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, 2020
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	**46-2346314**
(State or other jurisdiction of incorporation or organization)	**(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:

Title of each class	Trading Symbol	Name of each exchange of which registered
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, 2020 (based on the closing sale price of $10.76 on that date), was approximately $211,206,803. 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 2, 2021 was 32,504,073.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive Proxy Statement for its 2021 Annual Meeting of Stockholders are incorporated by reference into Part III hereof.

Benefitfocus, Inc.
Form 10-K
For Year Ended December 31, 2020

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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 appropriately staff 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 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 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;
- 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;
- 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 carrier customers decreases or the number of products or services to which our employer and carrier 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 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 future litigation against us 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; 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 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 provides industry-leading, cloud-based benefits management technology solutions for employers and health plans. The Benefitfocus enrollment platform simplifies how organizations procure benefits and connect to the necessary benefits products and services that improve the lives of their employees and the American workforce. Our core technology solutions facilitate employee benefits administration and enrollment; our solutions enable working Americans and their families to select and engage in the right benefits products and services for themselves; and our data advantage delivers insights to employers, health, plans and their advisors to help control healthcare spending and reduce unnecessary expenses.

The Benefitfocus Platform has a multi-tenant architecture and has a user-friendly interface designed for employees to access all of their benefits in one place. Our comprehensive solutions support medical benefit plans and non-medical benefits, such as, dental, life, disability insurance, income protection, digital health and financial wellness. 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 the Benefitfocus Platform 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 simplify the management of complex benefits processes, from sales and enrollment to implementation and ongoing administration. It provides their employees with an engaging, 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. 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, which should bring 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.

In 2018, we expanded our economic model to include a transaction-oriented solution, known as Benefit Catalog (formerly BenefitsPlace), designed to align brokers, health plans, 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 the Benefit Catalog products to employee and 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 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 significant 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 1,200 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 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 $61.9 billion in 2019. Eastbridge Consulting Group estimates the U.S. in-force premiums were $47.1 billion in 2019 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 2018*, 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. They are also 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 29.8% of all employee labor costs in September 2020. 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 $1,221 per employee in 2020. 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, or 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 myriad 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, or PPACA, 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.

The 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 ROI. 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 subscription solutions. In order to reach new customers in our existing markets, we are aggressively investing in our sales and marketing resources and our channel marketing strategy, including in ways intended to expand existing relationships and foster organic growth opportunities through brokers.

Further develop our partner ecosystem. We believe we have a large opportunity to efficiently grow our customer base through our 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. We have also eliminated previous friction and improved our outreach to key constituents within the benefits industry, like brokers.

Deepen our relationships with our existing customer base. We are deepening our employer relationships by continuing to provide a unified platform with a growing list of additional solutions to manage increasingly complex benefits processes and simplify the distribution and administration of employee benefits. We are expanding our carrier relationships through both the upsell of additional software products, increased adoption across our carriers' member populations and providing access to our multidimensional marketplace.

Extend our suite of applications and continue our technology leadership. We are extending the number, range, and functionality of our benefits solutions. We have also 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 purchase of non-medical benefits. We believe we have a significant opportunity to drive higher employer placement of Benefit Catalog products and increase consumer engagement in purchasing 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. 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 (formerly Benefitfocus MarketPlace) 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.
    - 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.
    - 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* (formerly 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.
- *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.

- *Billing & Payments* (formerly MarketPlace 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 COBRA, or the Consolidated Omnibus Budget Reconciliation Act, benefits. COBRA Administration automates required communication, enrollment, fulfillment and payment processing within Benefitplace.

Benefit Catalog (formerly BeneftsPlace) 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. P*roducts 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, and same-day delivery services for grocery and household items.

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 (formerly Benefitfocus Marketplace). 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 (formerly eEnrollment and Benefitfocus

Marketplace). 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 (formerly Benefitfocus MarketPlace for Carriers) 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* (formerly MarketPlace Enroll) 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* (formerly MarketPlace Bill) 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* (formerly MarketPlace 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* (formerly MarketPlace Quote) 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.

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* (formerly BenefitSaige Analytics) 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	**Health Plan Customers**
American Eagle Outfitters Inc.	American Heritage Life Insurance Company
Amerigas Propane, Inc.	BlueChoice HealthPlan of South Carolina, Inc.
Blackbaud, Inc.	Blue Cross of Idaho Health Service, Inc.
Boston Scientific Corporation	Blue Cross and Blue Shield of Kansas City
Brookdale Senior Living Inc.	Blue Cross and Blue Shield of South Carolina, Inc.
Designer Brands Inc.	Wellmark, 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	

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	Haven Life
Aflac	HealthSherpa
Allstate Benefits	MetLife
BrightDime	Nationwide Pet Insurance
CIGNA	Pet Benefit Solutions
Genworth	The Hartford
GoodRx	Transamerica Corporation

No customer accounted for more than 10% of our total revenue during the years ended December 31, 2020 and 2019, respectively. During the year ended December 31, 2018, one customer accounted for 13% of total revenue.

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 and Equifax.

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 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, or PCI-DSS, 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;
- 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, 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 $46.2 million, $54.7 million and $47.9 million for the years December 31, 2020, 2019 and 2018, 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, India, Israel, Ireland, New Zealand, South Africa, 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., five 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 many 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 subsequently repealed, and insurers have experienced mixed results providing services through the exchanges, leading many to exit this market. Increased volatility following the repeal of the individual mandate has led to additional uncertainty in the insurance market.

A significant goal of PPACA and subsequent reform efforts has been to move away from fee for service payments and toward capitated payments to make providers more accountable for the cost and quality of care provided. While many of the provisions of PPACA will not be directly applicable to us, PPACA, as currently implemented, might affect 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 the creation of state and national exchanges, though it is unclear how many states will decline to implement the Medicaid expansion or adopt state-specific exchanges.

Following the creation of the Medicare Shared Savings Program, 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 groups of individuals. Also, 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.

As has been the case since 2010, the long-term viability of PPACA remains in doubt, and we expect that the current Congress and White House will continue to seek ways to modify, repeal, or otherwise invalidate all, or certain provisions of PPACA. For instance, on January 20, 2017, President Trump issued an executive order stating that the U.S. federal government's policy is to seek the prompt repeal of PPACA, and directing the heads of all executive departments and agencies to minimize the economic and regulatory burdens of PPACA to the maximum extent permitted by law. Also, the December 2017 revisions to the tax code eliminated PPACA's individual mandate, which could serve as a basis for continued challenges to the constitutionality of the law and cause further disruption to the insurance markets. Should Congress or the courts modify, repeal, or otherwise invalidate PPACA or any parts of its provisions, the business of our customers could be substantially affected.

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 carrier 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 $59,522 per violation and a maximum civil penalty of $1,785,651 in a calendar year for violations of the same requirement, in addition to criminal penalties. Recently, the U.S. Department of Health and Human Services Office for Civil Rights, which enforces HIPAA, appears to have increased its enforcement activities. 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, or 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 all personal data, 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 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 Centers for Medicare and Medicaid Services, or 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, or 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 another entity identifier, or 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, or 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, 2020, we employed approximately 1,200 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. 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. Our mission 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;
- Company-sponsored disability benefits; and
- A culture and programs designed to help associates find connection and belonging.

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 9, 2021:

Name	Age	Position
Stephen M. Swad	59	President and Chief Executive Officer, Director
Mason R. Holland, Jr.	56	Executive Chairman, Director
Alpana Wegner	48	Chief Financial Officer, Treasurer

Stephen M. Swad—President and Chief Executive Officer

Stephen Swad has been our President and Chief Executive Officer and a member of the board of directors since August 2020. Prior to that Mr. Swad served as our Chief Financial Officer and Treasurer from July 2019 until his recent appointment. He has also previously served on our board of directors from December 2013 until July 2019. From January 2016 until July 2019, Mr. Swad served as Chief Financial Officer of Vox Media, LLC. From February 2012 until April 2015, Mr. Swad served as the President, Chief Executive Officer, and a director of Rosetta Stone Inc., a previously publicly held language-learning software company until its merger with Cambium Holding Corp. He was previously its Chief Financial Officer beginning in November 2010. Prior to joining Rosetta Stone, Mr. Swad served as the Executive Vice President and Chief Financial Officer of Comverse Technology, Inc., beginning in May 2009. Prior to that, he served as Executive Vice President and Chief Financial Officer of Federal National Mortgage Association (Fannie Mae) (OTCQB) from May 2007 until August 2008. He has also held various senior financial management positions with then-public companies, including AOL Inc. (now a part of Oath Inc., renamed Verizon Media) and Time Warner Inc. now known as Warner Media LLC and its subsidiaries. Mr. Swad, a former partner of KPMG LLP, has also served as a Deputy Chief Accountant at the SEC. He served on the board of Eloqua, Inc. from August 2011 until February 2013, including between August 2012 and February 2013, during which time it was a publicly held company. Mr. Swad holds a B.A. in business administration from the University of Michigan.

Mason R. Holland, Jr.—Executive Chairman of the Board

Mason Holland, one of our founders, has been our Executive Chairman and a member of the board of directors since our founding in June 2000. Mr. Holland is responsible for the coordination of strategic partnerships with industry leaders and client relations. Mr. Holland founded American Pensions, Inc. in 1988, serving as its Chairman and President from 1988 to 2003. Mr. Holland also has established and operated a number of other business entities throughout his 35 plus year career, including a real estate development firm established in 1989 and still operational and a jet aircraft manufacturer for which he served as lead investor, chief executive officer and board chairman from 2009 to 2014. Mr. Holland has served on the board of the private company AmplifiedAg, Inc. since September 2018 and on the boards of the following non-profit organizations, American Red Cross, Lowcountry Chapter, South Carolina Region; South Carolina Aquarium; and The Charleston Gaillard Management Corporation. Mr. Holland attended Old Dominion University in Norfolk, Virginia.

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 holds the CPA designation 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 $24.3 million, $45.5 million, and $52.6 million, for the years ended December 31, 2020, 2019, and 2018, 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 August 4, 2017, the first trading day after we publicly announced our operating results for the second quarter ended June 30, 2017, our stock price dropped $7.10 per share, or approximately 20.5%, to $27.50. 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 in light of the Democratic party winning the U.S. presidency and control of the U.S. Senate, in addition to the House of Representatives;
- 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 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 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 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. Since then, the COVID-19 pandemic has rapidly spread across the globe, and more importantly for our business across the United States, resulting in significant financial volatility, uncertainty, and economic disruption.

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 well-being of our employees 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 expect our workforce to continue to remotely for a significant portion of 2021.

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 employees, 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. 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.

Recently, we have engaged in extensive dialogue with an activist stockholder. These discussions resulted in the expenditure of significant time and energy by management and our Board of Directors and required dedication by the Company of significant resources. We have undertaken, and will continue to implement, several initiatives in order to enhance our corporate governance, improve our financial flexibility, bolster our balance sheet and strengthen our leadership team, but there is no assurance that we will achieve these goals, or that doing so will decrease the likelihood of activist stockholder engagement in the future.

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 employees, 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 2020, Ray August stepped down as president and chief executive officer and was replaced by Stephen Swad, our then-current chief financial officer, and Alpana Wegner, our then-current vice president, corporate controller, was appointed as our chief financial officer. Additionally in 2020, our former Chief Technology Officer resigned for personal reasons. In 2021, the Company announced that Mason Holland would step down from his position as Executive Chairman and a member of the Board, to be 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 overall and specifically in Charleston, South Carolina, where our principal office is located. In addition, many of the companies with which we compete for experienced personnel have greater resources than we have and are located in geographic areas, like Silicon Valley, that may attract more qualified technology workers.

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 (formerly BenefitsPlace). 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 carriers. While our employer contracts generally automatically renew, our carrier 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 carrier customers are able to terminate their respective contracts without cause or for convenience, although generally our carrier contracts are only cancellable by the carrier in an instance of our uncured breach. As a result, our ability to grow depends in part on the continuance and renewal of our carrier 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 carrier 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 34%, 37% and 42% of our consolidated revenue in each of 2020, 2019 and 2018, respectively. No customer accounted for more than 10% of our revenue in 2019 or 2020. One customer accounted for approximately 13% of our revenue in 2018. 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.

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 coronavirus and the 2020 presidential election. All of 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 and 2020, and we believe this trend will continue in 2021. 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 carrier customers decreases or the number of products or services to which our employer and carrier 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. For example, during 2020, we experienced an increase in early termination and credit requests. Additionally, in 2020 revenue from some health plan customers was protected from decreases in the number of covered employees because it was based on contractual minimums, which might be renewed at lower levels 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 employees and reduced productivity of remaining employees. 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, 2020, 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, or 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 employees 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 future litigation against us 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 purported securities class actions. 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 February 2019, we acquired certain assets of Connecture, Inc. We spent considerable time, effort, and money pursuing this acquisition, our first in years, 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 statements and actions by the current U.S. presidential administration and the U.K. exit from the European Union;
- 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 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 revenue and lease standards in 2018 and 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 employee 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, such as 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 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 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, Dell and Hewlett-Packard Company. 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 exercise limited control over third-party vendors, 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.

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 Patient Protection and Affordable Care Act of 2010 ("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 repeal efforts and other deregulatory 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.

- 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 payers, 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 Privacy and Security Requirements. Numerous federal and state laws and regulations govern the privacy and security of personal health information. In particular, regulations govern 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, as amended, established privacy and security standards that limit the use and disclosure of protected health information, and require the implementation of administrative, physical, and technological 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 carrier 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 $59,522 per violation and a maximum civil penalty of $1,785,651 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 ("OCR"), which enforces HIPAA, continues to increase its enforcement activities. OCR also operates a formal HIPAA audit program. The audits are intended to assess compliance with HIPAA by both Covered Entities and Business Associates and are conducted by OCR with assistance from third-party vendors. Issues identified during the audits may result in agency-imposed corrective action plans or civil monetary penalties. 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 and Security 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 are required to comply with them. Failure by us to comply with any 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.

- Personal Privacy and Consumer Protection. 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, including updates to the California Consumer Privacy Act of 2018 that were passed in 2020. Additionally, the California Privacy Rights Act was recently approved by California voters through a ballot initiative. 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 regulations. 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 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 Centers for Medicare & Medicaid Services, or 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, or 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, or TPA, activities. TPA regulations typically impose requirements regarding enrollment into benefits plans, claims processing and payments, and the handling of customer funds. Although we do not believe we are currently acting as a TPA, changes in state regulations could result in us being obligated to comply with such regulations, which might require us to obtain 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. 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, 2020, we had $221 million aggregate principal of Notes outstanding. We also had the ability to borrow an aggregate of $50 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, 2020, 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.

In May 2008, the Financial Accounting Standards Board ("FASB") issued Staff Position No. APB 14-1, Accounting for Convertible Debt Instruments That May Be Settled in Cash Upon Conversion (Including Partial Cash Settlement), which has subsequently been codified as ASC 470-20, Debt with Conversion and Other Options. Under ASC 470-20, an entity must separately account for the liability and equity components of the convertible debt instruments (such as the Notes) that may be settled entirely or partially in cash upon conversion in a manner that reflects the issuer's economic interest cost. The effect of ASC 470-20 on the accounting for the Notes is that the equity component is required to be included in the additional paid-in capital section of stockholders' equity on our consolidated balance sheets, and the value of the equity component would be treated as original issue discount for purposes of accounting for the debt component of the Notes. As a result, we will be required to record a greater amount of non-cash interest expense in current periods presented as a result of the amortization of the discounted carrying value of the Notes to their face amount over the term of the Notes. We will report lower net income in our financial results because ASC 470-20 will require interest to include both the current period's amortization of the debt discount and the instrument's coupon interest, which could adversely affect our reported or future financial results, the trading price of our common stock and the trading price of the Notes.

In addition, 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 IPO in September 2013 through March 8, 2021, 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, 2020, we had an aggregate of 32,327,439 shares of common stock outstanding. As of December 31, 2020, there also were outstanding options and restricted stock units to purchase 2,712,805 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 12,584,766 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, 2020, 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 though 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 employees.

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 employees 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 of 1933, as amended 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 employees, which may discourage such lawsuits against us and our directors, officers and other employees. 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 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;
- the classification of our board of directors into three classes with only one class, representing approximately one-third of our directors, standing for election at each annual meeting (although we intend to bring a proposal to declassify our board to the stockholders for consideration at our 2021 annual stockholders meeting); 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, 2020, 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, 2020, we also leased facilities in Greenville, South Carolina; 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 are assessing our space requirement for the future and have listed space for sublease on our headquarters campus in Charleston, South Carolina and in Tulsa, Oklahoma. On December 31, 2020, we sublet all of the space at our Brookfield, Wisconsin facility.

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 disclosed below, 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.

On March 2, 2021, Benefitfocus, Inc., The Goldman Sachs Group, Inc., GS Capital Partners VI Parallel, L.P., GS Capital Partners VI Offshore Fund, L.P., GS Capital Partners VI Fund, L.P., GS Capital Partners VI GMBH & Co. KG, Mercer LLC, Marsh & McLennan Companies, Inc., Mercer Consulting Group, Inc., Mason R. Holland, Jr., Raymond A. August, Jonathon E. Dussault, Douglas A. Dennerline, Joseph P. DiSabato, A. Lanham Napier, Francis J. Pelzer V, Stephen M. Swad, Ana M. White, J.P. Morgan Securities LLC, Goldman Sachs & Co. LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Piper Jaffray & Co., Raymond James & Associates, Inc., Wedbush Securities, Inc., and First Analysis Securities Corporation were named as defendants in a purported class-action lawsuit filed by the City of Pittsburgh Comprehensive Municipal Pension Trust Fund in the Supreme Court of the State of New York, County of New York. The complaint alleges violations of Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. The complaint asserts claims on behalf of a class of persons who acquired our common stock in or traceable to our secondary public offering commenced on or about March 1, 2019. 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. The complaint seeks rescission or rescissory damages and compensatory damages, costs and fees incurred in the action. We do not believe the complaint has merit and plan to vigorously contest and defend against it.

