							\$66,000					
2012.3 Release Items – Broker Portal	5%							\$66,000					
2012.3 Release Items – PSP	5%							\$66,000					
2012.4 Release Items – eSales	5%											\$66,000	
2012.4 Release Items – enrollment	5%											\$66,000	

EXHIBIT B – ACCEPTANCE FORM

For Use Only With Schedule No. 8 To The Master Business Agreement Between Aetna Life Insurance Company (“Aetna”) And Benefitfocus.Com, Inc. (“Benefitfocus”) dated November 1, 2009

PLEASE PROCESS THIS FORM WITHIN FIVE (5) DAYS OF THE DATE SUBMITTED

<u>DATE</u>	<u>PROJECT NAME</u>	<u>BENEFITFOCUS MILESTONE</u>	<u>DELIVERABLE NAME AND DESCRIPTION</u>	<u>ACCEPTANCE CRITERIA</u>	<u>AMOUNT COMPLETED & EARNED</u>	<u>APPROVAL*</u>
<Enter the date of delivery.>	<Enter the Aetna project name and number. >	<List the Benefitfocus milestone that has been met qualifying the deliverable for submission.>	<List the deliverable and any references that point to the deliverable that is being submitted. State the receiving individual or organization.>	<List the acceptance (success) criteria for the deliverable.>	<List the amount completed and earned under the Benefitfocus Project Schedule for this discrete milestone.>	<input type="checkbox"/> Accepted <input type="checkbox"/> Rejected
						<input type="checkbox"/> Accepted <input type="checkbox"/> Rejected
						<input type="checkbox"/> Accepted <input type="checkbox"/> Rejected
						<input type="checkbox"/> Accepted <input type="checkbox"/> Rejected

* Any rejection must be accompanied by an explanation for the reasons for the rejection including specific references to those portions of the Schedule, Milestone, Deliverable and Acceptance Criteria which are the basis for the rejection, including identifying those deficiencies that must be corrected in order for the Deliverable to be accepted. AETNA shall not offer as the basis for any rejection, and Benefitfocus shall not be required to correct, any minor imperfections or defects that do not materially impair the operation or utility of any Deliverable.

By accepting the respective Milestones and Deliverables, Aetna agrees that Benefitfocus has performed the work identified herein and has fully earned the amounts specified. For these deliverable and milestones accepted, rights to further reject, refund, offset, rebate or discount of the amounts earned related to these milestones are hereby waived.

Accepted on behalf of AETNA by:

Date Submitted: _____ Print Name _____

Benefitfocus Project Manager: _____ Print Title _____

Due Date: _____ Signature: _____

**SCHEDULE NO. 9
TO THE
SOFTWARE LICENSE ATTACHMENT
TO THE
MASTER BUSINESS AGREEMENT
BETWEEN
AETNA LIFE INSURANCE COMPANY
AND
BENEFITFOCUS.COM, INC.**

This Schedule No. 9 (“Schedule”) to the Software License Attachment (“Attachment”) to the Master Business Agreement dated November 28, 2006 (“MBA”) between Benefitfocus.com, Inc. (“Supplier”) and Aetna Life Insurance Company (“Aetna”) is made this 1st day of November, 2009. Capitalized terms not otherwise herein defined shall have the meanings ascribed to them in the Attachment and/or Agreement. In the case of a conflict, the terms of this Schedule will control and prevail over those contained in the Attachment and Agreement.

1. **Effective Date:** November 1, 2009

2. **Aetna** [*]
Coordinators: [*]

3. **License Term:** Term for each license pack shall begin on the respective date set forth in Section 4 below and shall be perpetual.

4. **License Fees:** License fees for each license pack will be paid in annual installments, payable on the dates set forth below, in accordance with the payment terms in Section 3.B. of the MBA, as amended:

January 1, 2010	\$ [*] (Pack 1 for up to an aggregate of [*] Contracts)
January 1, 2011	\$ [*] (Pack 2 for an additional [*] Contracts)
January 1, 2012	\$ [*] (Pack 3 for an additional [*] Contracts)
Total License Fee:	\$ 17,340,000 (For an aggregate of 5M Contracts)

(For Administrative Purposes Only) UNSPSC: 81112106

5. **Program Description:** Program licenses for [*] Contracts for the following products:

- A. eSales – This platform provides insurance agents and carrier underwriters with tools to simplify the steps of the pre-sales process necessary in managing a group from quote to live.
- B. eEnrollment – An online enrollment system which integrates with insurance carrier, payroll and HRIS systems to form the one-to-many platform. It supports open enrollment, new hire enrollment, ongoing maintenance and COBRA administration.
- C. eBilling – A comprehensive Electronic Invoice Presentment and Payment system that provides secure and direct access to invoice, payment and reporting information.
- D. eCDH – A consumer-directed healthcare platform that guides subscribers through the process of comparing plans.
- E. eDirect – A system integrates enrollment, underwriting, direct marketing and sales components into one application, offering sales automation, rating tools, marketing campaigns and paperless application processing with a convenient plan shopping experience system.

Together, these Programs form the Benefitfocus commercial product framework for the Integrated Product, defined in Schedule 8.

For purposes of these licenses, a “Contract” shall mean any one unique Aetna subscriber, regardless of how many products and/or services that subscriber purchases.

At any time after full payment of the License Fees set forth in Section 4 above, for a one-time payment of \$[*], Aetna may elect to convert the above [*] Contract license into an unlimited, enterprise-wide license ("Site License") to use all then-current components of the Integrated Product for unlimited users for all Aetna products and services.

6. **Installation:** Prior to migration, as referenced in Schedule 10, installation shall be at Benefitfocus' Charlotte, North Carolina data center. After migration, installation shall be at Aetna's facilities in Connecticut. All Programs shall be delivered to Aetna electronically.

7. **Supplier Employee(s):**

A. Names and Title of Supplier Employee(s) assigned under this Schedule:

B. Supplier Employee Type:

i. Supplier intends on utilizing one or more H-1b employee(s) in the performance of this Schedule.

Yes X_No

ii. If "Yes", this/these employee(s) will be on Aetna's site(s) for thirty (30) days or more.

Yes No

Supplier must comply with all applicable laws and regulations regarding the utilization of H-1 b employee(s).

8. **Acceptance Period:** To be set forth in the BNAs and Program Plan as set forth in Schedule .

9. **Open Source:**

Do the Programs contain open source?

Yes X_No

If "Yes", please describe:

10. **Sales & Use Taxes.** Supplier is not currently registered to collect sales tax in the state of Connecticut where the Services will be delivered. Aetna will self-assess and remit the appropriate use tax to the taxing jurisdiction. Within a reasonable time after execution of this Schedule, Supplier will register with the state of Connecticut. Benefitfocus will provide notice to Aetna when it is registered in Connecticut. Upon registration in Connecticut, Benefitfocus will collect the tax at the current rate of 1%.

11. **Access to Health Care Benefits.** N/A - Benefitfocus completed Aetna Supplier Health Care Survey in November 2008.

12. **Aetna Notification Addresses:** Electronic Invoices
AWBII

Business Notices
151 Farmington Avenue
Procurement, RT32
Hartford, CT 06156

IN WITNESS WHEREOF, the parties have hereto by their duly authorized representatives executed this Agreement.

Aetna Life Insurance Company

Benefitfocus.com, Inc.

By: /s/ Joseph C. Black
(Authorized Signature)

By: /s/ Shawn A. Jenkins
(Authorized Signature)

Name: Joseph C. Black
(Print Name)

Name: Shawn A. Jenkins
(Print Name)

Title: Chief Procurement Officer

Title: President and CEO

Date: 11-24-09

Date: 11/11/09

**AMENDMENT NO. 1 TO SCHEDULE NO. 9
TO THE MASTER BUSINESS AGREEMENT BETWEEN
AETNA LIFE INSURANCE COMPANY AND BENEFITFOCUS.COM, INC.**

This Amendment (the "Amendment") to Schedule No. 9, dated November 1, 2009, to the Master Business Agreement (the "Agreement") dated November 28, 2006 between Benefitfocus.com Inc. (the "Supplier") and Aetna Life Insurance Company ("Aetna") (collectively the "Parties") is made as of March 29, 2013 ("Effective Date"). The following revisions supplement and are incorporated into and made a part of Schedule No. 9. All sections and paragraphs of Schedule No. 9 not hereby amended shall remain in full force and effect. Capitalized terms not otherwise herein defined shall have the meanings ascribed to them in the Agreement. In case of a conflict, the terms of this Amendment will control and prevail over those contained in Schedule No. 9.

WHEREAS, the Parties entered into Schedule No. 9 in order for Supplier to license to Aetna certain Supplier software as defined therein; and

WHEREAS, the Aetna desires to license from Supplier the Benefitfocus Marketplace Sales Automation software ("Sales Automation"), and Benefitfocus® Marketplace Enrollment software ("Enrollment") (collectively, the "Marketplace") pursuant to the terms and conditions of Schedule No. 9

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree to the following:

1. Section 5, is amended to add new Section 5(F) to read as follows:

- F. Benefitfocus® Marketplace Sales Automation ("Sales Automation"), for the for small sized group markets, including the following functionality:
 - a. Broker small group prospect registration
 - b. Broker shopping for groups
 - c. Quoting and proposal generation
 - d. Broker assisted group application
 - e. Application processing and case load functionality

2. Section 5, is amended to add new Section 5(G) to read as follows:

- G. The Benefitfocus® Marketplace Enrollment ("Enrollment") enhancements for small sized groups, including:
 - a. Guided Shopping
 - b. Standard Video Integration
 - c. Plan Shopping App ("Plan Shopping")
 - d. Defined contribution
 - e. Tax account contribution
 - f. PCP Directory Link to Aetna Docfind.

The licenses described in Sections 5(F) and (G) are collectively the "Marketplace Licenses".

3. Section 3 is amended to add the following provision:

Notwithstanding anything to the contrary contained herein, and for the avoidance of doubt, the term of the Marketplace Licenses shall not be perpetual.

The term of the Marketplace Licenses shall commence as of the successful placement of the Marketplace in Aetna's production environment, and shall expire on October 31, 2014. The cost of the Marketplace licenses for any renewal term shall not exceed the cost stated in paragraph 5 of this Amendment.

4. The provision of Section 5 which reads as follows shall not apply to the licenses granted hereunder:

At any time after full payment of the License Fees set forth in Section 4 above, for a one-time payment of \$[*], Aetna may elect to convert the above [*] Contract license into an unlimited, enterprise-wide license ("Site License") to use all then-current components of the Integrated Product for unlimited users for all Aetna products and services.

5. Commencing upon the date which Supplier successfully places the Marketplace into Aetna's production environment, and for every [*] thereafter during the term defined in Section 3. Supplier shall invoice Aetna a fee of \$[*] for the Marketplace licenses.

All Sections, terms and conditions of Schedule No. 9 not expressly amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereto by their duly authorized representatives executed this Agreement.

Aetna Life Insurance Company

Benefitfocus.com, Inc.