Item 4. Mine Safety Disclosures.

Not applicable.

PART II

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

Market Information for Common Stock

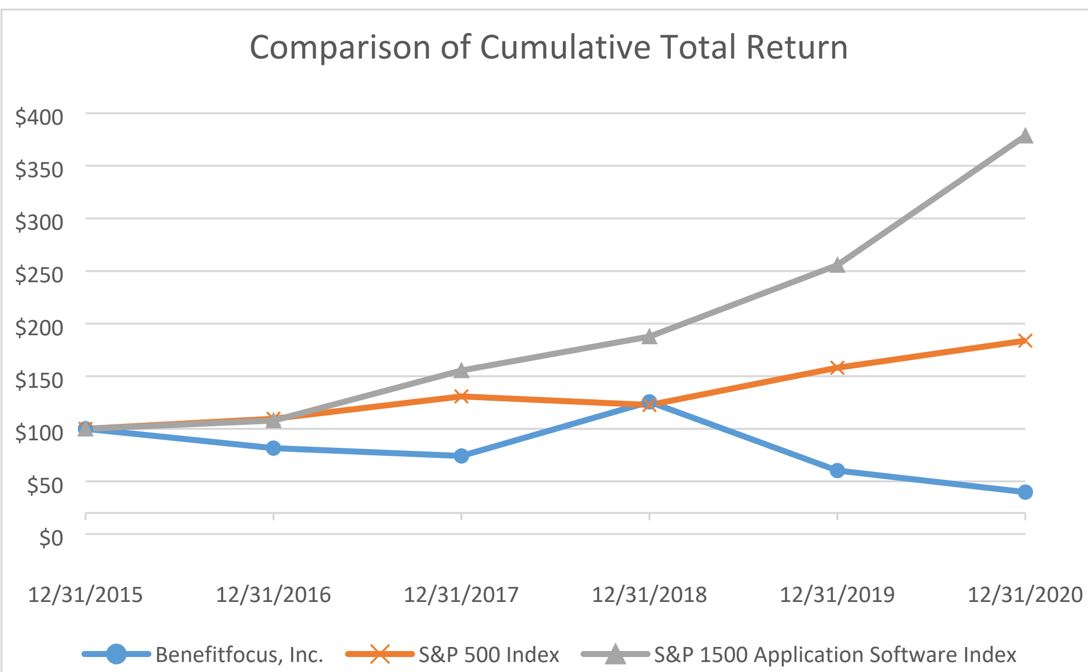
Our common stock has been listed on the Nasdaq Global Market under the symbol "BNFT" since September 18, 2013. Prior to that date, there was no public trading market for our common stock.

As of December 31, 2020, we had 38 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, 2015, 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 12/31/2015	12/31/2016	12/31/2017	12/31/2018	12/31/2019	12/31/2020
Benefitfocus, Inc.	$ 100.00	$ 81.62	$ 74.20	$ 125.64	$ 60.29	$ 39.79
S&P 500 Index	$ 100.00	$ 109.54	$ 130.81	$ 122.65	$ 158.07	$ 183.77
S&P 1500 Application Software Index	$ 100.00	$ 107.83	$ 155.45	$ 187.66	$ 255.62	$ 378.53

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, 2020:

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, 2020, 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 beginning on page 24 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 provides industry-leading, cloud-based benefits management technology solutions for employers and health plans. The Benefitfocus enrollment platform simplifies how organizations procure benefits and connect to the necessary benefits products and services that improve the lives of their employees and the American workforce. Our core technology solutions facilitate employee benefits administration and enrollment; our solutions enable working Americans and their families to select and engage in the right benefits products and services for themselves; and our data advantage deliver insights to employers, health plans and their advisors to help control healthcare spending and reduce unnecessary expenses.

The Benefitfocus Platform has a multi-tenant architecture and a user-friendly interface designed for employees to access all of their benefits in one place. Our comprehensive solutions support medical benefit plans and non-medical benefits, such as, dental, life, disability insurance, income protection, digital health and financial wellness. 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 the Benefitfocus Platform is growing.

Our economic model includes a transaction-oriented solution, now 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 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 insurance carrier 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 67%, 66%, and 69% of our total revenue during the years ended December 31, 2020, 2019 and 2018, 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 13%, 11%, and 9% of our total revenue during the years ended December 31, 2020, 2019 and 2018, 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 20%, 23%, and 22% of our total revenue during the years ended December 31, 2020, 2019 and 2018, respectively.

Expanding our customer base is a key element of our growth strategy. We believe that our continued innovation and new solutions, such as Benefit Catalog, which extend to the functionality of our mobile offerings, provide more robust data analytics capabilities and enhance our ability to quickly respond to evolving market needs, we believe these innovative capabilities 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 market for our services, and we have been investing in growth over the past several years. In particular, we have continued to invest in technology and services to better serve our larger employer customers, which we believe are an important source of growth for our business. As we have invested in growth, we have had operating losses in each of the last ten 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 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 include 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 include investing in accelerating automation efforts to gain efficiencies.

During the initial peak of the COVID-19 pandemic during the second quarter of 2020, we experienced delays in completing selling as HR professionals shifted their focus away procuring technology solutions. We believe the financial impacts from COVID-19 are temporary in nature and do not significantly affect our business model and growth strategy. 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, noting no indicators of impairment.

The impact that COVID-19 will have on our consolidated financial statements beyond 2020 remains uncertain and ultimately will be dictated by the length and severity of the pandemic, as well as the economic recovery and federal, state and local government actions taken in response. We will continue to evaluate the nature and extent of these potential impacts to our business and consolidated financial statements.

While the ultimate impact of the pandemic on our business and financial results remains uncertain, our business has been impacted by the following:

- New sales. We have experienced longer sales cycles and a slowdown in new sales activity which negatively impact professional services revenue and platform revenue from new business.
- Unemployment. The increase in unemployment caused by the pandemic has negatively impacted platform revenue by decreasing the rate at which our Benefits Catalog voluntary benefits offerings are purchased. Our subscription revenue has been impacted to a lesser extent in 2020 depending on the level of contractual minimums in our contracts and a delay

in when unemployed workers leave our platform. In addition, unemployment has caused a decrease in net benefit eligible lives on our platform in the near term.

- Participation in Voluntary Benefits. Participation of lives on our platform in purchasing voluntary benefits did not grow compared to the previous year as a result of the economic impacts of the pandemic on income levels across the country.

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 and our ongoing investments in automation, we believe we will be able to increase cash flows from operations and achieve profitability in the relatively near future. Of course, our ability to achieve profitability will continue to be subject to many risks and factors beyond our control, such as the COVID-19 pandemic.

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 “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Components of Operating Results”. 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.

We expect the number net benefit eligible lives will decrease during 2021. We expect that some health plan customers will renew their agreements in 2021 at lower minimum counts as the result of higher unemployment rates decreasing the number covered employees. Additionally, we expect the number of net benefit eligible lives to be negatively impacted by the termination of a contract with an entity with a substantial number of freelancers.

	As of December 31,		
	2020	**2019**	**2018**
		(in millions)	
Net benefit eligible lives	18.3	17.3	13.3

In February 2019, we acquired certain operating assets and liabilities, intellectual property and intangible assets of Connecture, Inc. This transaction added 2.0 million net benefit eligible lives to our platform. The details of this transaction are described in more detail in Note 3 of our consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

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 active contracts 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 90% for year ended December 31, 2020 compared to being greater than 95% for the years ended December 31, 2019 and 2018. The reduction in the rate was primarily the result of the impact on 2020 revenue from the renegotiation of a customer contract. Excluding this customer, our software revenue retention rate exceeded 95% for all periods. We expect our software revenue retention rate will continue to be negatively impacted for the remainder of 2021 by the effects of this customer contract negotiation along with the potential impacts of unemployment as a result of COVID-19 pandemic.

Adjusted EBITDA

Adjusted EBITDA represents our earnings before net interest and other expense, taxes, and depreciation and amortization expense, adjusted to eliminate stock-based compensation, restructuring costs, impairment of goodwill, intangible assets, and long-lived assets, gain or loss on extinguishment of debt, transaction and acquisition-related costs expensed, and costs not core to our business. Adjusted EBITDA is not a measure calculated in accordance with United States generally accepted accounting principles, or GAAP.

During 2020, we revised our definition of adjusted EBITDA to also exclude restructuring costs, impairment of long-lived assets, and gain or loss of extinguishment of debt. The revisions to these definitions had no impact on our reported adjusted EBITDA for periods prior to 2020. Please note that other companies might define their non-GAAP financial measures differently than we do.

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 a reconciliation of adjusted EBITDA to net loss for each of the periods indicated:

	Year Ended December 31,		
	2020	2019	2018
		(in thousands)	
Reconciliation from Net Income (Loss) to Adjusted EBITDA:			
Net income (loss)	$ (24,297)	$ (45,515)	$ (52,627)
Depreciation	15,285	15,288	11,721
Amortization of software development costs	7,455	5,130	3,944
Amortization of acquired intangible assets	2,274	1,933	150
Interest income	(632)	(2,613)	(250)
Interest expense	23,071	23,524	13,156
Income tax expense	22	27	28
Stock-based compensation expense	14,537	19,572	28,868
Transaction and acquisition-related costs expensed	450	1,035	507
Restructuring costs	5,616	-	-
Impairment of long-lived assets	916	-	-
Gain on repurchase of convertible senior notes	(1,138)	-	-
Costs not core to our business	457	649	4,843
Total net adjustments	$ 68,313	$ 64,545	$ 62,967
Adjusted EBITDA	$ 44,016	$ 19,030	$ 10,340

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. Our professional 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,		
	2020	2019	2018
Subscription	$ 179,743	$ 195,091	$ 179,410
Platform	35,101	33,654	22,938
Total software services	$ 214,844	$ 228,745	$ 202,348
Professional services	53,297	66,941	56,373
Total revenue	$ 268,141	$ 295,686	$ 258,721

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. Professional services typically include discovery, configuration and deployment, integration, testing, and training. Fees from consulting services, support services and training are also included in professional services revenue.

We determined that implementation services for certain of our insurance carrier 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 insurance carrier 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 SaaS 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, professional fees, amortization expenses associated with acquired intangibles and capitalized software development 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 to decrease our operating expenses, as a percentage of revenue, if and as we achieve economies of scale and as a result of restructuring actions taken in April 2020.

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. We expect our sales and marketing expense to remain flat, in absolute dollars, in the near term as we achieve the savings expected from the restructuring actions taken in April 2020.

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.

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 decrease in absolute terms as a result of the restructuring actions taken in April 2020, which included reducing headcount, renegotiating vendor service contracts, restricting travel, and reducing discretionary expenditures such as for consultants.

Restructuring costs. Restructuring costs are comprised of one-time severance charges, continuation of health benefits and outplacement services. As discussed above in “Overview”, in the quarter ended June 30, 2020, we reduced our work force by approximately 17%.

Other Income and Expense

Other income and expense consists primarily of interest income and expense, gain on repurchase of senior convertible notes and gain (loss) on disposal of property and equipment. 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 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 incurred minimal income tax expense for 2020, 2019, and 2018. Net operating loss carryforwards for federal income tax purposes were approximately $326.9 million at December 31, 2020. State net operating loss carryforwards were approximately $294.4 million at December 31, 2020. Federal and state net operating loss carryforwards will expire at various dates beginning in 2021, 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.

On March 27, 2020, the “Coronavirus Aid, Relief and Economic Security (CARES) Act” was signed into law. The CARES Act, among other things, includes provisions relating to refundable payroll tax credits, deferment of employer side social security payments, net operating loss carryback periods, alternative minimum tax credit refunds, modifications to the net interest deduction limitations and technical corrections to tax depreciation methods for qualified improvement property. Except for utilizing the deferment of employer social security payments, we do not expect the CARES Act to have a material impact on our financial results. We continue to examine the impacts the CARES Act may have on our business.

Adoption of Leases Accounting Standard

We adopted the new accounting standard for Leases, Topic 842, on January 1, 2019. We applied the modified transition method at the beginning of adoption. Accordingly, we did not adjust prior period financial statements, and recognized a cumulative-effect adjustment to the opening balance of accumulated deficit in 2019.

The adoption of Topic 842 requires lessees, among other things, to recognize lease assets and lease liabilities on the balance sheet for those leases classified as operating leases under previous authoritative guidance. We describe the effects of adoption of Topic 842 in more detail in Note 2 of our consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

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,		
	2020	2019	2018
Revenue	$ 268,141	$ 295,686	$ 258,721
Cost of revenue[(1)]	129,388	144,090	129,277
Gross profit	138,753	151,596	129,444
Operating expenses:			
Sales and marketing[(1)]	52,210	76,049	78,179
Research and development[(1)]	46,175	54,724	47,902
General and administrative[(1)]	37,720	45,329	43,062
Restructuring costs[(1)]	5,616	–	–
Total operating expenses	141,721	176,102	169,143
Loss from operations	(2,968)	(24,506)	(39,699)
Other income (expense):			
Interest income	632	2,613	250
Interest expense	(23,071)	(23,524)	(13,156)
Gain on repurchase of convertible senior notes	1,138	–	–
Other expense	(6)	(71)	6
Total other expense, net	(21,307)	(20,982)	(12,900)
Loss before income taxes	(24,275)	(45,488)	(52,599)
Income tax expense	22	27	28
Net loss	$ (24,297)	$ (45,515)	$ (52,627)

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

	Year Ended December 31,		
	2020	2019	2018
Cost of revenue	$ 3,703	$ 3,569	$ 5,164
Sales and marketing	3,081	3,799	6,764
Research and development	2,555	3,265	5,510
General and administrative	5,198	8,939	11,430
Restructuring costs	-	-	-

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,		
	2020	2019	2018
Revenue	100.0 %	100.0 %	100.0 %
Cost of revenue	48.3	48.7	50.0
Gross profit	51.7	51.3	50.0
Operating expenses:			
Sales and marketing	19.5	25.7	30.2
Research and development	17.2	18.5	18.5
General and administrative	14.1	15.3	16.6
Restructuring costs	2.1	-	-
Total operating expenses	52.9	59.6	65.4
Loss from operations	(1.1)	(8.3)	(15.3)
Other income (expense):			
Interest income	0.2	0.9	0.1
Interest expense	(8.6)	(8.0)	(5.1)
Gain on repurchase of convertible senior notes	0.4	-	-
Other expense	-	-	-
Total other expense, net	(7.9)	(7.1)	(5.0)
Loss before income taxes	(9.1)	(15.4)	(20.3)
Income tax expense	-	-	-
Net loss	(9.1) %	(15.4) %	(20.3) %

Comparison of Years Ended December 31, 2020 and 2019

Revenue

	Year Ended December 31,					
	2020		2019			
		Percentage of		Percentage of	Period-to-Period Change	
	Amount	Revenue	Amount	Revenue	Amount	Percentage
	(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) %

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		Period-to-Period Change	
	Amount	Percentage of Revenue	Amount	Percentage of Revenue	Amount	Percentage
	(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		Period-to-Period Change	
	Amount	Percentage of Revenue	Amount	Percentage of Revenue	Amount	Percentage
	(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		Period-to-Period Change	
	Amount	Percentage of Revenue	Amount	Percentage of Revenue	Amount	Percentage
	(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.

Comparison of Years Ended December 31, 2019 and 2018

Revenue

	Year Ended December 31,					
	2019		2018			
		Percentage of		Percentage of	Period-to-Period Change	
	Amount	Revenue	Amount	Revenue	Amount	Percentage
	(in thousands)					
Subscription	$ 195,091	66.0 %	$ 179,410	69.3 %	$ 15,681	8.7 %
Platform	33,654	11.4	22,938	8.9	10,716	46.7
Total software services	$ 228,745	77.4 %	$ 202,348	78.2 %	$ 26,397	13.0 %
Professional services	66,941	22.6	56,373	21.8	10,568	18.7
Total revenue	$ 295,686	100.0 %	$ 258,721	100.0 %	$ 36,965	14.3 %

Subscription revenue includes $11.1 million of revenue associated with assets acquired from Connecture in February 2019. Additionally, subscription revenue increased $9.5 million from the net addition of new customers, contractual price increases, and volume increases. These increases were offset by a $6.0 million decrease in subscription revenue from the renegotiation of a customer contract and decreases from customers that terminated products and services. Additionally, sales allowance decreased resulting in an increase in subscription revenue of $1.0 million.

Platform revenue increased from growth in premiums and new products from Benefit Catalog which resulted in an increase of $7.3 million in Benefit Catalog carrier revenue and an increase of $3.4 million in revenue from broker and supplier commissions. As discussed above in “Components of Operating Results – Revenue”, platform revenue from carriers is recognized over the policy period and commissions revenue is recognized at a point in time.

The increase in professional services revenue was primarily attributable to an increase of $12.5 million from work performed related to the customer contracts acquired from Connecture in February 2019 and a $1.3 million increase in customer support from new and existing customers. These increases were offset by a net decrease of $3.7 million from professional services work for customers in 2018 that did not recur in 2019. Professional services revenue increased as a percentage of total revenue in the current year compared to the prior year primarily as result of revenue from the Connecture acquisition. We expect this trend to end after the first quarter of 2020 when comparable periods will include the results of the Connecture operations for the full period.

Cost of Revenue

	Year Ended December 31,					
	2019		2018			
		Percentage of		Percentage of	Period-to-Period Change	
	Amount	Revenue	Amount	Revenue	Amount	Percentage
	(in thousands)					
Cost of revenue	$ 144,090	48.7 %	$ 129,277	50.0 %	$ 14,813	11.5 %

The increase in cost of revenue in absolute terms was primarily attributable to an increase in salaries and other personnel-related costs of $8.0 million and increased depreciation expense of $4.1 million. The increase in salaries and personnel-related costs is primarily attributable to the workforce acquired from Connecture in February 2019 partially offset by decreases related to our cost structure in place prior to the acquisition. The increase in depreciation and amortization expense is attributable to the amortization of acquired intangibles from the Connecture acquisition as well as higher depreciation expense related to an increase in capitalized software development costs and the impact of the adoption of the new lease accounting standard at the beginning of 2019. Cost of revenue decreased as a percentage of revenue as we continued to achieve economies of scale. Cost of revenue included $3.6 million and $5.2 million of stock-based compensation expense for the years ended December 31, 2019 and 2018, respectively, and $16.0 million and $11.9 million of depreciation and amortization for the years ended December 30, 2019 and 2018, respectively.

Gross Profit

	Year Ended December 31,					
	2019		2018		Period-to-Period Change	
	Amount	Percentage of Revenue	Amount	Percentage of Revenue	Amount	Percentage
	(in thousands)					
Software services	$ 157,221	68.7 %	$ 136,344	67.4 %	$ 20,877	15.3 %
Professional services	(5,625)	(8.4)	(6,900)	(12.2)	1,275	(18.5)
Gross profit	$ 151,596	51.3 %	$ 129,444	50.0 %	$ 22,152	17.1 %

The increase in software services gross profit was driven by a $26.4 million, or 13.0%, increase in revenue partially offset by a $5.5 million, or 8.4%, increase in software services cost of revenue. Software services cost of revenue included $2.1 million and $3.0 million of stock-based compensation expense for the years ended December 31, 2019 and 2018, respectively, and $12.8 million and $10.0 million of depreciation and amortization for the years ended December 31, 2019 and 2018, respectively. As discussed above, we are not able to meaningfully separate and assign costs of revenues to subscription and platform revenue separately.

The improvement in professional services gross loss was driven by a $10.6 million, or 18.7%, increase in professional services revenue. This increase was partially offset by an increase in professional services cost of revenue of $9.3 million. Professional services cost of revenue included $1.5 million and $2.2 million of stock-based compensation expense for the years ended December 31, 2019 and 2018, respectively. In addition, professional services cost of revenue included $3.2 million and $1.9 million in depreciation and amortization for the years ended December 31, 2019 and 2018, respectively.

Operating Expenses

	Year Ended December 31,					
	2019		2018		Period-to-Period Change	
	Amount	Percentage of Revenue	Amount	Percentage of Revenue	Amount	Percentage
	(in thousands)					
Sales and marketing	$ 76,049	25.7 %	$ 78,179	30.2 %	$ (2,130)	(2.7) %
Research and development	54,724	18.5	47,902	18.5	6,822	14.2
General and administrative	45,329	15.3	43,062	16.6	2,267	5.3
Restructuring costs	-	0.0	-	0.0	-	0.0

The decrease in sales and marketing expense in absolute terms was primarily attributable to a decrease of $3.9 million in salaries and personnel-related costs and a decrease in travel-related costs of $0.3 million, partially offset by an increase of $1.4 million increase in the cost of marketing events that occurred during 2019 and IT-related costs. Salaries and personnel-related costs decreased primarily due to a decrease in number of sales associates that occurred starting in the second half of 2018. As a result we experienced lower salary expense and sales bonuses, as well as lower stock-based compensation. Stock-based compensation decreased primarily as a result of the forfeiture of stock awards related to the departure of employees who separated from the Company during the year. These decreases in salaries were partially offset by a decrease in the amount of commission expense capitalized in 2019 compared to 2018. As discussed above in “Components of Operating Results-Operating Expenses”, certain sales commissions are capitalized and amortized over a period generally equal to four to five years.

The increase in research and development expense is primarily attributable to costs related to the workforce acquired from Connecture in February 2019. Additionally, depreciation and amortization and IT-related costs increased by $2.0 million. These increases were partially offset by an increase of $2.4 million in the amount of personnel-related costs capitalized for software development.

The increase in general and administrative expense was primarily attributable to a net increase of $2.6 million in salary and personnel-related costs primarily as increases from investing in our business operations function were partly offset by a decrease in stock-based compensation of $2.5 million. Additionally, depreciation and amortization, IT-related expense, contract labor, travel-related and other operating expenses increased $2.3 million and insurance expense increased $0.2 million in connection with the acquisition of assets from Connecture. These increases were partially offset by a decrease in professional and consulting costs of $2.8 million as implementation costs of the new lease accounting standard incurred in 2019 were more than offset by a decrease in professional fees associated with the adoption of the leasing and revenue accounting standards and internal control testing incurred during 2018.

Stock-based Compensation

Cost of revenue and operating expenses include an aggregate of $19.6 million and $28.9 million of stock-based compensation for the years ended December 31, 2019 and 2018, respectively, representing a decrease of $9.3 million, or a 32.2% decrease. The decrease is primarily attributable to expense from performance-based awards as the achievement of performance measures was lower for awards granted in 2019 compared to 2018. Additionally, expense decreased from the forfeitures of awards from employees who separated from the Company.

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 2020, the constraint rate decreased by approximately 1%, or less than 0.2 percentage points, during the year. An increase in the constraint rate of one percentage point, would negatively impact revenue recognized in 2020 by approximately $0.1 million.

Liquidity and Capital Resources

Sources of Liquidity

As of December 31, 2020, our primary sources of liquidity were our cash and cash equivalents totaling $90.7 million, $95.1 million in marketable securities, $22.2 million in accounts receivables, net of allowance, and unused availability under our revolving line of credit of $50.0 million.

We entered into a new revolving line of credit agreement with Silicon Valley Bank on March 3, 2020. This agreement replaces our previous agreement with Silicon Valley Bank, which expired on February 20, 2020. The new 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 revolving line of credit, 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 revolving line of credit are described in Note 11 of the unaudited 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, 2020, 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 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 unaudited 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, at our election. The Notes have an initial conversion rate of 18.8076 shares of common stock per $1,000 principal amount. This 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 unaudited consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

During the third quarter of 2020, we repurchased Notes with an aggregate principal amount of $18.8 million for an aggregate of $14.6 million in cash. As of the end of the third quarter of 2020, the remaining outstanding Notes were convertible into 4,161,182 shares of common stock. In connection with the purchase of the Notes, we terminated a portion of the capped call transactions which resulted in an immaterial amount of payments to us in cash and shares of our common stock.

Our cash flows from operations has improved in recent years and turned positive for the years ended December 31, 2020 and 2018. 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 anticipated growth, we believe our future cash flows from operating activities and existing cash balances 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, 2020 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, 2020 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 are reassessing our need for office space and have listed certain of our facilities for sublease, including 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. Many associates have expressed interest in a remote or flexible work situation after the risk of infection from COVID-19 diminishes. The timing, amount of 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 more detail 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 No. ASU 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 is effective for interim and annual reporting periods beginning January 1, 2022. Early adoption is permitted after January 1, 2021. This update permits the use of either the modified retrospective or fully retrospective method of transition. We are currently evaluating the timing and impact of the adoption of ASU 2020-06 on our consolidated financial statements, but we anticipate that it will result in a reduction in non-cash interest expense related to the Notes.

In December 2019, the FASB issued ASU No. 2019-12 “Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes”. This ASU is intended to simplify various aspects related to accounting for income taxes, eliminates certain exceptions to the general principles in ASC Topic 740 related to intra-period tax allocation, simplifies when companies recognize deferred taxes in an interim period, and clarifies certain aspects of the current guidance to promote consistent application. This ASU is effective for interim and annual reporting periods starting January 1, 2021. We are currently evaluating the potential effects of this guidance on our consolidated financial statements.

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 new revolving line of credit agreement. Borrowings under the new 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 new 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, or the Notes. 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, 2020, 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, 2020 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, 2020.

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 U.S. 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 U.S. 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, 2020, based on the Internal Control—Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) (2013 Framework). 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, 2020.

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, 2020, which appears on page F-4 of this Report.

Item 9B. Other Information.

As previously reported, the Company has decided to eliminate the position of Executive Chairman, with Mason R. Holland, Jr. stepping down from his position as Executive Chairman and a member of the Company's Board of Directors, effective at the Company's 2021 Annual Meeting of Stockholders. While Mr. Holland was to serve as an advisor to the Board with observer rights after the 2021 Annual Meeting of Stockholders pursuant to an Advisory and Board Observation Agreement dated January 26, 2021 (the "Agreement"), on March 5, 2021, the Board and Mr. Holland agreed that Mr. Holland will not serve as an advisor to the Company or earn any related advisor compensation and that Mr. Holland will forgo all observer rights under the Agreement, after the 2021 Annual Meeting of Stockholders. The remaining terms of the Agreement, which the Company filed with the Securities and Exchange Commission on February 1, 2021, remain in full force and effect.

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 2021 Annual Meeting of Stockholders, which we intend to file with the Securities and Exchange Commission within 120 days of the end of our 2019 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 Dennerline and Ms. White are independent within the meaning of the Nasdaq Stock Market listing rules and meet the additional test for independence for audit committee members imposed by Securities and Exchange Commission regulation and the Nasdaq Stock Market 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, 2020 with respect to our equity compensation plans:

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans
Equity compensation plans approved by security holders			
2016 Employee Stock Purchase Plan	-	$ -	98,571
Second Amended and Restated 2012 Stock Plan, as amended	2,712,805	$ 0.53	3,518,804
Total	2,712,805	$ 0.53	3,617,375

Our equity compensation plans consist of the Benefitfocus, Inc. 2016 Employee Stock Purchase Plan and the Second Amended and Restated 2012 Stock Plan, as amended, which were approved by our stockholders. We do not have any equity compensation plans or arrangements that have not been approved by our stockholders. Our Amended and Restated 2000 Stock Option Plan expired during 2020.

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

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.

		Incorporated by Reference (Unless Otherwise Indicated)			
Exhibit Number	**Exhibit Title**	**Form**	**File**	**Exhibit**	**Filing Date**
3.1	Restated Certificate of Incorporation of Benefitfocus, Inc.	10-Q	—	3.1.3	November 12, 2013
3.1.1	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	-	3.1	June 8, 2020
3.2	Amended and Restated Bylaws of Benefitfocus, Inc.	8-K	—	3.2.1	September 19, 2016
4.1	Specimen Certificate for Common Stock.	S-1/A	333-190610	4.1	September 5, 2013
4.2	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

4.2.1	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	—	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	—	4.1	December 28, 2018
4.4	Form of 1.25% Convertible Senior Notes due 2023 (included in Exhibit 4.3).	8-K	—	4.1	December 28, 2018
4.5	Description of Securities	—	—	—	Filed herewith
10.1	Benefitfocus, Inc. Amended and Restated 2012 Stock Plan.#	DEF 14A	—	—	April 25, 2014
10.1.1	Form of Grant Notice and Stock Option Agreement under the 2012 Stock Plan, as amended.#	S-1	333-190610	10.6	August 14, 2013
10.2	Form of Management Incentive Bonus Program.#	S-1	333-190610	10.7	August 14, 2013
10.2.1	Benefitfocus, Inc. Management Incentive Bonus Program.#	DEF 14A	—	—	April 25, 2014
10.3	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
10.4	Form of Employment Agreement.#	S-1	333-190610	10.11	August 14, 2013
10.5	Form of Indemnification Agreement.#	S-1	333-190610	10.12	August 14, 2013
10.6	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
10.6.1	Third Amendment to Lease between Daniel Island Executive Center, LLC and Benefitfocus.com, Inc., dated as of December 12, 2016.	8-K	—	10.13.1	December 14, 2016
10.7	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
10.7.1	First Amendment to Lease between Daniel Island Executive Center, LLC and Benefitfocus.com, Inc., dated as of December 12, 2016.	8-K	—	10.14.1	December 14, 2016

10.8	Master Business Agreement between Aetna Life Insurance Company and Benefitfocus.com, Inc., dated as of November 28, 2006.+	S-1	333-190610	10.15	August 14, 2013
10.9	Lease between DIEC II, LLC and Benefitfocus.com, Inc., dated as of December 13, 2013.	10-K	—	10.19	March 21, 2014
10.9.1	Amendment to Lease between DIEC II, LLC and Benefitfocus.com, Inc., dated as of December 12, 2016.	8-K	—	10.16.1	December 14, 2016
10.10	Form of Independent Director Compensation Agreement.	8-K	—	10.21	June 23, 2014
10.11	Employment Agreement, dated June 25, 2014, by and between Benefitfocus.com, Inc. and Ray August.#	8-K	—	10.22	April 8, 2015
10.11.1	First Amendment to Employment Agreement, dated November 20, 2017, by and between Benefitfocus.com, Inc. and Raymond A. August.#	10-K	—	10.18.1	March 15, 2018
10.11.2	Second Amendment to Employment Agreement, dated April 1, 2019, by and between Benefitfocus.com, Inc. and Raymond A. August.#	10-Q	—	10.17.2	August 7, 2019
10.12	Senior Secured Credit Facility, dated as of February 20, 2015, by and among Benefitfocus, Inc., Benefitfocus.com, Inc., Benefit Informatics, Inc., BenefitStore, Inc., several lenders, Silicon Valley Bank, as administrative agent, issuing lender and swingline lender and Comerica Bank, as documentation agent.	10-Q	—	10.23	May 6, 2015
10.12.1	First Amendment Agreement, dated as of June 16, 2015, by and among Benefitfocus, Inc., Benefitfocus.com, Inc., Benefit Informatics, Inc., BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.	8-K	—	10.25	June 16, 2015

10.12.2	Second Amendment Agreement, dated as of December 18, 2015, by and among Benefitfocus, Inc., Benefitfocus.com, Inc., Benefit Informatics, Inc., BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.	10-K	—	10.23	February 25, 2016
10.12.3	Third Amendment Agreement, dated as of March 24, 2016, by and among Benefitfocus, Inc., Benefitfocus.com, Inc., BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.	8-K	—	10.26	March 29, 2016
10.12.4	Fourth Amendment Agreement, dated as of October 28, 2016, by and among Benefitfocus, Inc., Benefitfocus.com, Inc. and BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.	10-Q	—	10.16.4	May 8, 2020
10.12.5	Fifth Amendment Agreement, dated as of December 12, 2016, by and among Benefitfocus, Inc., Benefitfocus.com, Inc. and BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.	8-K	—	10.32	December 14, 2016
10.12.6	Sixth Amendment Agreement, dated as of April 26, 2017, by and among Benefitfocus, Inc., Benefitfocus.com, Inc. and BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.	10-Q	—	10.16.6	May 8, 2020
10.12.7	Seventh Amendment Agreement, dated as of March 29, 2018, by and among Benefitfocus, Inc., Benefitfocus.com, Inc. and BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.	10-Q	—	10.16.7	May 8, 2020

10.12.8	Eighth Amendment Agreement, dated as of December 19, 2018, by and among Benefitfocus, Inc., Benefitfocus.com, Inc. and BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.	10-Q	—	10.16.8	May 8, 2020
10.13	Guarantee and Collateral Agreement, dated as of February 20, 2015, made by Benefitfocus, Inc., Benefitfocus.com, Inc., Benefit Informatics, Inc., BenefitStore, Inc., and other grantors, in favor of Silicon Valley Bank, as administrative agent.	10-Q	—	10.24	May 6, 2015
10.14	Benefitfocus, Inc. 2016 Employee Stock Purchase Plan.#	DEF14A	—	—	April 22, 2016
10.15	Waiver to Credit Agreement, dated as of September 1, 2016, by and among the Benefitfocus, Inc., Benefitfocus.com, Inc. and BenefitStore, Inc., the several banks and other financial institutions or entities party thereto and Silicon Valley Bank, as administration agent and collateral agent for the lenders.	8-K	—	10.28	September 1, 2016
10.16	Lease between DIEC II, LLC and Benefitfocus.com, Inc., dated as of December 12, 2016.	8-K	—	10.31	December 14, 2016
10.17	Form of Call Option Transaction Notice.	8-K	—	10.1	December 28, 2018
10.18	Employment Agreement, dated June 30, 2017, by and between Benefitfocus.com and James Restivo.#	10-K	—	10.25	February 26, 2019
10.19	Employment Agreement, dated July 2, 2019, by and between Benefitfocus.com and Stephen M. Swad.#	10-Q	—	10.26	November 7, 2019
10.19.1	First Amendment to Employment Agreement, dated August 25, 2020, by and between Benefitfocus.com and Stephen M. Swad.#	8-K	-	10.1	August 26, 2020

10.20	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	-	10.26	May 8, 2020
10.21	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	-	10.27	May 8, 2020
10.22	Employment Agreement, dated January 1, 2020, by and between Benefitfocus.com, Inc. and Annmarie Fini.#	10-Q	-	10.28	May 8, 2020
10.23	Amendment to Leases between Daniel Island Executive Center, LLC, DIEC II, LLC and Benefitfocus.com, Inc., dated as of March 13, 2020.	8-K	-	10.26	March 19, 2020
10.24	Preferred Stock Purchase Agreement, dated May 22, 2020, by and between Benefitfocus, Inc. and BuildGroup LLC.	8-K	-	10.1	May 26, 2020
10.25	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	-	10.2	May 26, 2020
10.26	Registration Rights Agreement, dated June 4, 2020, by and between Benefitfocus, Inc. and BuildGroup LLC.	8-K	-	10.1	June 8, 2020
10.27	Co-Sale and Voting Agreement, dated June 4, 2020, by and among Benefitfocus, Inc., BuildGroup LLC, and Mason R. Holland, Jr.	8-K	-	10.2	June 8, 2020

10.28	Benefitfocus, Inc. Second Amended and Restated Stock Plan, as amended.#	8-K	--	10.24.1	June 12, 2020
10.29	Employment Agreement, dated August 25, 2020, by and between Benefitfocus.com and Alpana Wegner.#	8-K	-	10.2	August 26, 2020
10.30	Separation and Release Agreement, dated August 24, 2020, by and between Benefitfocus.com and Raymond A. August.#	8-K	-	10.3	August 26, 2020
10.31	Separation and Release Agreement dated September 29, 2020, by and between Benefitfocus.com and James P. Restivo.#	8-K	-	10.1	September 30, 2020
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
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)	—	—	—	Filed herewith

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\# Management contract or compensatory plan.