By: /s/ Alan Byrne
(Authorized Signature)

By: /s/ Andrew L. Howell
(Authorized Signature)

Name: Alan Byrne
(Print Name)

Name: Andrew L. Howell
(Print Name)

Title: Procurement Manager

Title: COO

Date: Mar 30, 2013

Date: Mar 29, 2013
Taxpayer ID #: 57-1099948

(Signature Page to Amendment No. 1 to Schedule No. 9)

SCHEDULE NO. 10
to the
MASTER BUSINESS AGREEMENT (“MBA”)
between
AETNA LIFE INSURANCE COMPANY (“Aetna”)
and
BENEFITFOCUS.COM, INC. (“Benefitfocus”)

The parties agree that the terms and conditions of the MBA dated November 28, 2006 and the Hosting Services Attachment (“Hosting Attachment”), the Software License Attachment (“License Attachment”), and the Professional Services Attachment (“Services Attachment”) dated November 28, 2006 shall govern this Schedule. In the event of a conflict between the relevant documents, the terms and conditions of this Schedule shall control and prevail over its associated Attachment and the underlying MBA. Furthermore, in this regard, the Attachments shall take precedence over the underlying MBA.

1. Effective Date: November 1, 2009

2. Aetna [*], Project Manager

Coordinator:

[*], Procurement Senior Agent

3. Definitions:

- A. “Existing Programs” means the Benefitfocus enterprise Programs currently in use by Aetna and licensed under Schedules 1, 5, and 6,
- B. “Hosting Services” is defined in the Hosting Attachment.
- C. “Integrated Product” is defined in Schedule 8.
- D. “Maintenance” is defined in the License Attachment.
- E. “Operational Services” means the Hosting Services more fully set forth in Section 1.5 of the attached Statement of Work.
- E. “Remediation” means the Services more fully set forth in Section 1.3 of the attached Statement of Work.

4. Assignment Description: This Schedule addresses hosting and certain maintenance and support services to be performed by Benefitfocus as part of the overall relationship described collectively in this Schedule and Schedules 8 and 9 for a full suite of online tools to support new and existing Aetna customers. Benefitfocus will continue to provide Hosting Services for the Existing Programs until migration to Aetna’s data center, and thereafter, will maintain and host development and testing within the Benefitfocus environment. Additionally, Benefitfocus will collaborate with Aetna to plan and, as needed, support implementation of that migration effort, including, but not limited to the Remediation of the Integrated Product. Benefitfocus will provide Maintenance to Aetna for the Existing Programs prior to migration and will provide Maintenance for the Integrated Products following their transition to an Aetna-hosted environment. The Statement of Work (“SOW”), attached as Exhibit A, sets forth the requirements for the Hosting Services and Maintenance of the Program.

This assignment can not be altered without the consent of both Aetna and Benefitfocus. Benefitfocus shall provide any supervision of a Benefitfocus employee’s day-to-day services.

(For Administrative Purposes Only) UNSPSC: 81112106

5. Acceptance Criteria: Acceptance Criteria will be developed and mutually agreed upon by the Parties during the planning phases for remediation and migration more fully described in Section 1 of the SOW.

6. Assignment Location (Where Services will be delivered): Benefit of the Services will be in Hartford, CT. All Improvements will be delivered electronically.

7. Supplier Employee(s):

- A. Names and Title of Supplier Employee(s) assigned under this Schedule: To be determined during project planning.
 - B. Supplier Employee Type:
-

i. Benefitfocus intends on utilizing one or more H-1b employee(s) (as defined above) in the performance of this Schedule. Yes No

ii. If “Yes”, this/these employee(s) will be on Aetna’s site(s) for thirty (30) days or more.

Yes No

Benefitfocus must comply with all applicable laws and regulations regarding the utilization of H-1b employee(s).

8. Term/Schedule/Fees: The initial term of this assignment will run for [*] ([*]) [*] from the Effective Date of this Schedule (the “Initial Term”). The fees for the Schedule 10 Services during the Initial Term are fixed and are set for the in the table below:^{1FNREF}

Services	Total Fees
2009	\$ [*]
2010	\$ [*]
2011	\$ [*]
2012	\$ [*]
2013	\$ [*]
2014	\$ [*]
Total Fees	\$24,060,000

Notwithstanding the foregoing, Aetna will pay an additional fee if Aetna is unable to host the Existing Programs by [*]. The additional fee will be \$[*] per [*] until Aetna is able to host the Existing Programs.

Following expiration of the Initial Term, Aetna, at its election, may renew annually the Maintenance Services and/or the Operational Services for the test and development environment (each annual renewal referred to as a “Renewal Term”). The fees for the Services listed below for the first Renewal Term shall be no more than the following:

Operational Services and Maintenance:	\$[*]
Maintenance only:	\$[*]

The fees for subsequent Renewal Terms for such Services shall be no more than the fees set forth above plus an amount equal to the increase in the Revised Consumer Price Index (CPI) as reported on the US Department of Labor BLS website; all urban consumers; not seasonally adjusted; US city average; all items; base period 1982-84=100 for the most recent 12 month period ending on the day immediately preceding the commencement of the Renewal Term.

9. Sales & Use Taxes. Supplier is not currently registered to collect sales tax in the state of Connecticut where the Services will be delivered. Aetna will self-assess and remit the appropriate use tax to the taxing jurisdiction. Within a reasonable time after execution of this Schedule, Supplier will register with the state of Connecticut. Benefitfocus will provide notice to Aetna when it is registered in Connecticut. Upon registration in Connecticut, Benefitfocus will include in all invoices and collect the tax at the current rate of 1%.