\+ The registrant has received confidential treatment with respect to portions of this exhibit. Those portions have been omitted from the exhibit and filed separately with the SEC.

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 9, 2021

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.

Signature	Capacity	Date
/s/ Mason R. Holland, Jr. Mason R. Holland, Jr.	Chairman of the Board of Directors	March 9, 2021
/s/ Stephen M. Swad Stephen M. Swad	President and Chief Executive Officer (principal executive officer)	March 9, 2021
/s/ Alpana Wegner Alpana Wegner	Chief Financial Officer (principal financial and accounting officer)	March 9, 2021
/s/ Douglas A. Dennerline Douglas A. Dennerline	Director	March 9, 2021
/s/ A. Lanham Napier A. Lanham Napier	Director	March 9, 2021
/s/ Francis J. Pelzer V Francis J. Pelzer V	Director	March 9, 2021
/s/ Ana M. White Ana M. White	Director	March 9, 2021
/s/ Zeynep Young Zeynep Young	Director	March 9, 2021

BENEFITFOCUS, INC.
INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

AUDITED CONSOLIDATED FINANCIAL STATEMENTS

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, 2020 and 2019, 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, 2020, 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, 2020 and 2019, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2020, 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, 2020, 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 9, 2021 expressed an unqualified opinion thereon.

Adoption of ASU No. 2016-13

As discussed in Note 2 to the consolidated financial statements, the Company changed its method of accounting for leases in 2019 due to the adoption of Accounting Standards Update (ASU) No. 2016-02, Leases (Topic 842), and the related amendments.

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 9, 2021

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, 2020, 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, 2020, based on the COSO criteria.

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, 2020 and 2019, 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, 2020, and the related notes and our report dated March 9, 2021 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 9, 2021

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

	As of December 31,	
	2020	**2019**
Assets		
Current assets:		
Cash and cash equivalents	$ 90,706	$ 130,976
Marketable securities	95,085	–
Accounts receivable, net	22,240	33,754
Contract, prepaid and other current assets	21,354	21,523
Total current assets	229,385	186,253
Property and equipment, net	29,701	28,669
Financing lease right-of-use assets	68,670	78,520
Operating lease right-of-use assets	1,107	1,715
Intangible assets, net	10,393	12,667
Goodwill	12,857	12,857
Deferred contract costs and other non-current assets	10,259	11,002
Total assets	$ 362,372	$ 331,683
Liabilities and stockholders' deficit		
Current liabilities:		
Accounts payable	$ 2,160	$ 9,563
Accrued expenses	6,262	10,526
Accrued compensation and benefits	19,129	15,246
Deferred revenue, current portion	27,782	33,429
Lease liabilities and financing obligations, current portion	5,959	6,871
Total current liabilities	61,292	75,635
Deferred revenue, net of current portion	4,422	5,079
Convertible senior notes	184,308	187,949
Lease liabilities and financing obligations, net of current portion	79,282	88,572
Other non-current liabilities	2,470	92
Total liabilities	331,774	357,327
Commitments and contingencies		
Redeemable preferred stock:		
Series A preferred stock, par value $0.001, 5,000,000 shares authorized, 1,777,778 and 0 shares issued and outstanding at December 31, 2020 and 2019, respectively, liquidation preference $45 per share as of December 31, 2020	79,193	–
Stockholders' deficit:		
Common stock, par value $0.001, 50,000,000 shares authorized, 32,327,439 and 32,788,980 shares issued and outstanding at December 31, 2020 and 2019, respectively	32	33
Additional paid-in capital	427,431	426,025
Accumulated deficit	(476,058)	(451,702)
Total stockholders' deficit	(48,595)	(25,644)
Total liabilities, redeemable preferred stock and stockholders' deficit	$ 362,372	$ 331,683

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,		
	2020	**2019**	**2018**
Revenue	$ 268,141	$ 295,686	$ 258,721
Cost of revenue	129,388	144,090	129,277
Gross profit	138,753	151,596	129,444
Operating expenses:			
Sales and marketing	52,210	76,049	78,179
Research and development	46,175	54,724	47,902
General and administrative	37,720	45,329	43,062
Restructuring expense	5,616	–	–
Total operating expenses	141,721	176,102	169,143
Loss from operations	(2,968)	(24,506)	(39,699)
Other income (expense):			
Interest income	632	2,613	250
Interest expense	(23,071)	(23,524)	(13,156)
Gain on repurchase of convertible senior notes	1,138	–	–
Other (expense) income	(6)	(71)	6
Total other expense, net	(21,307)	(20,982)	(12,900)
Loss before income taxes	(24,275)	(45,488)	(52,599)
Income tax expense	22	27	28
Net loss	(24,297)	(45,515)	(52,627)
Preferred dividends	(3,662)	–	–
Net loss available to common stockholders	$ (27,959)	$ (45,515)	$ (52,627)
Comprehensive loss	$ (24,297)	$ (45,515)	$ (52,627)
Net loss per common share:			
Basic and diluted	$ (0.87)	$ (1.40)	$ (1.66)
Weighted-average common shares outstanding:			
Basic and diluted	32,318,201	32,539,748	31,756,415

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	Accumulated	Total
	Shares	Par Value	Paid-in Capital	Deficit	Stockholders' Deficit
Balance, December 31, 2017	31,307,989	$ 31	$ 352,496	$ (361,246)	$ (8,719)
Exercise of stock options	29,908	–	186	$ –	186
Issuance of common stock upon vesting of restricted stock units	663,419	1	(1)	–	–
Issuance of common stock under ESPP	16,457	–	526	–	526
Purchase of convertible note capped call hedge	–		(33,024)		(33,024)
Equity component of convertible notes	–		56,950		56,950
Stock-based compensation expense	–	–	26,498	–	26,498
Net loss	–	–	–	(52,627)	(52,627)
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 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)

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,		
	2020	2019	2018
Cash flows from operating activities			
Net loss	$ (24,297)	$ (45,515)	$ (52,627)
Adjustments to reconcile net loss to net cash and cash equivalents used in operating activities:			
Depreciation and amortization	25,014	22,351	15,815
Stock-based compensation expense	14,537	19,572	28,868
Accretion of interest on convertible senior notes	11,656	11,256	–
Interest accrual on finance lease liabilities	97	33	–
Interest accrual on financing obligations (prior to adoption of ASC 842)	–	–	7,521
Rent payments in excess of expense	(32)	(16)	–
Non-cash interest income for short-term investments	143	–	–
Loss on disposal or impairment of property and equipment	918	9	7
Gain on extinguishment of debt	(1,138)	–	–
Provision for doubtful accounts	43	111	364
Changes in operating assets and liabilities:			
Accounts receivable, net	11,412	(11,875)	8,650
Accrued interest on short-term investments	(102)	–	–
Contract, prepaid and other current assets	169	(3,642)	(570)
Deferred costs and other non-current assets	743	2,893	3,137
Accounts payable and accrued expenses	(11,468)	426	6,566
Accrued compensation and benefits	3,884	161	649
Deferred revenue	(6,304)	(14,047)	(9,165)
Other non-current liabilities	2,376	(92)	(234)
Net cash and cash equivalents provided by (used in) operating activities	27,651	(18,375)	8,981
Cash flows from investing activities			
Purchases of short-term investments held to maturity	(104,125)	–	–
Proceeds from short-term investments held to maturity	9,000	–	–
Business combination, net of cash acquired	–	(20,914)	–
Purchases of property and equipment	(13,085)	(13,248)	(8,290)
Net cash and cash equivalents used in investing activities	(108,210)	(34,162)	(8,290)
Cash flows from financing activities			
Draws on revolving line of credit	10,000	–	115,000
Payments on revolving line of credit	(10,000)	–	(171,246)
Proceeds from issuance of convertible senior notes	–	–	240,000
Repurchase of convertible senior notes	(14,619)	–	–
Payments of debt issuance costs	(154)	(357)	(6,000)
Purchase of convertible note capped call hedge	–	–	(33,024)
Cancellation of convertible note capped call hedge	26	–	–
Proceeds from issuance of preferred stock, net of issuance costs	79,192	–	–
Payment of preferred dividends	(3,662)	–	–
Repurchase of common stock	(9,667)	–	–
Proceeds from exercises of stock options and ESPP	585	453	712
Payments on capital lease and financing obligations	(1,212)	(1,627)	(10,540)
Payments of principal on finance lease liabilities	(10,200)	(5,884)	–
Net cash and cash equivalents provided by (used in) financing activities	40,289	(7,415)	134,902
Net (decrease) increase in cash and cash equivalents	(40,270)	(59,952)	135,593
Cash and cash equivalents, beginning of year	130,976	190,928	55,335
Cash and cash equivalents, end of year	$ 90,706	$ 130,976	$ 190,928
Supplemental disclosure of non-cash investing and financing activities			
Property and equipment purchases in accounts payable and accrued expenses	$ 142	$ 154	$ 244
Property and equipment purchased with financing and capital lease obligations (prior to adoption of ASC 842)	$ -	$ -	$ 4,810
Post contract support purchased with financing obligations	$ -	$ 1,287	$ 790
Debt issuance costs included in accounts payable and accrued expenses	$ -	$ -	$ 358
Supplemental disclosure of cash flow information			

Income taxes paid	$ 22	$ 28	$ 28
Interest paid	$ 11,408	$ 12,374	$ 11,884

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

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. and BenefitStore, 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 doubtful accounts and returns, valuations of deferred income taxes, long-lived assets, capitalizable software development costs and the related amortization, 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

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. Restructuring costs are presented separately in operating expenses in the consolidated statements of operations and comprehensive loss. 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 insurance carriers as well as platform revenue derived from the value of products sold on our 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 subscription fees paid to the Company by its employer and insurance carrier 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 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 insurance carrier 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 insurance carrier 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 generally recognized as those services are performed.

Revenue from support and training fees is recognized 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 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,	
Balance of deferred contract costs	**2020**	**2019**
Costs to obtain contracts	$ 5,624	$ 6,676
Costs to fulfill contracts	$ 3,639	$ 3,112

	Year ended December 31,		
Amortization of deferred contract costs	**2020**	**2019**	**2018**
Costs to obtain contracts included in sales and marketing expense	$ 3,275	$ 3,662	$ 4,217
Costs to fulfill contracts included in cost of revenue	$ 1,285	$ 2,790	$ 3,480

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. To reflect its intention, the Company classifies its marketable securities as held-to-maturity at the time of purchase. As a result, the marketable securities are recorded at amortized cost and any gains or losses realized upon maturity are reported in other expense, net in the consolidated statements of operations and comprehensive loss.

Debt securities classified as held-to-maturity are subject to the expected credit loss model prescribed under Accounting Standards Update (“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 held-to-maturity securities at the time the financial asset is originated or acquired. The Company measures expected credit losses on its held-to-maturity 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 held-to-maturity 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 classified as held-to-maturity 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. The weighted average maturity of the portfolio of investments must not exceed nine months, per the Company's investment policy

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, 2020 and 2019. One customer represented approximately 13% of total revenue for the year ended December 31, 2018. No customer exceeded 10% of accounts receivable as of December 31, 2020. As of December 31, 2019, one customer represented approximately 11% of total accounts receivable.

Allowance for Doubtful Accounts

Historically, the Company used an incurred loss model to calculate its allowance for doubtful accounts. Upon the adoption of ASU No. 2016-13, "Financial Instruments – Credit Losses" (Topic 326) on January 1, 2020, the Company shifted to a current expected credit loss model. Accounts receivable and allowance for doubtful accounts 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:

Buildings, leased (prior to adoption of ASC 842)	30 years
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
Vehicles	5 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, 2020 and 2019, 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 our 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 (after adoption of ASC 842)

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, or 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 operating 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 are expensed as incurred and recorded as variable lease expense.

Financing Obligations

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

Prior to the adoption of ASC 842 on January 1, 2019, in its build-to-suit lease arrangements where the Company is involved in the construction of its buildings, the Company is deemed the owner for accounting purposes during the construction period. The Company records an asset for the amount of the total project costs in property and equipment, net and the related financing obligation in Lease Liabilities and Financing obligations on the consolidated balance sheets. Once construction is complete, the Company determines if the asset qualifies for sale-leaseback accounting treatment. If the arrangement does not qualify for sale-lease back treatment, the Company continues to reduce the obligation over the lease term as payments are made and depreciates the asset over its useful life. The Company does not report rent expense for the portion of the rent payment determined to be related to the assets that it owns for accounting purposes. Rather, this portion of the rent payment under the lease is recognized as a reduction of the financing obligation and as interest expense.

Advertising

The Company expenses advertising costs as they are incurred. Direct advertising costs for the years ended December 31, 2020, 2019 and 2018 were $308, $332 and $391, 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 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 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

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.

Leases

On January 1, 2019, the Company adopted ASU No. 2016-02, “Leases (Topic 842)”, codified as ASC 842. The amendments in this update require lessees, among other things, to recognize lease assets and lease liabilities on the balance sheet for those leases classified as operating leases under previous authoritative guidance. ASC 842 introduces new disclosure requirements for leasing arrangements. The Company adopted this update using the modified retrospective transition method at the beginning of the period of adoption. Accordingly, the Company did not adjust prior period financial statements, and recognized a cumulative-effect adjustment to the opening balance of accumulated deficit in 2019 in the amount of $7,686. The Company utilized the following additional significant policy elections:

- Elected the package of three transition practical expedients to not reassess:
    - whether any expired or existing contracts are or contain a lease;
    - the classification of any expired or existing leases; and
    - the treatment of initial direct costs.
- Adopted a policy to not separate lease and associated nonlease components for all classes of assets. The Company applied this policy to all existing leases on transition as well as new leases going forward.
- Adopted a policy to not include leases with a term of 12 months or less in the recognized ROU assets and lease liabilities for all classes of assets.

The adoption of this standard had a significant impact on the Company’s consolidated financial statements as follows:

- Net assets of $21,019 and related financing obligations and other noncurrent liabilities of $34,909 for existing build-to-suit lease arrangements were derecognized. These leases were transitioned to the new standard based on an analysis of the lease balances as of the transition date as if they had been leases under ASC 840. Based on this analysis, the land component of these leases was combined with the remainder of the lease obligations. Historically, these obligations were accounted for separately and recognized as part of facilities expense and allocated to cost of revenue and operating expenses. Amounts recognized included $56,422 of net ROU assets, $2,848 of net leasehold improvements, and $63,952 of total finance lease liabilities. The net cumulative adjustment to accumulated deficit to derecognize and transition these leases was $7,686.
- Finance lease liabilities and ROU assets of $3,589 were recorded related to payment obligations for nonlease components (e.g. common area maintenance and equipment maintenance) associated with existing capital leases.
- Operating lease liabilities and ROU assets of $1,169 were recorded related to existing operating lease obligations.

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 is effective for annual reporting periods beginning after December 15, 2021, including interim periods within those fiscal years. Early adoption is permitted, but no earlier than fiscal years beginning after December 15, 2020. This update permits the use of either the modified retrospective or fully retrospective method of transition. The Company is currently evaluating the timing and impact of the adoption of ASU 2020-06 on the Company's consolidated financial statements, but anticipates that it will result in a reduction in non-cash interest expense related to the Convertible Senior Notes.

In December 2019, the FASB issued ASU No. 2019-12, “Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes”. ASU No. 2019-12 is intended to simplify various aspects related to accounting for income taxes, eliminates certain exceptions to the general principles in ASC Topic 740 related to intra-period tax allocation, simplifies when companies recognize deferred taxes in an interim period, and clarifies certain aspects of the current guidance to promote consistent application. This ASU is effective for the Company for the interim and annual reporting periods starting January 1, 2021. Early adoption is permitted. The Company is currently evaluating the potential effects of this guidance on its consolidated financial statements.

3. Business Combination

On February 25, 2019, the Company purchased certain operating assets and liabilities, intellectual property and intangible assets, including the workforce in place, of the commercial business of Connecture, Inc., for $20,914 ($24,000 before working capital adjustments). This acquisition added technology to potentially strengthen the Company's platform, expand its customer reach, and enhance the value the Company delivers to its carrier customers.

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

Consideration Transferred		
Cash	$	19,914
Contingent consideration arrangement		1,000
Fair value of total consideration transferred	$	20,914
Recognized Amounts of Identifiable Assets Acquired and Liabilities Assumed		
Accounts receivable, net	$	912
Contract, prepaid and other current assets		611
Property and equipment, net		198
Operating lease right-of-use assets		1,107
Intangible assets, net		14,600
Deferred contract costs and other non-current assets		250
Accrued expenses		(2)
Accrued compensation and benefits		(186)
Deferred revenue, current portion		(6,692)
Operating lease ROU liabilities, current portion		(84)
Operating lease ROU liabilities, net of current portion		(1,023)
Total identifiable net assets		9,691
Goodwill		11,223
Total identifiable net assets and goodwill	$	20,914

The goodwill of $11,223 arising from the acquisition consists largely of the value of the acquired organized workforce as well as economies of scale. The Company expects all of the goodwill recognized to be deductible for income tax purposes after satisfying performance obligations for certain customers.

The identifiable intangible assets acquired have a weighted average amortization period of 6.5 years and include developed technology, customer relationships, and trade name. The Company did not acquire any contingent liabilities as part of the transaction.

The cash transferred included $1,000 in contingent consideration placed into a third-party escrow to be released to Connecture as required contractual consents to the assignment of service arrangements are obtained from specified customers. As of December 31, 2019, all of these escrow funds had been released to Connecture.

The Company incurred $450 in costs related to completing the acquisition, all of which were recognized in general and administrative expense during the year ended December 31, 2019.

Revenue recognized by the Company related to the operations of the acquired business were $23,855 for the year ended December 31, 2019. During the third quarter of 2019, the Company had integrated the acquired assets and workforce into its operations, which decreased the Company's ability to identify incremental costs associated with the acquired business. Identifiable expenses associated with the acquired business were $20,219 for the year ended December 31, 2019.

Coincident with the acquisition, the Company entered into two additional agreements with Connecture each of which are accounted for separately at contracted prices as described below:

- Transition Services Agreement where each party provides certain transition services to the other for a 12-month period to facilitate an orderly transition of the acquired business. During the years ended December 31, 2020 and 2019, the Company recognized operating expense of $0 and $559, respectively, related to this agreement.
- An agreement for the Company to provide interim services to Connecture as a subcontractor under a master services agreement maintained by Connecture that includes service commitments related to both the acquired business and Connecture's retained business while the parties work together with the customer to legally separate the contract. During the years ended December 31, 2020 and 2019, the Company recognized revenue of $1,155 and $979, respectively, related to this agreement.

Supplemental pro forma revenue and earnings information are not presented because historical records for the acquired business are not available. Therefore, determining the amount of revenue and earnings of the combined entity as though the business combination had occurred as of the beginning of the comparable periods would require significant estimates of amounts that the Company cannot independently substantiate. 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:

	Year Ended December 31,		
Anti-Dilutive Common Share Equivalents	**2020**	**2019**	**2018**
Restricted stock units	2,590,877	1,970,555	2,174,250
Stock options	121,928	206,447	233,247
Convertible senior notes	4,161,182	4,513,824	4,513,824
Conversion of preferred stock	5,333,334	-	-
Total anti-dilutive common share equivalents	12,207,321	6,690,826	6,921,321

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

	Year Ended December 31,		
	2020	**2019**	**2018**
Numerator:			
Net loss	$ (24,297)	$ (45,515)	$ (52,627)
Preferred dividends	(3,662)	-	-
Net loss attributable to common stockholders	$ (27,959)	$ (45,515)	$ (52,627)
Denominator:			
Weighted-average common shares outstanding, basic and diluted	32,318,201	32,539,748	31,756,415
Net loss per common share, basic and diluted	$ (0.87)	$ (1.40)	$ (1.66)

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 and revolving line of credit approximates fair value, considering the borrowing rates currently available to the Company for financing obligations 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, as of December 31, 2020 and 2019.

	December 31, 2020			
Description	**Level 1**	**Level 2**	**Level 3**	**Total**
Cash Equivalents:				
Money market mutual funds [1]	$ 87,224	$ -	$ -	$ 87,224
Total assets	$ 87,224	$ -	$ -	$ 87,224

	December 31, 2019			
Description	**Level 1**	**Level 2**	**Level 3**	**Total**
Cash Equivalents:				
Money market mutual funds [1]	$ 124,503	$ -	$ -	$ 124,503
Total assets	$ 124,503	$ -	$ -	$ 124,503

(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.

6. Marketable Securities

Marketable securities consist of corporate bonds, commercial paper and U.S. Treasury and agency bonds, and are classified as held-to-maturity. All marketable securities had contractual maturities of less than one year as of December 31, 2020. The following presents information about the Company's marketable securities by major security type as of December 31, 2020. There were no marketable securities as of December 31, 2019.

	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.

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 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.

7. Accounts Receivable, net

Accounts receivable, net include:

	As of December 31,	
Accounts receivable, net	**2020**	**2019**
Accounts receivable	$ 26,791	$ 36,669
Less: Allowance for doubtful accounts	(200)	(155)
Less: Allowance for returns	(4,351)	(2,760)
Total accounts receivable, net	$ 22,240	$ 33,754

Accounts receivable are stated at their amortized cost adjusted for any write-offs and net 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 doubtful accounts 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.

	Year ended December 31,		
Allowance for doubtful accounts	**2020**	**2019**	**2018**
Beginning of period	$ 155	$ 392	$ 654
Provision for credit losses (including effect of adoption)	212	111	138
Write-offs and recoveries	(167)	(348)	(400)
End of period	$ 200	$ 155	$ 392

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.

	Year ended December 31,		
Allowance for returns	**2020**	**2019**	**2018**
Beginning of period	$ 2,760	$ 3,192	$ 2,877
Charged against revenue	7,851	3,761	4,813
Deductions	(6,260)	(4,193)	(4,498)
End of period	$ 4,351	$ 2,760	$ 3,192

8. Property and Equipment

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

	2020	2019
Developed software	$ 57,300	$ 46,497
Computers and related equipment	33,872	31,730
Purchased software and licenses	31,362	30,507
Leasehold improvements	7,591	7,565
Furniture and fixtures	7,015	6,995
Other equipment	2,241	2,266
Vehicles	98	146
Total property and equipment, at cost	139,479	125,706
Accumulated depreciation and amortization	(109,778)	(97,037)
Property and equipment, net	$ 29,701	$ 28,669

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

Depreciation and amortization expense	2020	2019	2018
Depreciation and amortization expense related to property and equipment	$ 13,516	$ 11,819	$ 15,665
Amortization expense related to financing ROU assets	9,224	8,599	-
Total depreciation and amortization expense	$ 22,740	$ 20,418	$ 15,665

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

Depreciation and amortization expense	2020	2019	2018
Cost of revenue	$ 17,469	$ 14,986	$ 11,847
Sales and marketing	1,479	1,625	1,267
Research and development	2,848	2,963	1,998
General and administrative	944	844	553
Total depreciation and amortization expense	$ 22,740	$ 20,418	$ 15,665

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

	Year ended December 31,		
Capitalized software development costs	2020	2019	2018
Capitalized	$ 11,558	$ 9,784	$ 6,090
Amortization expense	$ 7,455	$ 5,130	$ 3,944
Impairment	$ 620	$ -	$ -

	As of December 31,	
Capitalized software development costs	2020	2019
Net book value	$ 17,942	$ 14,459

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 for the year ended December 31, 2020.

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	2020	2019
Goodwill on January 1	$ 12,857	$ 1,634
Additions from business combination	-	11,223
Impairment	-	-
Goodwill on December 31	$ 12,857	$ 12,857

Gross carrying amounts	2020	2019
Goodwill	$ 14,527	$ 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, 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	$ 17,026	$ (6,633)	$ 10,393	4.8

	As of December 31, 2019			
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted-Average Remaining Useful Life (in years)
Trademarks	$ 840	$ (313)	$ 527	6.2
Developed technology	7,900	(1,119)	6,781	5.2
Customer agreements	8,160	(2,801)	5,359	6.2
Non-compete agreements	126	(126)	-	-
Total	$ 17,026	$ (4,359)	$ 12,667	5.8

As of December 31, 2020, expected amortization expense for the intangible assets for each of the next five years and thereafter was as follows:

	Amortization expense
Year Ending December 31,	
2021	$ 2,274
2022	2,274
2023	2,274
2024	2,274
2025	1,155
Thereafter	142
Total	$ 10,393

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

	Year ended December 31,		
Amortization of acquisition-related intangible assets	2020	2019	2018
Amortization expense	$ 2,274	$ 1,933	$ 150
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 so 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.

The Notes have an initial conversion rate of 18.8076 shares of common stock per $1 principal amount of Notes. This represents 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, 2020, the Notes are not yet 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, and were included with the equity component in shareholders' equity.

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. 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 and 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:

	2020	2019
Liability Component:		
Principal	$ 221,250	$ 240,000
Less: debt discount, net of amortization	(36,942)	(52,051)
Net carrying amount	$ 184,308	$ 187,949
Equity component (a)	56,539	56,950
Remaining discount amortization period (in years)	2.96	

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

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

	Year Ended December 31, 2020	Year Ended December 31, 2019
1.25% coupon	$ 2,921	$ 3,000
Amortization of debt discount and transaction costs	11,656	11,256
Total interest expense	$ 14,577	$ 14,256
Effective interest rate on liability component	7.83%	7.59%

As of December 31, 2020, 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 notes classified in equity) were as follows:

	December 31, 2020		December 31, 2019	
	Fair Value	Carrying Value	Fair Value	Carrying Value
Convertible senior notes	$ 192,587	$ 184,308	$ 207,600	$ 187,949

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. The capped call will not be re-measured provided it continues to meet the conditions for equity classification.

Based on the closing price of our common stock of $14.48 on December 31, 2020, the if-converted value of the Notes was less than their respective principal amounts.

11. Revolving Line of Credit

The Company entered into a new credit facility with Silicon Valley Bank providing for a revolving line of credit agreement on March 3, 2020 (“Senior Revolver”). This agreement replaced the Company’s previous agreement with Silicon Valley Bank, which expired on February 20, 2020 (“Prior Revolver”). 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 Senior Revolver 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 Senior Revolver 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.

During the year ended December 31, 2020, the Company borrowed an aggregate of $10,000 under the Senior Revolver for general operating purposes and repaid an aggregate of $10,000. As of December 31, 2020 there were no amounts outstanding under the Company’s Senior Revolver. The amount available to borrow was $50,000 and the interest rate was 2.75% as of December 31, 2020.

During the year ended December 31, 2018, the Company borrowed an aggregate of $115,000 under the Prior Revolver for general operating purposes and repaid an aggregate of $171,246. No amounts were borrowed or repaid under the Prior Revolver during the year ended December 31, 2019.

12. Commitments and Contingencies

Total net cash flows were not impacted by adoption of ASC 842; however, classification of some transactions moved between operating and financing activities. Supplemental cash flow information related to the Company’s operating and finance leases was as follows:

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

As of December 31, 2020, 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 generally 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:

	Year Ended December 31,	
Operating lease expense	**2020**	**2019**
Fixed operating lease expense	$ 414	$ 705
Short-term lease expense	405	33
Variable operating lease expense	112	145
Total operating lease expense	931	883
Sublease income	-	(28)
Total operating lease cost	$ 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:

Lease Assets and Liabilities	**Classification**	**As of December 31, 2020**	**As of December 31, 2019**
Assets			
Operating lease ROU asset - Buildings	Operating lease right-of-use assets	$ 1,107	$ 1,715
Liabilities			
Operating lease ROU liabilities, current portion	Lease liabilities, current	$ 300	$ 343
Operating lease ROU liabilities, net of current portion	Lease liabilities, non-current	1,268	1,568
Total operating lease liabilities		$ 1,568	$ 1,911
Weighted average remaining lease term (in years)		5.21	5.86
Weighted average discount rate		6.04%	5.96%

On December 31, 2020, the Company entered into a sublease agreement for all of the space under one 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, 2020:

	Operating Leases
Year Ending December 31,	
2021	$ 385
2022	391
2023	398
2024	175
2025	179
Thereafter	306
Total minimum lease payments	1,834
Less: imputed interest	(266)
Total operating lease liabilities	$ 1,568

Finance Leases

The Company leases three buildings on its Charleston, South Carolina campus. Under ASC 840, one leasing arrangement was accounted for as a capital lease while the remaining two lease agreements were accounted for as build-to-suit, failed sale-leaseback arrangements. Accordingly, the Company recognized liabilities for the lease payments related to these two buildings, which were recorded as financing obligations. Upon adoption of ASC 842 on January 1, 2019, the assets and related financing obligations for the existing build-to-suit lease arrangements were derecognized with a cumulative adjustment of $7,686 to accumulated deficit. These leases were transitioned to the new standard based on an analysis of the lease balances as of the transition date as if they had been a lease under ASC 840. Based on this analysis, the land components of these leases were combined with the remainder of the lease obligation whereas this obligation was previously accounted for separately and recognized as part of facility expense. To calculate the present value of lease payments, the Company used an incremental borrowing rate based on third-party valuation results as of December 2016. All three leasing arrangements are classified as finance leases under ASC 842.

As a result of the adoption of ASC 842, operating expenses increased as depreciation expense related to the buildings increased due to shortening the period of depreciation from the estimated life of the asset to the expected term of the lease. Additionally, interest expense decreased as a result of a discount rate that is lower than the rate required for build-to-suit accounting. Additional information regarding these three leases is incorporated in the following disclosures.

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 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:

	Year Ended December 31,	
Finance lease expense	**2020**	**2019**
Amortization of ROU assets	$ 9,224	$ 8,599
Interest on lease liabilities	8,051	8,535
Variable finance lease expense	46	53
Total finance lease expense	$ 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 December 31, 2020**	**As of December 31, 2019**
Assets			
Finance lease ROU asset	Finance lease right-of-use assets, net	$ 85,040	$ 87,067
Finance lease ROU accumulated amortization	Finance lease right-of-use assets, net	(16,370)	(8,547)
Finance lease ROU assets, net		$ 68,670	$ 78,520
Liabilities			
Finance lease ROU liabilities, current portion	Lease liabilities, current	$ 5,034	$ 5,315
Finance lease ROU liabilities, net of current portion	Lease liabilities, non-current	77,916	86,284
Total finance lease liabilities		$ 82,950	$ 91,599
Weighted average remaining lease term (in years)		10.31	11.34
Weighted average discount rate		9.53%	9.26%

The following table presents the maturity of the Company's finance lease liabilities as of December 31, 2020:

	Finance Leases
Year Ending December 31,	
2021	$ 9,634
2022	13,653
2023	11,553
2024	11,696
2025	12,002
Thereafter	79,962
Total minimum lease payments	138,500
Less: imputed interest	(55,550)
Total finance lease liabilities	$ 82,950

Financing Obligations

Financing obligations were $722 and $1,933, as of December 31, 2020 and 2019, respectively, and consist primarily of obligations for software licensing and support.

Contractual Commitments

The Company has $6,835 of non-cancellable contractual commitments as of December 31, 2020 related to the purchase of software and maintenance. These commitments are not accrued in the consolidated balance sheets of the Company.

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 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, 2020, the Company 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 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 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. 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.

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 6,231,609 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, 2020, no awards were outstanding under the 2000 Plan. As of December 31, 2020, the Company had 3,518,804 shares allocated to the 2012 Plan, but not yet issued.

The Company has issued two types of awards under these plans: stock options and restricted stock units ("RSUs"). The following table sets forth the number of awards outstanding for each award type is as follows:

	As of December 31,		
Award type outstanding	**2020**	**2019**	**2018**
Restricted stock units	2,590,877	1,970,555	2,174,250
Stock options	121,928	206,447	233,247

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.

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:

Stock-based compensation expense	**2020**	**2019**	**2018**
Cost of revenue	$ 3,703	$ 3,569	$ 5,164
Sales and marketing	3,081	3,799	6,764
Research and development	2,555	3,265	5,510
General and administrative	5,198	8,939	11,430
	$ 14,537	$ 19,572	$ 28,868

The total compensation cost related to non-vested awards not yet recognized as of December 31, 2020 was $21,286 and will be recognized over a weighted-average period of approximately 2.32 years.

Restricted Stock Units

During 2020, 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. The fair value of the stock at the time of grant is amortized based on a straight-line basis over the vesting period.

The summary of unvested restricted stock units is as follows:

	Restricted stock units		Weighted average grant date fair value
Unvested at December 31, 2019	1,970,555	$	34.82
Granted	2,361,447		9.47
Forfeited	(572,629)		29.00
Vested	(1,168,496)		27.41
Unvested at December 31, 2020	2,590,877	$	14.40

As of December 31, 2020, the number and intrinsic value of restricted stock units expected to vest was 2,506,574 and $36,295, respectively. The aggregate fair value of restricted stock units vested during the years ended December 31, 2020, 2019 and 2018 was $6,132, $32,065 and $18,623, respectively.

Included in the grants of 2020 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 801,453 performance restricted stock units to officers and certain employees with an aggregate grant-date fair value of $6,713. The actual number of shares issued upon vesting could range from 0% to 100%. As of December 31, 2020, there were 830,399 performance restricted stock units outstanding with a weighted average grant-date fair value of $11.76 per unit, of which 746,096 units with a weighted average grant-date fair value of $12.28 per unit were expected to vest.

Stock Options

The following is a summary of the option activity for the year ended December 31, 2020:

	Number of Options		Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (in years)		Aggregate Intrinsic Value
Outstanding balance at December 31, 2019	206,447	$	10.10			
Granted	-		-			
Exercised	(62,519)		6.93			
Forfeited	(21,000)		10.26			
Expired	(1,000)		5.38			
Outstanding balance at December 31, 2020	121,928	$	11.73	2.0	$	335
Exercisable at December 31, 2020	121,928	$	11.73	2.0	$	335
Vested and expected to vest at December 31, 2020	121,928	$	11.73	2.0	$	335

The aggregate intrinsic value of employee options exercised during the years ended December 31, 2020, 2019, and 2018 was $219, $958 and $915, respectively. No stock options were granted during the years ended December 31, 2020, 2019 and 2018.

15. Stockholders' Deficit

Preferred stock

The Company has 5,000,000 shares of preferred stock authorized of which 3,222,222 shares are undesignated.