10. Performance Credits. If the Benefitfocus has not met the Performance Criteria set forth below, the Aetna Coordinator shall promptly advise Benefitfocus in writing of such non-performance. The Performance Criteria are as follows:

Performance Criteria Prior to Migration

Performance Criteria	Service Level	Performance Credit
Maintenance Resolution Timeframe for Severity 1 as set forth in Sec. 10.C. of the License Attachment	[*] from receipt of service call	\$[*] per [*] in accordance with Sec. 10.D. of the License Attachment
Maintenance Resolution Timeframe for Severity 2 as set forth in Sec. 10.C. of the License Attachment	[*] from receipt of service call	\$[*] per [*] in accordance with Sec. 10.D. of the License Attachment

Maintenance Resolution Timeframe for Severity 3 as set forth in Sec. 10.C. of the License Attachment	[*] from receipt of service call	\$[*] per [*] in accordance with Sec. 10.D. of the License Attachment
Hosting Guaranteed Response Time	In accordance with Sec. 3.C. of the Hosting Attachment	[*] prorated [*] in accordance with Sec. 3.D. of the Hosting Attachment
Average Server response time	[*] per page in accordance with Sec. 3.B. of the Hosting Attachment	[*] prorated [*] in accordance with Sec. 3.D. of the Hosting Attachment
System availability of 24x7	[*]% in accordance with Sec. 3.A. of the Hosting Attachment	[*] prorated [*] in accordance with Sec. 3.D. of the Hosting Attachment
For reports with agreed upon submittal schedule (for example hourly/daily/weekly/monthly). Reports include, but are not limited to, fall-out, error, reconciliation reports.	Benefitfocus shall submit required reports by the specified date/time	\$[*] each time Benefitfocus misses a report date.
Customer Service	Failure to respond to a service call for Severity 1 within [*] and for Severity 2 or 3 within [*]	\$[*] for each hour Benefitfocus exceeds [*]
Constituent Call Center	<ul style="list-style-type: none"> • Answer [*]% of Constituent call within [*] • Maintain average abandonment rate of [*]% • Resolve Constituent issues on first call on average [*]% of the time • Member call quality [*]% based on feed back and call monitoring 	[*] prorated [*] for each incident

Performance Criteria after Migration to Aetna

Performance Criteria	Service Level	Performance Credit
Maintenance Resolution Timeframe for Severity 1 as set forth in Sec. 10.C. of the License Attachment	[*] from receipt of service call	\$[*] per [*] in accordance with Sec. 10.D. of the License Attachment
Maintenance Resolution Timeframe for Severity 2 as set forth in Sec. 10.C. of the License Attachment	[*] from receipt of service call	\$[*] per [*] in accordance with Sec. 10.D. of the License Attachment
Maintenance Resolution Timeframe for Severity 3 as set forth in Sec. 10.C. of the License Attachment	[*] from receipt of service call	\$[*] per [*] in accordance with Sec. 10.D. of the License Attachment
Test & Development environment availability of XX	[*]% in accordance with Sec. 3.A. of the Hosting Attachment	[*] prorated [*] in accordance with Sec. 3.D. of the Hosting Attachment
For reports with agreed upon submittal schedule (for example hourly/daily/weekly/monthly). Reports include, but are not limited to, fall-out, error, reconciliation reports.	Benefitfocus shall submit required reports by the specified date/time	\$[*] each time Benefitfocus misses a report date.

Performance Credits shall be paid in accordance with Section 10.D. of the License Attachment and Section 3.D. of the Hosting Attachment.

11. Aetna Notification Addresses:	Aetna Life Insurance Company [Department/Mail Code below] 151 Farmington Avenue Hartford, CT 06156	Electronic Invoices AWBII	Business Notices Procurement RT32
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12. Access to Health Care Benefits. N/A - Benefitfocus completed Aetna Supplier Health Care Survey in November 2008.

IN WITNESS WHEREOF, the Parties have hereto by their duly authorized representatives executed this Agreement.

Aetna Life Insurance Company

Benefitfocus.com, Inc.

By: /s/ Joseph C. Black
(Authorized Signature)

By: /s/ Shawn A. Jenkins
(Authorized Signature)

Name: Joseph C. Black
(Print Name)

Name: Shawn A. Jenkins
(Print Name)

Title: Chief Procurement Manager

Title: President & CEO

Date: 11-24-09

Date: 11/11/09
Taxpayer ID #: 57-1099948

**AMENDMENT NO. 01 TO SCHEDULE NO. 10
TO THE MASTER BUSINESS AGREEMENT BETWEEN
AETNA LIFE INSURANCE COMPANY AND BENEFITFOCUS.COM, INC.**

This Amendment (the "Amendment") to Schedule No. 10, dated November 1, 2009, to the Master Business Agreement (the "Agreement") dated November 28, 2006 between Benefitfocus.com Inc. (the "Supplier") and Aetna Life Insurance Company ("Aetna") (collectively the "Parties") is made as of July 30, 2012. The following revisions supplement and are incorporated into and made a part of Schedule No. 10. All sections and paragraphs of Schedule No. 10 not hereby amended shall remain in full force and effect. Capitalized terms not otherwise herein defined shall have the meanings ascribed to them in the Agreement. In case of a conflict, the terms of this Amendment will control and prevail over those contained in Schedule No. 10.

WHEREAS, the Parties entered into Schedule No. 10 in order for Supplier to provide Aetna with maintenance and support for the Existing Programs; and

WHEREAS, the Parties desire to have Supplier provide maintenance and support for certain functionality developed for [*] ("[*]") under a separate agreement between Supplier and [*] in support of an Aetna/[*] combined product offering to permit data exchange as part of the Existing Programs ("VB Functionality").

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree to the following:

1. The Statement of Work is hereby amended to add the following Section:

6. [*] Functionality

Supplier shall support the following VB Functionality for the remaining term of Schedule No. 10:

- a. Aetna private label [*].
 - b. A single interface file feed in iMax format to send seed file Enrollment record and Enrollment updates from the [*] membership system. Supplier will receive Enrollment updates via a file interface (iMax format) from [*] for Aetna private label [*] product records.
 - c. Updates of enrollment records from Enrollment to [*]. Supplier will provide an enrollment record interface in iMax format to [*] for Enrollment records of Aetna private label [*] products for [*] only. [*] will be solely responsible for developing an interface to accept Enrollment records for Aetna private label [*] product records via the file interface (iMax format).
 - d. Integration of EOI Application to support [*]'s external EOI application and underwriting process as part of the Aetna member enrollment workflow.
2. For the services described in this Amendment, Supplier shall invoice Aetna a base [*] fee of \$[*] for up to [*] Contracts ("Contracts" as defined in Schedule 09 between the Parties) for the Aetna/[*] combined product offering within eEnrollment ("eEnrollment" as defined within Schedule 09 between the Parties). Upon the first anniversary of this Amendment, and provided that the number of Contracts for the Aetna/[*] combined product offering within eEnrollment exceeds [*] Contracts, and/or the number of Contracts for the Aetna/[*] combined product offering within eEnrollment at the end of any anniversary of this Amendment exceeds the prior year's number of Contracts by [*]% or more the Parties agree in to negotiate in good faith an increase in the base [*] fee due to Supplier for the services described in this Amendment.
3. The value of this Amendment, assuming no increase in base [*] fees, is \$[*] ([*] through [*] = [*] at \$[*])
4. **Records Retention** - No Aetna Business Records will be retained by Supplier pursuant to this Schedule.
5. The Effective Date of this Amendment No. 01 is August 1, 2012.

All Sections, terms and conditions of Schedule No. 10 not expressly amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereto by their duly authorized representatives executed this Amendment.

Aetna Life Insurance Company

Benefitfocus.com, Inc.

By: /s/ Benjamin Diamond
(Authorized Signature)

By: /s/ Andrew L. Howell
(Authorized Signature)

Name: Benjamin Diamond
(Print Name)

Title: Senior Contract Agent

Date: Jul 31, 2012

Name: Andrew L. Howell
(Print Name)

Title: COO

Date: Jul 30, 2012

Taxpayer ID #: 57-1099948

**AMENDMENT NO. 2 TO SCHEDULE NO. 10
TO THE MASTER BUSINESS AGREEMENT BETWEEN
AETNA LIFE INSURANCE COMPANY AND BENEFITFOCUS.COM, INC.**

This Amendment (the "Amendment") to Schedule No. 10, dated November 1, 2009, to the Master Business Agreement (the "Agreement") dated November 28, 2006 between Benefitfocus.com Inc. (the "Supplier") and Aetna Life Insurance Company ("Aetna") (collectively the "Parties") is made as of March 29, 2013 ("Effective Date"). The following revisions supplement and are incorporated into and made a part of Schedule No. 10. All sections and paragraphs of Schedule No. 10 not hereby amended shall remain in full force and effect. Capitalized terms not otherwise herein defined shall have the meanings ascribed to them in the Agreement. In case of a conflict, the terms of this Amendment will control and prevail over those contained in Schedule No. 10.

WHEREAS, the Parties entered into Schedule No. 10 in order for Supplier to provide Aetna with maintenance and support for the Existing Programs; and

WHEREAS, Aetna has licensed the Benefitfocus Marketplace Sales Automation ("Sales Automation"), and Benefitfocus® Marketplace Enrollment ("Enrollment") (collectively, the "Marketplace"), pursuant to Amendment No. 1 to Schedule No. 9; and

WHEREAS, the Parties desire to have Supplier provide hosting, maintenance and support for the Marketplace Licenses described in Amendment 01 to Schedule 09.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree to the following:

1. Supplier shall provide the maintenance, operational support and hosting services for the Marketplace for the remaining term of, and pursuant to the terms and conditions of Schedule No. 10.
2. Manual Group Load Functionality. As part of the maintenance, support, and hosting of the Marketplace, Supplier will provide Manual Group Load (which shall be defined as the manual configuration of the groups sold via Marketplace) services [*] charge for Aetna clients sold through Marketplace through July 31, 2014. Thereafter, any Manual Group Load services to be provided by Supplier shall be subject to mutual agreement between Aetna and Supplier.
3. Supplier shall invoice Aetna a [*] fee of \$[*] for Maintenance services and a [*] fee of \$[*] for Operational Support & Hosting, for a total of \$[*] per [*] for the services defined in Section 2 and 3 of this Amendment.
4. Supplier may invoice the fees due under this Amendment upon Aetna's final acceptance of the Marketplace in a production environment, as acceptance is defined in Schedule No. 28, which is anticipated to be on or about July 1, 2013.
5. Assuming Supplier begins invoicing Aetna pursuant to No.4, above, on July 1, 2013, the dollar value of this Amendment is \$[*] (\$[*]/month for [*] months).

All Sections, terms and conditions of Schedule No. 10 not expressly amended hereby shall remain in full force and effect.

<<SIGNATURE PAGE FOLLOWS>>

IN WITNESS WHEREOF, the parties have hereto by their duly authorized representatives executed this Amendment.