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 Benefitfocus, Inc. 2016 Employee Stock Purchase Plan ("ESPP") pursuant to which the Company has reserved 98,571 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, 2020, the Company had reserved a total of 11,663,514 of its authorized 50,000,000 shares of common stock for future issuance as follows:

Outstanding stock options	121,928
Restricted stock units	2,590,877
Available for future issuance under stock award plans	3,518,804
Available for future issuance under ESPP	98,571
Issuable upon conversion of Series A Preferred Stock	5,333,334
Total common shares reserved for future issuance	11,663,514

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.

16. Revenue

Disaggregation of Revenue

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

	Year ended December 31		
	2020	2019	2018
Service line			
Subscription	$ 179,743	$ 195,091	$ 179,410
Platform	35,101	33,654	22,938
Total software services	$ 214,844	$ 228,745	$ 202,348
Professional services	53,297	66,941	56,373
Total	$ 268,141	$ 295,686	$ 258,721

Contract Balances

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

	Balance at Beginning of Period		Balance at End of Period	
As of December 31, 2020				
Contract assets	$	16,685	$	15,105
Contract liabilities:				
Deferred revenue	$	38,508	$	32,204
As of December 31, 2019				
Contract assets	$	12,798	$	16,685
Contract liabilities:				
Deferred revenue	$	45,863	$	38,508

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, 2020 and 2019.

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.

There were no significant changes in the contract assets outside of standard revenue and billing activity.

Revenue recognized during the years ended December 31, 2020 and 2019 that was included in the deferred revenue balance at the beginning of the periods was $33,092 and $32,256, respectively.

The Company added deferred revenue of $6,692 as a result of a business combination during the year ended December 31, 2019.

The Company recorded favorable transaction price adjustments to software services revenue from performance obligations satisfied or partially satisfied in previous periods of $4,374 and $2,914 during the years ended December 31, 2020 and 2019, respectively.

Performance Obligations

As of December 31, 2020, the aggregate amount of the Company's performance obligations that are unsatisfied or partially unsatisfied were approximately $227,000, 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, 2020, 2019 and 2018, 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, 2020, 2019, and 2018, employer matching contributions were $2,790, $3,370 and $3,162, respectively.

18. Income Taxes

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 2016 through 2019 as well as state income tax examinations for various years depending on statutes of limitations of those jurisdictions.

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

Current:	2020	2019	2018
Federal	$ -	$ -	$ -
State and local	22	27	28
Total current expense	$ 22	$ 27	$ 28
Deferred:			
Federal	$ -	$ -	$ -
State and local	-	-	-
Total deferred taxes	$ -	$ -	$ -

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:

	2020	2019	2018
Federal statutory rate	21.0%	21.0%	21.0%
Effect of:			
State income taxes, net of federal benefit	1.8%	8.2%	10.3%
Change in state tax rates	3.8%	2.9%	1.7%
Change in valuation allowance	(13.7%)	(33.7%)	(29.4%)
State tax credits	(0.6%)	1.4%	0.3%
Stock-based compensation	(11.5%)	2.5%	(2.2%)
Section 162(m)	(0.2%)	(1.2%)	(0.8%)
Other permanent items	(0.6%)	(1.1%)	(0.9%)
Income tax provision effective rate	0.0%	0.0%	0.0%

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

	2020	2019
Deferred tax assets relating to:		
Net operating loss carryforwards	$ 93,408	$ 95,084
Deferred revenue	7,499	7,304
Commissions and incentive accrual	1,945	895
Deferred rent	136	57
State tax credits	8,414	8,590
Stock-based compensation	2,684	4,095
Compensation and other accruals	1,455	-
Finance lease right-of-use liabilities	22,567	24,930
Interest limitation	-	1,804
Total gross deferred tax assets	138,108	142,759
Deferred tax liabilities		
Compensation and other accruals	$ -	$ (712)
Finance lease right-of-use assets	(20,193)	(22,848)
Property and equipment and intangible assets	(4,366)	(3,025)
Convertible debt	(9,806)	(13,657)
Total gross deferred tax liabilities	(34,365)	(40,242)
Deferred tax assets less liabilities	103,743	102,517
Less: valuation allowance	(103,743)	(102,517)
Net deferred tax asset (liability)	$ -	$ -

As of December 31, 2020 and 2019, the Company's gross deferred tax was reduced by a valuation allowance of $103,743 and $102,517, respectively.

The valuation allowance increased by $1,226 and $20,209 during the years ended December 31, 2020 and 2019, respectively. The valuation allowance increased 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 valuation allowance increase in 2019 resulted primarily from changes in the deferred tax assets related to the net operating loss carryforwards and deferred revenue. The following table provides information about the Company's deferred tax valuation allowance.

	Year ended December 31,		
Deferred tax valuation allowance	**2020**	**2019**	**2018**
Beginning of period	$ 102,517	$ 82,308	$ 89,093
Additions charged against expenses	1,226	22,446	15,444
Deductions	-	(2,237)	(22,229)
End of period	$ 103,743	$ 102,517	$ 82,308

Net operating loss carryforwards for federal income tax purposes were approximately $326,944 and $327,415 at December 31, 2020 and 2019, respectively. State net operating loss carryforwards were $294,442 and $325,106 at December 31, 2020 and 2019, respectively. The federal and state net operating loss carryforwards will expire at various dates during 2021 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 $11,088 and $11,309 were available at December 31, 2020 and 2019, respectively. Headquarters credits are expected to be used to offset future state income tax license fees. The credits expire in various amounts during 2021 through 2035.

The Company follows FASB ASC 740-10 for accounting for unrecognized tax benefits. As of December 31, 2020, the Company had gross unrecognized tax benefits of $437.

A reconciliation of the beginning and ending amounts of unrecognized tax benefits is as follows for the years ended December 31:

	2020	2019	2018
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	-	-	-
Reductions for tax positions of prior years	-	-	-
Reductions for tax positions due to lapse of statute	-	-	-
Settlements	-	-	-
Balance at end of year	$ 437	$ 437	$ 437

At December 31, 2020 and 2019, none of the $437 liabilities for unrecognized tax benefits could impact the Company's effective tax rate, if recognized. The Company expects the unrecognized tax benefits to change by $71 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.

During the first quarter of 2019, the Company concluded that the composition of its operating segments changed as a result of changes in the structure of its internal organization. As a result of these changes, 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, 2020, 2019 and 2018.

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 $3,662 to the buyer for the year ended December 31, 2020. Additionally, the Company paid management oversight fees of $229 to the Buyer for the year ended December 31, 2020. The significant terms of the Preferred Stock are described in Note 13.

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 affiliated with an executive who is also a Company director and significant stockholder. 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 three 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.

In March 2019, the Company terminated its cancellable lease agreement to construct additional office space under its December 12, 2016 lease.

Payments related to these agreements were $15,137, $10,884, and $10,659 for the years ended December 31, 2020, 2019 and 2018, respectively. Amounts due to the related parties were recorded as $667 and $791 in accrued expenses in the accompanying consolidated balance sheets as of December 31, 2020 and 2019, respectively, 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 an executive who is also a Company director and significant stockholder. The companies provide construction project management services, private air transportation and other services. Expenses related to these companies were $177, $256, and $107 for the years ended December 31, 2020, 2019 and 2018, respectively. Amounts due to the related parties were de minimis as of December 31, 2020. No amounts were due to the related parties as of December 31, 2019.

During 2018, the Company entered into an agreement to purchase software and services from a company affiliated with a Company director. Payments related to this agreement were $102, $108, and $35 for the years ended December 31, 2020, 2019 and 2018, respectively. Amounts due to this company were de minimis as of December 31, 2020. No amounts were due to this company as of December 31, 2019.

21. Subsequent Events

Legal Proceedings

On March 2, 2021, the Company, along with other parties, was named as a defendant in a purported class-action lawsuit filed by an investor. The other parties named as defendants were parties involved in the secondary public offering of the Company’s common stock in March 2019 which include the selling shareholders and their affiliated companies, members of board of directors and management, and the offering underwriters. The complaint asserts claims on behalf of a class of persons who acquired our common stock in or traceable to our secondary public offering in March 2019. 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. The complaint seeks rescission or rescissory damages and compensatory damages, costs and fees incurred in the action. The Company does not believe the complaint has merit and plans to vigorously contest and defend against it.

Stock-Based Compensation

During January and February 2021, stock option exercises and vesting of restricted stock units resulted in the issuance of 174,125 shares of common stock.

Restructuring

During January 2021, the Company recorded restructuring costs of approximately $1,400 from a reduction to its workforce. Restructuring costs are comprised of one-time severance charges, continuation of health benefits and outplacement services and will be presented separately in operating expenses in the consolidated statements of operations and comprehensive loss.

Exhibit 4.5

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 50,000,000 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 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

As of December 31, 2020, there were 32,327,439 shares of our common stock outstanding. 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, and the shares of our common stock that may be issued pursuant to an offering under this registration statement will be, 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 can also 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. Each share of the Series A Preferred Stock had an initial stated value of $45 per share.

As of December 31, 2020, there were 1,777,778 shares of our Series A Preferred Stock outstanding. 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”).

- *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 will 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.

- *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.

Stock Awards Available For Issuance

As of December 31, 2020, we had options and restricted stock units outstanding with respect to 2,712,805 shares of common stock, including restricted stock units with time-based vesting criteria and performance-based vesting criteria.

As of December 31, 2020, total stock awards, including restricted stock units and performance restricted stock units, to exchange or purchase a total of 3,518,804 shares of common stock remain available for future issuance under our stock plans.

Registration Rights

As of December 31, 2020, stockholders holding approximately 2,699,654 shares of our common stock and 1,777,778 shares of our Preferred Stock had the right, subject to various conditions and limitations, to include their shares in registration statements relating to our securities. 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 66 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 not redeem the Notes prior to December 20, 2021. 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.

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 provide that our board is classified into three classes of directors. This 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. In February 2021, we announced that we will submit a proposal at the June 2021 Annual Meeting of Stockholders to declassify the board and provide for the annual election of directors.

- 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 up to 3,222,222 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”.

Exhibit 21.1

Benefitfocus, Inc.,
A Delaware corporation
List of subsidiaries

- Benefitfocus.com, Inc.
- BenefitStore, Inc.

Exhibit 23.1

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 9, 2021, 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, 2020.

/s/ Ernst & Young LLP

Charlotte, North Carolina
March 9, 2021

Exhibit 31.1

CERTIFICATION PURSUANT TO
SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002

I, Stephen M. Swad, 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 9, 2021

/s/ Stephen M. Swad
Stephen M. Swad
President and Chief Executive Officer
(Principal executive officer)

Exhibit 31.2

**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 9, 2021

/s/ Alpana Wegner
Alpana Wegner
Chief Financial Officer
(Principal financial and accounting officer)

Exhibit 32.1

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, Stephen M. Swad, 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, 2020, 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 9, 2021

/s/ Stephen M. Swad
Stephen M. Swad
President and Chief Executive Officer
(Principal executive officer)

/s/ Alpana Wegner
Alpana Wegner
Chief Financial Officer
(Principal financial and accounting officer)

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

FORM 10-K/A
(Amendment No. 1)

(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, 2020

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:

Title of each class	Trading Symbol	Name of each exchange of which registered
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, 2020 (based on the closing sale price of $10.76 on that date), was approximately $211,206,803. 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 2, 2021 was 32,504,073.

EXPLANATORY NOTE

On March 10, 2021, Benefitfocus, Inc. filed its Annual Report on Form 10-K for the fiscal year ended December 31, 2020 (the "Original Form 10-K"). The Original Form 10-K omitted Part III, Items 10 (*Directors, Executive Officers and Corporate Governance*), 11 (*Executive Compensation*), 12 (*Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters*), 13 (*Certain Relationships and Related Transactions, and Director Independence*), and 14 (*Principal Accountant Fees and Services*) in reliance on General Instruction G(3) to Form 10-K, which provides that such information may be either incorporated by reference from the registrant's definitive proxy statement or included in an amendment to Form 10-K, in either case filed with the Securities and Exchange Commission (the "SEC") not later than 120 days after the end of the fiscal year.

Our definitive proxy statement for the 2021 Annual Meeting of Stockholders will not be filed within 120 days of the end of the last fiscal year. Accordingly, this Amendment No. 1 to Form 10-K (this "Amendment") is being filed solely to:

- amend Part III, Items 10, 11, 12, 13, and 14 of the Original Form 10-K to include the information required by such Items;
- delete the reference on the cover of the Original Form 10-K to the incorporation by reference of portions of our proxy statement into Part III of the Original Form 10-K; and
- file new certifications of our principal executive officer and principal financial officer as exhibits to this Amendment under Item 15 of Part IV hereof, pursuant to Rule 12b-15 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Because no financial statements are contained within this Amendment, we are not including certifications pursuant to Section 906 of The Sarbanes-Oxley Act of 2002.

This Amendment does not otherwise change or update any of the disclosures set forth in the Original Form 10-K and does not otherwise reflect any events occurring after the filing of the Original Form 10-K. Accordingly, the Amendment should be read in conjunction with the Original Form 10-K and the Company's filings made with the SEC subsequent to the filing of the Original Form 10-K.

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

Benefitfocus, Inc.
Form 10-K
For Year Ended December 31, 2020

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PART III

Item 10. Directors, Executive Officers and Corporate Governance.

Board of Directors

Background and Qualifications

The names of the members of our board of directors, their respective ages, their positions with Benefitfocus, and other biographical information as of April 20, 2021 are set forth below. There is no family relationship between any director or executive officer of our Company.

Name	Age	Position(s) with Benefitfocus	Director Since
Douglas A. Dennerline	62	Director	August 2014
A. Lanham Napier	50	Director	September 2014
Coretha M. Rushing	64	Director	March 2021
Zeynep Young	50	Director	January 2021
Stephen M. Swad	59	Chief Executive Officer, Director	August 2020
Francis J. Pelzer V	50	Director	May 2013
Mason R. Holland, Jr.(1)	56	Executive Chairman, Director	June 2000

(1) Mr. Holland will not stand for re-election when his current term expires at our 2021 Annual Meeting of Stockholders.

Douglas A. Dennerline—Director

Doug Dennerline has served as a member of the board of directors since August 2014. He serves on the compensation and talent and nominating and governance committees. He is currently Chief Executive Officer and Executive Chairman of BetterWorks Systems, Inc. From January 2013 to March 2018, he was Chief Executive Officer and on the board of directors of Alfresco Software, Inc. and was previously President and a director of SuccessFactors, Inc. Prior to joining SuccessFactors, Mr. Dennerline was Executive Vice President of Sales, Americas and Europe, Middle East and Africa for Salesforce.com, Inc. (NYSE: CRM). He is currently serving on the board of VBrick Systems, Inc. AmplifiedAg, Inc., and Aktana, Inc. and previously served on the board of SugarCRM Inc. Mr. Dennerline holds a B.S. in Business Administration from Arizona State University.

We believe Mr. Dennerline's experience as chief executive officer of a software company and familiarity with the software industry brings to the board of directors important skills. In addition, his experience as a director of a software and technology company brings to the board critical skills related to financial oversight of complex organizations, strategic planning, and corporate governance. All of this qualifies him to serve on the board and as the Chairman Elect of the board.

A. Lanham Napier—Director

Lanham Napier has served as a member of the board of directors since September 2014. He serves on the audit and nominating and governance committees and is the chair of the nominating and governance committee. Mr. Napier is a Co-Founder, Co-Chief Executive Officer, and member of the board of managers of BuildGroup Management, LLC. BuildGroup Management, LLC is a privately held company based in Austin, Texas, that operates and invests in emerging software companies in select technology categories. Affiliates of BuildGroup Management, LLC hold all of the outstanding shares of our Preferred Stock. Mr. Napier is also Co-Chief Executive Officer and chairman of the board of Build Acquisition Corp. (NYSE: BGSX.UN), a newly incorporated blank check company formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination with one or more businesses. Mr. Napier was formerly the Chief Executive Officer of Rackspace Hosting, Inc. (NYSE: RAX), which was acquired by Apollo Global Management, LLC. At various times during his 14 years at Rackspace, he also served in other capacities at the company, including as its President, Chief Financial Officer, and member of its board of directors. Prior to that, Mr. Napier was an analyst of Merrill Lynch & Co., Inc. Mr. Napier serves on the board of directors of Transtelco, Inc., Anaconda Inc., DigniFi Tech Inc., and Leading Quality Assurance Limited, among others. Mr. Napier holds an M.B.A. from Harvard University and a B.A. in Economics from Rice University.

We believe Mr. Napier's experience as chief executive officer of a public company, familiarity with the software industry and his experience as a director of a software company brings to the board of directors critical skills related to strategic planning and corporate governance and qualifies him to serve on the board.

Coretha M. Rushing—Director

Coretha Rushing has served as a member of the board of directors since March 2021. Ms. Rushing is Managing Director of Merryck & Co. Americas, LLC, a global executive coaching and mentoring firm. From May 2006 to December 2019, she was Corporate Vice President and Chief Human Resources Officer of Equifax Inc. (NYSE: EFX). Prior to that, from April 1996 to June 2005, she was Senior Vice President, Chief Human Resources Officer at The Coca-Cola Company (NYSE: KO). Ms. Rushing currently serves on the board of directors and compensation committee of 2U, Inc. (NASDAQ: TWOU) and is an external board advisor for Spencer Stuart Consulting Firm. She previously served on the board, including most recently as Chair and then Chair Emeritus, of The Society for Human Resource Management. Ms. Rushing holds a B.S. in Industrial Psychology from East Carolina University and an M.Ed. in Human Resources and Counseling from The George Washington University.