Aetna Life Insurance Company

Benefitfocus.com, Inc.

By: /s/ Alan Byrne
(Authorized Signature)

By: /s/ Andrew L. Howell
(Authorized Signature)

Name: Alan Byrne
(Print Name)

Name: Andrew L. Howell
(Print Name)

Title: Procurement Manager

Title: COO

Date: Mar 30, 2013

Date: Mar 29, 2013
Taxpayer ID #: 57-1099948

(Signature Page to Amendment No. 2 to Schedule No. 10)

INDEPENDENT DIRECTOR COMPENSATION AGREEMENT

This Independent Director Compensation Agreement (this “**Agreement**”) is entered into as of _____, by and between Benefitfocus, Inc., a Delaware corporation (the “**Company**”), and _____ (the “**Director**”).

Statement of Purpose

WHEREAS the Company desires to retain and attract as directors the most capable persons available to serve on its Board of Directors (the “**Board**”); and

WHEREAS the Company believes that Director possesses the necessary qualifications and abilities to serve as a director of the Company and perform the functions associated with such service.

NOW, THEREFORE, in consideration of the foregoing, the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Service as Director. Director will serve as a director of the Company and perform all duties as a director of the Company, including without limitation (a) attending meetings of the Board, (b) serving on one or more committees of the Board (each a “**Committee**”) and attending meetings of each Committee of which Director is a member, and (c) using reasonable efforts to promote the business of the Company. The Company currently intends to hold at least one in-person regular meeting of the Board and each Committee each quarter, together with additional meetings of the Board and Committees as may be required by the business and affairs of the Company. In fulfilling [his/her] responsibilities as a director of the Company, Director will act honestly and in good faith with a view to the best interests of the Company and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

2. Term; Termination. This Agreement will take effect on _____ and will continue in effect until terminated as described herein. This Agreement may be terminated by either party on thirty (30) days’ written notice for any reason or no reason. In addition, this Agreement will terminate immediately upon the earliest to occur of (i) death of the Director, or (ii) the Director’s ceasing to be a member of the Board. Director acknowledges that this Agreement does not constitute a promise or in any way imply that the Company will continue [his/her] service as a director for any period of time.

3. Compensation and Expenses. As compensation for the services to be rendered by Director under this Agreement, the Company will provide the following compensation and benefits to Director.

(a) Annual Retainer. The Company will pay Director the amount of One Hundred Eighty Thousand Dollars (\$180,000) as described herein, (the “**Annual Retainer**”). By

initialing one of the boxes below, Director irrevocably elects to receive [his/her] retainer either (i) 50% in cash and 50% in restricted stock units (“RSUs”), or (ii) 100% in RSUs:

50% cash and 50% RSUs _____ 100% RSUs _____

(i) The cash portion of the Annual Retainer will be paid in equal quarterly installments promptly following the conclusion of each calendar quarter, and in no event later than March 15 of the year in which the quarterly portion of the Annual Retainer was earned. In order to receive the retainer for a given quarter, Director must be a director of the Company on the last day of the quarter, and this Agreement must remain in effect as of such day.

(ii) All RSUs awarded pursuant to this Section 3(a) will be granted immediately following the Company’s annual meeting of stockholders and vest on the earlier of (A) immediately prior to the Company’s next annual meeting of stockholders, or (B) one year after the date on which they were issued, provided that Director remains a director of the Company on such vesting date, and will be subject to the Company’s Second Amended and Restated 2012 Stock Plan, as amended, and as may be amended from time to time.

(iii) RSUs that vest in accordance with (ii) above will be paid to the Director in whole shares of common stock promptly after the date of vesting, but in no event later than March 15 following the calendar year in which vesting occurs.

(b) **Initial Grant of Shares.** If Director is a new member of the Company’s Board of Directors, as compensation for Director’s first year of service as a director of the Company, the Company shall grant to Director a number of RSUs worth Two Hundred Thousand Dollars (\$200,000), as described below (the “**Initial Grant**”).

(i) The Initial Grant will be issued promptly upon Director’s commencement of service as a director of the Company.

(ii) One-third of the total number of RSUs awarded as part of the Initial Grant will vest on each of the first, second, and third anniversaries of the date of grant, or if earlier, immediately prior to the Company’s annual stockholder meeting for that year, so long as Director remains a director of the Company through each such vesting date.

(iii) All RSUs awarded as part of the Initial Grant will be subject to the Company’s Second Amended and Restated 2012 Stock Plan, as amended, and as may be amended from time to time.

(iv) RSUs that vest in accordance with (ii) above will be paid to the Director in whole shares of common stock promptly after the date of vesting, but in no event later than March 15 following the calendar year in which vesting occurs.

(v) The Initial Grant is in lieu of the Annual Retainer for Director’s first year of service as a director of the Company.

(c) **Additional Compensation for Service as Committee Chair.** In addition to the compensation described above, Director will be eligible for additional cash compensation if

[he/she] serves as the chair of one or more Committees of the Board. For each quarter of service as chair, Director will receive \$6,250 for serving as chair of the Audit/Finance Committee, \$2,500 for serving as chair of the Compensation and Talent Committee, and/or \$1,875 for serving as chair of any other Committee.

(d) Additional Compensation for Service on Committee. In addition to the compensation described above, Director will be eligible for additional cash compensation if [he/she] serves on one or more Committees of the Board other than in the capacity of Chair. For each quarter of service, Director will receive \$2,250 for serving on the Audit/Finance Committee, \$1,250 for serving on the Compensation and Talent Committee, and/or \$937.50 for serving on any other Committee.

(e) Reimbursement of Expenses. Upon submission of appropriate receipts, invoices, or other documentation as may be reasonably required by the Company, the Company will reimburse Director for all reasonable out-of-pocket expenses incurred in connection with the performance of Director's duties under this Agreement. Expenses authorized pursuant to this Section 3(e) shall be reimbursed promptly upon receipt of all required documentation.

(f) Other Benefits. The Board (or a designated Committee) may from time to time authorize additional compensation and benefits for Director, including additional awards under any stock incentive, stock option, stock compensation or long-term incentive plan of the Company.

4. Director Stock Ownership Requirements. The Company requires its non-employee directors own stock in the Company with a cash value of \$225,000 or 3,750 shares, whichever is less. Director agrees to comply with this ownership requirement, provided that Director need not own the requisite number of shares until [he/she] has completed three years of service as a director of the Company. If the ownership requirement is not met after Director has completed three years of service as a director of the Company, then all payments made to [him/her] pursuant to this Agreement will be entirely in the form of RSUs until the required ownership level is reached. For purposes of calculating the number of shares held by Director, shares that are owned directly are counted along with (a) shares over which Director has investment or voting power, and (b) shares that may be acquired pursuant to vested, in-the-money options to acquire Company stock. Shares used to achieve the minimum director ownership requirement may not be pledged, used as security, or otherwise encumbered by Director.

5. Status of Director.

(a) The Director will be an independent contractor with respect to the services to be rendered to the Company hereunder. The Director will not be considered an employee of the Company for any purpose, and will not be eligible to participate in any of the employee benefit and/or welfare plans maintained by the Company, its subsidiaries or its affiliates.

(b) The Director understands and agrees that the Company will not be responsible for withholding or paying any federal or state income, social security or other taxes in connection with any compensation paid under this Agreement, and Director agrees that [he/she] is solely responsible for any such tax payments.

6. Confidential Information.

(a) Director acknowledges that during [his/her] service as a director of the Company, Director will have access to certain highly-sensitive, confidential, and proprietary information relating to the Company and its business (collectively, “**Confidential Information**”). Director acknowledges that, unless otherwise available to the public, Confidential Information includes, but is not limited to, the following categories of Company related confidential or proprietary information and material, whether in electronic, print, or other form, including all copies, notes, or other reproductions or replicas thereof: financial statements and information; budgets, forecasts, and projections; business and strategic plans; marketing, sales, and distribution strategies; research and development projects; records relating to any intellectual property developed by, owned by, controlled, or maintained by the Company; information related to the Company’s inventions, research, products, designs, methods, formulae, techniques, systems, processes; customer lists; non-public information relating to the Company’s customers, employees, suppliers, distributors, or investors; the specific terms of the Company’s agreements or arrangements, whether oral or written, with any customer, supplier, vendor, or contractor with which the Company may be associated from time to time; and any and all other non-public information relating to the operation of the Company’s business which the Company may from time to time designate as confidential or proprietary or that Director reasonably knows should be, or has been, treated by the Company as confidential or proprietary. Confidential Information encompasses all formats in which information is preserved, whether electronic, print, or any other form, including all originals, copies, notes, or other reproductions or replicas thereof.

(b) Confidential Information does not include any information that: (i) at the time of disclosure is generally known to, or readily ascertainable by, the public; (ii) becomes known to the public through no fault of Director or other violation of this Agreement; or (iii) is disclosed to Director by a third party under no obligation to maintain the confidentiality of the information.

(c) During the term of this Agreement and for a period of five (5) years after this Agreement ends, Director will hold in trust and confidence all Confidential Information, and will not disclose any Confidential Information to any person or entity, nor use any Confidential Information for the benefit of any third party, except in connection with providing services as a director of the Company or as authorized in writing by the Company.

(d) The restrictions in Section 6(c) above will not apply to any information that Director is required to disclose by law, provided that the Director (i) notifies the Company of the existence and terms of such obligation, (ii) gives the Company a reasonable opportunity to seek a protective or similar order to prevent or limit such disclosure, and (iii) only discloses that information actually required to be disclosed.

(e) At any time during the term of this Agreement, and immediately at the termination of [his/her] service as a director of the Company, Director will return to the Company all Confidential Information in any form (including all copies and reproductions thereof) and all other property whatsoever of the Company in [his/her] possession or under [his/her] control. If requested by the Company, Director will certify in writing that all such materials have been returned to the Company.

(f) Director acknowledges and agrees that the Company will suffer irreparable harm in the event that Director breaches any of Director's obligations under this Section 6 and that monetary damages would be inadequate to compensate the Company for such breach. Accordingly, Director agrees that, in the event of a breach or threatened breach of any of Director's obligations under this Section 6, the Company will be entitled to obtain from any court of competent jurisdiction preliminary and permanent injunctive relief in order to prevent or to restrain any such breach. The Company shall not be required to post bond or other security in connection with any such injunctive relief. The Company will be entitled to recover its costs incurred in connection with any action to enforce this Section 6, including reasonable attorneys' fees and expenses. The remedies described in this Section 6(f) are cumulative (not alternative) and in addition to all other rights and remedies available to the Company at law, in equity, or otherwise.

(g) The Director's obligations pursuant to this Section 6 shall survive any termination of this Agreement.