Ms. Rushing brings 30 years of experience in the human resources arena, with expertise spanning corporate and consulting environments across various industries, including technology and software, financial services and consumer goods. We believe that her expertise with respect to critical human capital management skills including succession planning, employee engagement, talent development, executive coaching, compensation and corporate governance qualifies her to serve on the board.

Zeynep Young—Director

Zeynep Young has served as a member of the board of directors since January 2021. Since December 2020, Ms. Young has served as the Strategic Advisor for BuildGroup Management, LLC. BuildGroup Management, LLC is a privately held company based in Austin, Texas, that operates and invests in emerging software companies in select technology categories. Ms. Young is also Co-Chief Executive Officer and a director of Build Acquisition Corp. (NYSE: BGSX.UN), a newly incorporated blank check company formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination with one or more businesses. From March 2020 until December 2020, she was the Chief Executive Officer of Calytera, Inc. Prior to that, she was a venture partner and advisor for Next Coast Ventures, LLC, which she joined in March 2017. Ms. Young was the Founder and Chief Executive Officer of Double Line, Inc. from February 2009 until January 2016. She was Portfolio Director, Texas for The Michael & Susan Dell Foundation from October 2005 through February 2009, where she oversaw a portfolio of investments in market-leading technologies in education and healthcare. Ms. Young began her career at McKinsey & Company in 1997. Ms. Young previously served as a member of the board of directors and compensation committee of Cipherloc Corporation (OTCQB: CLOC) from August 2019 until January 2021. Ms. Young also serves on the boards of YPO Austin, Texas 2036 and Texas Book Festival. Ms. Young holds an M.B.A. from the Kellogg School of Management at Northwestern University and a B.A. in Economics and Sociology from Rice University.

Ms. Young is an experienced entrepreneur and executive with a track record of leading and scaling private software companies, particularly in the government, education and social sectors. In addition to her roles in the government technology sector, Ms. Young is an experienced public company director, and her familiarity with strategic planning and corporate governance in the software industry and her perspective as an investor at one of the leading family offices qualifies her to serve on the board.

Stephen M. Swad—Chief Executive Officer, Director

Steve Swad has been our Chief Executive Officer and a member of the board of directors since August 2020. He previously served as our Chief Financial Officer from July 2019 until his recent appointment. He also had previously served on our board from December 2013 until July 2019. From January 2016 until July 2019, Mr. Swad served as Chief Financial Officer of Vox Media, LLC. From February 2012 until April 2015, Mr. Swad served as the President, Chief Executive Officer, and a director of Rosetta Stone Inc., a previously publicly held language-learning software company until its merger with Cambium Holding Corp. in 2020. He was previously its Chief Financial Officer beginning in November 2010. Prior to joining Rosetta Stone, Mr. Swad served as the Executive Vice President and Chief Financial Officer of Comverse Technology, Inc., beginning in May 2009. Prior to that, he served as Executive Vice President and Chief Financial Officer of Federal National Mortgage Association (Fannie Mae) (OTCQB: FNMA) from May 2007 until August 2008. He has also held various senior financial management positions with then-public companies, including AOL Inc. (now a part of Oath Inc., which was renamed Verizon Media, which is a division of Verizon Communications) and Time Warner Inc. (now known as Warner Media, LLC) and its subsidiaries. Mr. Swad, a former partner of KPMG LLP, has also served as a Deputy Chief Accountant at the SEC. He served on the board of Eloqua, Inc. from August of 2011 until February 2013, including between August 2012 and February 2013, during which time it was a publicly held company. Mr. Swad holds a B.A. in business administration from the University of Michigan.

Among other experience, qualifications, attributes and skills, we believe Mr. Swad's financial and accounting experience, ability to lead public companies, and familiarity with consumer-facing technology companies bring to the board of directors important skills related to corporate finance and governance, and qualify him to serve on the board.

Francis J. Pelzer V—Director

Frank Pelzer has served as a member of the board of directors since May 2013. He serves on the audit and compensation and talent committees and is the chair of the audit committee. He is currently Executive Vice President and Chief Financial Officer of F5 Networks, Inc. (NASDAQ: FFIV). Until May 2018, Mr. Pelzer served as President and Chief Operating Officer of SAP SE's (Xetra: SAP) Cloud Business Group, and he was the Chief Financial Officer prior to that, starting in January 2015. From May 2010 to January 2015, Mr. Pelzer served as the Chief Financial Officer of Concur Technologies, Inc. (acquired by SAP SE), a provider of web-based and mobile integrated travel and expense management solutions. From 2004 to May 2010, Mr. Pelzer served as a Director and Vice President in the Software Investment Banking group at Deutsche Bank AG (NYSE: DB). Prior to that, Mr. Pelzer was a Vice President with Credit Suisse First Boston and a management consultant with Kurt Salmon Associates, now a part of Accenture plc (NYSE: ACN). Mr. Pelzer serves on the board of directors of Modumetal, Inc. and Duck Creek Technologies, Inc. (NASDAQ: DCT). Mr. Pelzer graduated with an M.B.A. as an Edward Tuck Scholar with Distinction from the Tuck School of Business at Dartmouth and holds a B.A. from Dartmouth College.

We believe Mr. Pelzer's experience as a chief financial officer of a public company, familiarity with the software industry, accounting standards, and public company disclosure requirements, and his ability to serve as our audit committee financial expert, bring to the board of directors important skills and qualify him to serve on the board.

Mason R. Holland, Jr.—Executive Chairman, Director

Mason Holland, one of our founders, has been our Executive Chairman and a member of the board of directors since our founding in June 2000. Mr. Holland is responsible for the coordination of strategic partnerships with industry leaders and client relations. Mr. Holland founded American Pensions, Inc. in 1988, serving as its Chairman and President from 1988 to 2003. Mr. Holland also has established and operated a number of other business entities throughout his 35 plus year career, including a real estate development firm established in 1989 and still operational and a jet aircraft manufacturer for which he served as lead investor, chief executive officer and board chairman from 2009 to 2014. Mr. Holland has served on the board of the private company AmplifiedAg, Inc. since September 2018 and on the boards of the following non-profit organizations, American Red Cross, Lowcountry Chapter, South Carolina Region; South Carolina Aquarium, and The Charleston Gaillard Management Corporation. Mr. Holland attended Old Dominion University in Norfolk, Virginia.

We believe Mr. Holland brings to the board of directors valuable perspective and experience as our Executive Chairman, one of our founders and as a large stockholder, as well as knowledge of the benefits industry and experience managing and directing companies through various stages of development, all of which qualify him to serve on the board.

Mr. Holland will not stand for re-election when his current term expires at our 2021 Annual Meeting of Stockholders.

Committees of the Board of Directors

The following table provides membership information of our directors on each committee of our board of directors as of April 20, 2021.

	Audit Committee	**Compensation & Talent Committee**	**Nominating & Governance Committee**
Douglas A. Dennerline	●	●	●
Francis J. Pelzer V	C	●	●
Coretha M. Rushing (1)	●		

C = Committee Chair

● = Member

(1) Ms. Rushing joined our audit committee in March 2021 when Ana M. White resigned from the board of directors. Ms. White previously joined our audit committee in June 2020 when Mr. Napier stepped down from the committee.

Our board of directors has determined that of the members of the audit committee, Messrs. Pelzer (Chair) and Dennerline and Ms. Rushing are, and Ms. White during her period of service on the audit committee was, independent within the meaning of the Nasdaq Listing Rules and meet the additional test for independence for audit committee members imposed by SEC regulations 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.

Executive Officers

The information required by this Item concerning our executive officers is set forth at the end of Part I of the Original Form 10-K under the heading "Executive Officers".

Code of Ethics

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*.

Item 11. Executive Compensation.

The following discussion and analysis of compensation arrangements of our named executive officers for 2020 should be read together with the compensation tables and related disclosures on our current plans, considerations, expectations and determinations regarding future compensation programs. Actual compensation programs that we may adopt in the future might differ materially from currently planned programs summarized in this discussion.

Compensation Committee Report

The compensation and talent committee of our board of directors has reviewed and discussed the Compensation Discussion and Analysis contained in this Amendment with management and, based on that review and discussion, the compensation and talent committee recommended to the board that the Compensation Discussion and Analysis be included in this Amendment.

THE COMPENSATION AND TALENT COMMITTEE
OF THE BOARD OF DIRECTORS
Douglas A. Dennerline
Francis J. Pelzer V
Ana M. White (member of the compensation and talent committee until March 2021)

Compensation Discussion and Analysis

This Compensation Discussion and Analysis describes the material elements of our executive compensation program during 2020. It also provides an overview of our executive compensation philosophy, including our principal compensation policies and practices. Finally, it analyzes how and why the compensation and talent committee of our board of directors arrived at the specific compensation decisions for our named executive officers in 2020, and discusses the key factors that the compensation and talent committee considered in determining named executive officer compensation.

"Named executive officers" includes individuals who served as our principal executive officer at any time during 2020, individuals who served as our principal financial officer at any time during 2020, and the only other persons serving as an executive officer as of December 31, 2020, plus two individuals who were executive officers during 2020 but were not executive officers on December 31, 2020. Our named executive officers for 2020 were:

- Stephen M. Swad, who was our Chief Financial Officer from July 2019 to August 2020 and our President and Chief Executive Officer (our "CEO") starting in August 2020;
- Alpana Wegner, who began service as our Chief Financial Officer (our "CFO") in August 2020;
- Mason R. Holland, Jr., who serves as Executive Chairman of our board of directors until the 2021 Annual Meeting of Stockholders;
- Annmarie Fini, who serves as our Executive Vice President of Customer Success (our "EVP"), but due to a reorganization of management, stopped serving as an executive officer in December 2020;
- Raymond A. August, who served as our Chief Executive Officer until August 2020 (our "former CEO"); and
- James P. Restivo, who served as our Chief Technology Officer (our "former CTO") until September 2020.

Executive Summary

Who We Are

We provide industry-leading, cloud-based benefits management technology solutions for employers and health plans. The Benefitfocus enrollment platform simplifies how organizations procure benefits and connect to the necessary benefits products and services that improve the lives of their employees and the American workforce. Our core technology solutions facilitate employee benefits administration and enrollment; our solutions enable working Americans and their families to select and engage in the right benefits products and services for themselves; and our data advantage delivers insights to employers, health, plans and their advisors to help control healthcare spending and reduce unnecessary expenses.

The Benefitfocus Platform has a multi-tenant architecture and has a user-friendly interface designed for employees to access all of their benefits in one place. Our comprehensive solutions support medical benefit plans and non-medical benefits, such as, dental, life, disability insurance, income protection, digital health and financial wellness. 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 the Benefitfocus Platform 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 simplify the management of complex benefits processes, from sales and enrollment to implementation and ongoing administration. It provides their employees with an engaging, 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. This includes delivering strategic insights that improve their employer clients' benefits experience and demonstrating greater value through access to a larger set of relevant products for employers, which should bring 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.

In 2018, we expanded our economic model to include a transaction-oriented solution, known as Benefit Catalog (formerly BenefitsPlace), designed to align brokers, health plans, 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 the Benefit Catalog products to employee and 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 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 significant visibility into our future operating results, which enhances our ability to manage our business.

2020 Business and Financial Highlights

With the challenges of the COVID-19 pandemic and social and political turmoil in the United States, 2020 was a challenging year for us and our business partners. However, we remained committed to creating shareholder value and, with our recurring revenue business model and the strength of our leadership team, delivered on key strategic business and financial objectives during 2020. Our 2020 business and financial highlights include:

Business Highlights

- invested in our platform to help remove friction in benefits management and improve the customer experience through AI-backed platform enrollment enhancements;
- enhanced Benefit Catalog, including through key partnerships with Lincoln Financial Group and Transamerica;
- expedited bringing a resource center devoted to addressing the COVID-19 pandemic and its impact on customers' benefits-related operations and communications to help them deal with the pandemic;
- developed with LIMRA the first data exchange standards focused on post-enrollment data for the employee benefits market not governed by HIPAA;
- shifted our workforce strategy to fully remote and enhanced our health and welfare benefits for our associates in response to the COVID-19 pandemic;
- swiftly took a series of actions to help address the impact of the COVID-19 pandemic on our business with a view to protecting our associates, customers and business partners, including significantly reducing our underlying expenses, enhancing our financial flexibility, and maintaining our liquidity profile;
- strengthened our leadership team with the hiring of our first chief data officer and executive vice president, product and engineering;
- delivered open enrollment with a customer satisfaction score from enrolled employees exceeding 90% and improved our employer customer Net Promoter Score (NPS);
- successfully transitioned our annual user conference to a fully digital format with record attendance; and
- refined our real estate strategy with a focus on optimizing our footprint for the future of work including exiting certain office leases, optimizing our office utilization, and enhancing our associates' work experience to help improve productivity and effectiveness.

Financial Highlights

- maintained software revenue retention of greater than 90% during a period of global economic unrest;
- generated cash from operating activities of $27.7 million, compared to using cash in operating activities of $18.4 million in 2019;
- improved GAAP net loss by approximately 47.0% to ($24.3) million, compared to ($45.5) million in 2019;
- reduced GAAP net loss per share to ($0.87), compared to ($1.40) for 2019; and
- achieved adjusted EBITDA of $44.0 million, compared to $19.0 million in 2019.

A reconciliation of the GAAP and non-GAAP information referenced above, including an explanation of how we calculate the non-GAAP financial measures and a reconciliation of them to the applicable GAAP financial measures, is set forth in the Original 10-K.

Executive Compensation Results

Based on our overall operating environment and financial results, the compensation and talent committee took the following key actions with respect to the compensation of our named executive officers for 2020:

2020 Changes in Executive Officer Compensation Arrangements

In connection with Ms. Fini's appointment as our Executive Vice President, we entered into an employment agreement, effective on January 1, 2020, and we amended her agreement on December 21, 2020 (as amended, the "Fini Employment Agreement").

In connection with Mr. August's separation from our Company as President and Chief Executive Officer and a member of our board of directors, we entered into a separation and release agreement with him, dated August 24, 2020 (the "August Separation Agreement").

In connection with Mr. Swad's appointment as our Chief Executive Officer, we entered into an amendment, dated August 25, 2020, to his existing employment agreement, which was originally dated July 2, 2019 (the "Swad Employment Agreement").

In connection with Ms. Wegner's appointment as our Chief Financial Officer, we entered into an employment agreement dated August 25, 2020 with Ms. Wegner (the "Wegner Employment Agreement").

In connection with Mr. Restivo's separation from our Company as Chief Technology Officer, we entered into a separation and release agreement with him, dated September 29, 2020 (the "Restivo Separation Agreement").

The Fini Employment Agreement, Swad Employment Agreement and Wegner Employment Agreement were negotiated on our behalf by Mr. Holland, with input from the compensation and talent committee, our external independent compensation consultant, Compensia, Inc. ("Compensia"), and our primary outside legal counsel, Wyrick Robbins Yates & Ponton LLP. In establishing the compensation arrangements for Ms. Fini, Mr. Swad, and Ms. Wegner, we took into consideration the experience and skills that a qualified candidate would need to manage a growing business in a dynamic and continually changing environment and the competitive market for similar positions at other comparable companies based on a review of relevant compensation data, balancing both competitive and internal equity considerations. For a summary of the material terms and conditions of the Fini Employment Agreement, Swad Employment Agreement and Wegner Employment Agreement, see ***"Employment Agreements"*** below.

COVID-19-Related Compensation Adjustments

In response to the COVID-19 pandemic, in May 2020, the Company took swift expense reduction actions to mitigate risks and ensure the stability of the Company given the uncertainties surrounding COVID-19. These actions included:

- implementing executive compensation reductions, including reducing the take-home pay for the Chief Executive Officer to the minimum allowed by law ($684/week) and a 20% salary reduction for the executive leadership team;
- implementing a reduction in take-home pay for the Executive Chairman of the board of directors to the minimum allowed by law ($684/week) and a 25% reduction in equity compensation for all non-employee board members;
- reduced grants of long-term incentive awards by 25% and shortened the vesting term by 25%; and
- suspending merit increases and promotions.

The salary reduction actions were reversed in August 2020 and salaries were restored to previous levels.

Other Compensation Adjustments

In light of the Company's financial results in terms of revenue during the past year, our board of directors exercised a discretionary downward adjustment to the amounts earned by the Company's executive officers under the Management Incentive Bonus Program and the long-term incentive awards, with both paying out 90% of target for 2020.

Base Salaries

Approved annual base salaries for our named executive officers (other than Messrs. August and Swad) in amounts ranging from $325,779 to $375,000. Approved an annual base salary for Mr. August in the amount of $525,000 and approved an annual base salary for Mr. Swad in the amount of $475,000, effective on August 25, 2020. Ms. Wegner was appointed our Chief Financial Officer, effective August 24, 2020, and her annual base salary was adjusted to $350,000 for the remainder of 2020.

Management Incentive Bonus Payments

Approved management incentive bonus payments for performance equal to 90% of their target annual incentive bonus opportunities for each our named executive officers, including a management incentive bonus payment for Mr. Swad in the amount of $390,996, of which $193,002 was paid in cash and $197,994 was paid in shares of our common stock; and a management incentive bonus payment for Mr. August in the amount of $562,387, of which $236,250 was paid in cash and $326,137 was paid in shares of our common stock.

Long-Term Incentive Compensation

Granted long-term incentive compensation opportunities in the form of performance restricted stock units ("PRSUs") that may be settled for shares of our common stock, and time-based restricted stock units ("RSUs") that may be settled for shares of our common stock to our named executive officers (other than Messrs. August and Swad and Ms. Wegner), in amounts ranging from an aggregate value of approximately $249,613 to approximately $574,667 at target (under FASB ASC Topic 718), as well as a PRSU award and a time-based RSU award for Mr. Swad with an aggregate value of approximately $1,150,608 at target (under FASB ASC Topic 718), and for Mr. August with an aggregate value of approximately $2,681,810 at target (under FASB ASC Topic 718). Such bonus payments were made under our performance-based Management Incentive Bonus Program.