7. Representations of Director. The Director represents and warrants to the Company that (i) [he/she] has full power and authority to enter into this Agreement and to perform the services provided for hereunder; (ii) the performance of the services does not, and will not, violate any law, rule, regulation, judgment or order of any court binding on [him/her] and does not, and will not in any way violate or conflict with any agreement, understanding or arrangement to which [he/she] is a party or by which [he/she] may be bound; (iii) [he/she] is not in any way precluded from performing the services provided for hereunder; and (iv) this Agreement is a valid and binding Agreement of the Director, enforceable against [him/her] in accordance with its terms.

8. Miscellaneous.

(a)Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements (whether written or oral and whether express or implied) between the parties relating to such subject matter.

(b)Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns and, in the case of Director, heirs, executors, and/or personal representatives. The Company may freely assign or transfer this Agreement to an affiliated company or to a successor following a merger, consolidation, sale of assets, or other business transaction. Director may not assign, delegate or otherwise transfer any of Director's rights, interests or obligations in this Agreement without the prior written approval of the Company.

(c)Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same agreement. Facsimile or PDF reproductions of original signatures will be deemed binding for the purpose of the execution of this Agreement.

(d)Notices. Any notice pursuant to this Agreement must be in writing and will be deemed effectively given to the other party on the date it is actually delivered by (i) certified or

registered U.S. mail, return receipt requested; (ii) overnight courier service (such as FedEx); or (iii) personal delivery of such notice in person; in each case to the appropriate address shown below (or to such other address as a party may designate by notice to the other party):

If to Director: [Insert Address]

If to Company: Benefitfocus, Inc.

00 Benefitfocus Way
Charleston, South Carolina 29492
Attention: Chairman of the Board

Copy to: Donald R. Reynolds
Vyrick Robbins Yates & Ponton LLP
101 Lake Boone Trail, Suite 300
Raleigh, North Carolina 27607

(e) Amendments and Waivers. No amendment of any provision of this Agreement will be valid unless the amendment is in writing and signed by the Company and Director. No waiver of any provision of this Agreement on a particular occasion will be deemed or will constitute a waiver of that provision on a subsequent occasion or a waiver of any other provision of this Agreement.

(f) Severability. Each provision of this Agreement is severable from every other provision of this Agreement. Any provision of this Agreement that is determined by any court of competent jurisdiction to be invalid or unenforceable will not affect the validity or enforceability of any other provision. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

(g) Construction. The section headings in this Agreement are inserted for convenience only and are not intended to affect the interpretation of this Agreement. Any reference in this Agreement to any "Section" refers to the corresponding Section of this Agreement. The word "including" in this Agreement means "including without limitation." All words in this Agreement will be construed to be of such gender or number as the circumstances require.

(h) Governing Law. This Agreement will be governed by the laws of the State of Delaware without giving effect to any choice or conflict of law principles of any jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first written above.

DIRECTOR:

COMPANY:

BENEFITFOCUS, INC.

[_____]

By:

[_____]

Chairman of the Board

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**Benefitfocus, Inc.,
A Delaware corporation
List of subsidiaries**

- Benefitfocus.com, Inc., a South Carolina corporation
- BenefitStore, Inc., a South Carolina corporation
- Tango Health, Inc., a Delaware corporation

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the following registration statements:

- (1) Registration Statement (Form S-8 No. 333-211904) pertaining to the Benefitfocus, Inc. 2016 Employee Stock Purchase Plan;
- (2) Registration Statement (Form S-8 No. 333-192278) pertaining to the 2012 Stock Plan, as amended, and the Amended and Restated 2000 Stock Option Plan of Benefitfocus, Inc.;
- (3) Registration Statement (Form S-8 No. 333-218633) pertaining to the Benefitfocus, Inc. Amended and Restated 2012 Stock Plan;
- (4) Registration Statement (Form S-8 No. 333-233088) pertaining to the Benefitfocus, Inc. Second Amended and Restated 2012 Stock Plan;
- (5) Registration Statement (Form S-8 No. 333-242356) pertaining to the Benefitfocus, Inc. Second Amended and Restated 2012 Stock Plan, as amended; and
- (6) Registration Statement (Form S-3 No. 333-239406).

of our reports dated March 3, 2022, with respect to the consolidated financial statements and schedule of Benefitfocus, Inc. and the effectiveness of internal control over financial reporting of Benefitfocus, Inc. included in this Annual Report (Form 10-K) of Benefitfocus, Inc. for the year ended December 31, 2021.

/s/ Ernst & Young LLP

Charlotte, North Carolina
March 3, 2022

**CERTIFICATION PURSUANT TO
SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002**

I, Matthew Levin, certify that:

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

Date: March 3, 2022

/s/ Matthew Levin
Matthew Levin
President and Chief Executive Officer
(Principal executive officer)

**CERTIFICATION PURSUANT TO
SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002**

I, Alpana Wegner, certify that:

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

Date: March 3, 2022

/s/ Alpana Wegner
Alpana Wegner
Chief Financial Officer
(Principal financial and accounting officer)

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

In accordance with 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, Matthew Levin, President and Chief Executive Officer (principal executive officer) of Benefitfocus, Inc. (the "registrant"), and Alpana Wegner, Chief Financial Officer (principal financial and accounting officer) of the registrant, each hereby certifies that, to the best of their knowledge:

1. The registrant's Annual Report on Form 10-K for the year ended December 31, 2021, to which this Certification is attached as Exhibit 32.1 (the "Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition of the registrant at the end of the period covered by the Report and results of operations of the registrant for the periods covered by the Report.

Date: March 3, 2022

/s/ Matthew Levin

Matthew Levin
President and Chief Executive Officer
(Principal executive officer)

/s/ Alpana Wegner

Alpana Wegner
Chief Financial Officer
(Principal financial and accounting officer)