Pay-for-Performance

We believe our executive compensation program is reasonable, competitive, and appropriately balances the goals of attracting, motivating, rewarding, and retaining our executive officers with the goal of aligning their interests with those of our stockholders. To ensure this alignment and motivate and reward individual initiative and effort, a substantial portion of our executive officers' target annual total direct compensation opportunity is both performance-based and "at risk".

We emphasize performance-based compensation that appropriately rewards our named executive officers through two separate compensation elements:

- First, we provide the opportunity to participate in our Management Incentive Bonus Program, which provides for payments in both cash and equity if they produce short-term financial, operational, and strategic results that meet or exceed the objectives set forth in our annual operating plan.
- Second, we grant PRSUs, which comprise at least one-half of each named executive officer's long-term incentive compensation award, with the shares of our common stock subject to such awards to be earned over a one-year performance period based on our actual results as measured against pre-established target levels for software services revenue and adjusted EBITDA for such period, and the earned shares, if any, vesting over a subsequent multi-year period. Software services revenue is an indicator of long-term enterprise value creation from revenue that continues for multiple years. Adjusted EBITDA is an indicator of the ongoing financial strength of our business.

These variable pay elements ensure that a substantial portion of our named executive officers' target total direct compensation is contingent (rather than fixed) in nature, with the amounts ultimately payable subject to variability above or below target levels commensurate with our actual performance.

We believe that this pay mix provides balanced incentives for our named executive officers to drive financial performance and long-term growth. To ensure that we remain faithful to our compensation philosophy, the compensation and talent committee regularly evaluates the relationship between the reported values of the equity awards granted to our named executive officers, the amount of compensation realizable (and, ultimately, realized) from such awards in subsequent years, and our total stockholder return over this period.

Executive Compensation Policies and Practices

We endeavor to maintain sound governance standards consistent with our executive compensation policies and practices. The compensation and talent committee regularly evaluates our executive compensation program to ensure that it is consistent with our short-term and long-term goals given the dynamic nature of our business and the market in which we compete for executive talent. The following summarizes our executive compensation and related policies and practices:

What We Do

- ***Maintain an Independent Compensation and Talent Committee***. The compensation and talent committee consists solely of independent directors who establish our compensation policies and practices.
- ***Retain an Independent Compensation Advisor***. The compensation and talent committee engaged its own compensation consultant in 2020 to provide information, analysis, and other advice on executive compensation independent of management. This consultant performed no other consulting or other services for us in 2020.
- ***Annual Executive Compensation Review***. The compensation and talent committee conducts an annual review and approval of our compensation strategy, including a review and determination of our compensation peer group used for comparative purposes and a review of our compensation-related risk profile to ensure that our compensation programs do not encourage excessive or inappropriate risk-taking and that the level of risk that they do encourage is not reasonably likely to have a material adverse effect on us.
- ***Compensation At Risk***. Our executive compensation program is designed so that a significant portion of our named executive officers' compensation is "at risk" based on corporate performance, as well as equity-based, to help align the interests of our named executive officers and stockholders.
- ***Use a Pay-for-Performance Philosophy***. The majority of our named executive officers' compensation is directly linked to corporate performance. We also structure their target total direct compensation opportunities with a significant long-term equity component, thereby making a substantial portion of each named executive officer's target total direct compensation dependent upon our stock price performance.
- ***"Double-Trigger" Change-in-Control Arrangements***. All of our executive officers' post-employment compensation arrangements payable in the event of a change in control of the Company are "double-trigger" arrangements that require both a change in control of the Company plus a qualifying termination of employment before payments and benefits are paid. All such payments and benefits are also subject to the execution and delivery of an effective release of claims in favor of the Company.
- ***Stock Ownership Policy***. We maintain a stock ownership policy for our Chief Executive Officer, Chief Financial Officer, and other executive officers who are subject to Section 16 of the Exchange Act and the non-employee members of our board of directors.

What We Do Not Do

- ***No Guaranteed Bonuses***. We do not provide guaranteed bonuses to our named executive officers.
- ***No Executive Retirement Plans***. We do not currently offer, nor do we have plans to offer, defined benefit pension plans or any non-qualified deferred compensation plans or arrangements to our named executive officers other than the plans and arrangements that are available to all employees. Our named executive officers are eligible to participate in our Section 401(k) retirement savings plan on the same basis as our other employees.
- ***No Tax Payments on Perquisites***. We do not provide any tax reimbursement payments (including "gross-ups") on any perquisites or other personal benefits.

- ***No Excise Tax Payments on Future Post-Employment Compensation Arrangements***. We do not provide any excise tax reimbursement payments (including "gross-ups") on payments or benefits contingent upon a change in control of the Company.
- ***No Special Welfare or Health Benefits***. We do not provide our named executive officers with any welfare or health benefit programs, other than participation in our broad-based employee programs.
- ***No Stock Option Re-pricing***. We do not permit options to purchase shares of our common stock to be re-priced to a lower exercise price without the approval of our stockholders.

Stockholder Advisory Votes on Named Executive Officer Compensation

At our 2020 Annual Meeting of Stockholders, we conducted our second annual "Say-on-Pay" vote. Approximately 94% of the shares represented and entitled to vote on the matter voted to approve, on an advisory basis, the compensation of our named executive officers. Our board of directors and the compensation and talent committee consider the result of the Say-on-Pay vote in determining the compensation of our executive officers, including our named executive officers. Based on the strong level of support for our executive compensation philosophy, program and practices demonstrated by the result of last year's Say-on-Pay vote, among other factors, our board and the compensation and talent committee determined not to implement significant changes to our executive compensation program for 2020.

We value the opinions of our stockholders. Stockholder feedback, including through direct discussion and prior stockholder votes, is reported to our board of directors throughout the year. Our goal is to be responsive to our stockholders and ensure we understand and address their concerns and observations. Our board and the compensation and talent committee will consider the outcome of this year's Say-on-Pay vote, as well as feedback received throughout the year, when making compensation decisions for our named executive officers.

In addition, consistent with the recommendation of our board of directors and the preference of our stockholders as reflected in the non-binding stockholder advisory vote on the frequency of future Say-on-Pay votes held at our 2019 Annual Meeting of Stockholders, we intend to hold future Say-on-Pay votes on an annual basis.

Executive Compensation Philosophy and Objectives

Our executive compensation program is guided by our overarching philosophy of paying for demonstrable performance. Consistent with this philosophy, we have designed our executive compensation program to achieve the following primary objectives:

- provide market-competitive compensation and benefit levels that will attract, motivate, reward, and retain a highly talented team of executives within the context of responsible cost management;
- establish a direct link between our financial, operational, and strategic objectives and results, as well as our values, and the compensation of our executives;
- align the interests and objectives of our executives with those of our stockholders by linking the long-term incentive compensation opportunities to stockholder value creation and their cash incentives to our annual performance;
- target performance metrics and milestones at the top quartile of the competitive market to help drive the creation of stockholder value; and
- offer total compensation opportunities to our executives that are competitive and fair.

Program Design

We structure the annual compensation of our named executive officers using three principal elements: base salary, annual incentive bonus opportunities, and long-term incentive compensation opportunities in the form of equity awards. While the pay mix may vary from year to year, the ultimate goal is to achieve our compensation objectives as described above.

The key component of our executive compensation program has been long-term incentive compensation in the form of equity awards for shares of our common stock. We believe that these awards offer our named executive officers a valuable long-term incentive that aligns their interests with the long-term interests of our stockholders.

We also offer cash compensation in the form of base salaries that we believe, overall, are competitive within the market range for companies of similar size, stage of development, and growth potential. In addition, in designing annual incentive bonus opportunities, the compensation and talent committee focuses on the achievement of the financial and strategic objectives that will further our longer-term growth goals in making its determinations.

The design of our executive compensation program is influenced by a variety of factors, with the primary goals being to align the interests of our named executive officers and stockholders and to link pay with performance. We evaluate performance over short-term (annual) and long-term periods based on our financial and operational performance, including results for certain key performance measures.

We have not adopted policies or employed guidelines for allocating compensation between current and long-term compensation, between cash and non-cash compensation, or among different forms of non-cash compensation.

Compensation-Setting Process

Role of Compensation and Talent Committee

The compensation and talent committee discharges the responsibilities of our board of directors relating to the compensation of our executive officers, key employees, and the non-employee members of our board. The compensation and talent committee has overall responsibility for overseeing our compensation and benefits policies generally, and overseeing and evaluating the compensation plans, policies, and practices applicable our executive officers. In addition, the compensation and talent committee makes all final decisions regarding the compensation of our Chief Executive Officer and other executive officers.

In carrying out its responsibilities, the compensation and talent committee evaluates our compensation policies and practices with a focus on the degree to which these policies and practices reflect our executive compensation philosophy, develops strategies and makes decisions that it believes further our philosophy or align with developments in best compensation practices, and reviews the performance of our executive officers when making decisions with respect to their compensation.

The compensation and talent committee's authority, duties, and responsibilities are further described in its charter, which is reviewed annually and revised and updated as warranted. The most recent update to the compensation and talent committee charter was made in December 2020. The charter is available in the *Company—Investor Relations—Corporate Governance* section of our website at *www.benefitfocus.com*.

The compensation and talent committee retains a compensation consultant to provide support in its review and assessment of our executive compensation program.

Setting Target Total Direct Compensation

The compensation and talent committee generally reviews the base salary levels, annual incentive bonus opportunities, and long-term incentive compensation opportunities of our named executive officers and all related performance criteria at the beginning of the fall of each year, or more frequently as warranted.

Formal compensation decisions are made after the beginning of the fiscal year, with adjustments generally effective at the beginning of the year.

The compensation and talent committee does not establish a specific target for formulating the target total direct compensation opportunities of our named executive officers. In making decisions about the compensation of our named executive officers, the compensation and talent committee relies primarily on the general experience of its members and subjective considerations of various factors, including the following:

- our executive compensation program objectives;
- our performance against the financial, operational, and strategic objectives established by the compensation and talent committee and our board of directors;
- each individual named executive officer's knowledge, skills, experience, qualifications, and tenure relative to other similarly situated executives at the companies in our compensation peer group;
- the scope of each named executive officer's role and responsibilities compared to other similarly situated executives at the companies in our compensation peer group;
- the prior performance of each individual named executive officer, based on a subjective assessment of his or her contributions to our overall performance, ability to lead his or her business unit or function, and work as part of a team, all of which reflect our core values;
- the potential of each individual named executive officer to contribute to our long-term financial, operational, and strategic objectives;
- our Chief Executive Officer's compensation relative to that of our named executive officers, and compensation parity among our named executive officers;
- our financial performance relative to our compensation and performance peers;
- the compensation practices of our compensation peer group and the positioning of each named executive officer's compensation in a ranking of peer company compensation levels based on an analysis of competitive market data; and
- the recommendations of our Chief Executive Officer with respect to the compensation of our other named executive officers.

These factors provide the framework for compensation decision-making and final decisions regarding the compensation opportunity for each named executive officer. No single factor is determinative in setting compensation levels, nor is the impact of any individual factor on the determination of pay levels quantifiable.

The compensation and talent committee does not engage in formal benchmarking against other companies' compensation programs or practices to establish our compensation levels or make specific compensation determinations with respect to our named executive officers. Instead, in making its determinations, the compensation and talent committee reviews information summarizing the compensation paid at a representative group of peer companies, to the extent that the executive positions at these companies are considered comparable to our positions and informative of the competitive environment and more broad-based compensation surveys to gain a general understanding of market compensation levels. In addition, the compensation and talent committee does not weight the foregoing factors in any predetermined manner, nor does it apply any formulas in making its compensation determinations. The members of the compensation and talent committee consider all of this information in light of their individual experience, knowledge of the Company, knowledge of the competitive market, knowledge of each named executive officer, and business judgment in making their determinations.

The compensation and talent committee also considers the potential risks in our business when designing and administering our executive compensation program, and we believe our balanced approach to performance measurement and pay delivery works to avoid misaligned incentives for individuals to undertake excessive or inappropriate risk.

Role of Management

In discharging its responsibilities, the compensation and talent committee works with members of our management, including our Chief Executive Officer. Our management assists the compensation and talent committee by providing information on corporate and individual performance, competitive market data, and management's perspective and recommendations on compensation matters.

Typically, our Chief Executive Officer will make recommendations to the compensation and talent committee regarding compensation matters, including adjustments to annual cash compensation, long-term incentive compensation opportunities, and program structures, for our named executive officers, except with respect to his own compensation. As the year draws to a close, our Chief Executive Officer reviews the performance of our other named executive officers based on such individual's level of success in accomplishing the business objectives established for him or her for the year and his or her overall performance during that year, and then shares these evaluations with, and makes recommendations to, the compensation and talent committee for each element of compensation as described above. The annual business objectives for each named executive officer are developed through mutual discussion and agreement between our Chief Executive Officer and the named executive officers and are reviewed with our board of directors. The compensation and talent committee reviews and discusses these recommendations and proposals with our Chief Executive Officer and uses them as one factor in determining and approving the compensation for our named executive officers.

Our Chief Executive Officer also attends meetings of our board of directors and the compensation and talent committee at which executive compensation matters are addressed, except with respect to discussions involving his own compensation.

Role of Compensation Consultant

The compensation and talent committee engages an external compensation consultant to assist it by providing information, analysis, and other advice relating to our executive compensation program and the decisions resulting from its annual executive compensation review. The compensation consultant reports directly to the compensation and talent committee and its chair, and serves at the discretion of the compensation and talent committee, which reviews the engagement annually.

For the year ended December 31, 2020, the compensation and talent committee retained Compensia to serve as its compensation advisor to advise on executive compensation matters, including competitive market pay practices for our named executive officers, and with the selection and data analysis of the compensation peer group.

During the year ended December 31, 2020, Compensia attended the meetings of the compensation and talent committee (both with and without management present) as requested and provided the following services:

- consulted with the compensation and talent committee chair and other members between compensation and talent committee meetings;
- updated compensation peer group;
- provided competitive market data based on the compensation peer group for our executive officer positions and evaluated how the compensation we pay our executive officers compares both to our performance and to how the companies in our compensation peer group compensate their executives;
- reviewed and analyzed the base salary levels, annual incentive bonus opportunities, and long-term incentive compensation opportunities of our executive officers;
- reviewed and assessed the compensation for our Chief Executive Officer;
- reviewed and analyzed the compensation proposals for other senior executive positions;
- conducted a competitive market analysis of compensation for the board of directors; and
- supported on other *ad hoc* matters throughout the year.

Compensia did not provide any services to us other than the consulting services to the compensation and talent committee. The compensation and talent committee regularly reviews the objectivity and independence of the advice provided by its compensation consultant on executive compensation matters. The compensation and talent committee has evaluated Compensia's engagement, and based on the six factors for assessing independence and identifying potential conflicts of interest that are set forth in Exchange Act Rule 10C-1(b)(4), Rule 5605(d)(3)(D) of the Nasdaq Listing Rules, and such other factors as were deemed relevant under the circumstances, has determined that its relationship with Compensia and the work of Compensia on behalf of the compensation and talent committee did not raise any conflict of interest, and that Compensia is independent under the Nasdaq Listing Rules.

Competitive Positioning

For purposes of assessing our executive compensation against the competitive market, the compensation and talent committee reviews and considers the compensation levels and practices of a select group of peer companies. This compensation peer group consists of technology companies that are similar to us in terms of revenue, market capitalization, geographical location, and industry sector.

The companies in the compensation peer group for 2020 were approved in September 2019 on the basis of their similarity to us in size at that time, as determined using the following criteria:

- revenue—approximately 0.5x to approximately 2.5x our last four fiscal quarter revenue of approximately $265 million (approximately $100 million to $660 million);
- market capitalization—approximately 0.3x to approximately 3.0x our 30-day average market capitalization of approximately $849 million (approximately $250 million to $2.5 billion);
- industry sector—business to business software—SaaS/Internet services and HR and benefits product focus where possible; and
- location—headquartered in the United States.

In selecting the 2020 compensation peer group, the objective was to choose companies that resulted in us being near the median of the group in terms of both revenue and market capitalization. Our compensation peer group for 2020 was as follows:

AppFolio, Inc.	LivePerson, Inc.
Carbonite, Inc.	Model N, Inc.
Castlight Health, Inc.	NIC Inc.
ChannelAdvisor Corporation	Q2 Holdings, Inc.
Cornerstone OnDemand, Inc.	QAD Inc.
Evolent Health, Inc.	SPS Commerce, Inc.
Five9, Inc.	Tabula Rasa HealthCare, Inc.
HealthStream, Inc.	Upland Software, Inc.
Inovalon Holdings, Inc.	WageWorks, Inc. (now HealthEquity, Inc.)
Instructure, Inc.	Workiva Inc.

The compensation practices of the compensation peer group were the primary guide used by the compensation and talent committee in 2020 to compare the competitiveness of each compensation element and overall compensation levels (base salary, target annual incentive bonus opportunities, and long-term incentive compensation).

To analyze the compensation practices of the companies in our compensation peer group, Compensia gathered data from public filings (primarily proxy statements) of the peer group companies, as well as from the Radford Global Technology Survey. This market data was then used as a reference point for the compensation and talent committee to assess our current compensation levels in the course of its deliberations on compensation forms and amounts.

The compensation and talent committee reviews our compensation peer group each year (unless there have been significant changes to either our business model or market capitalization) and makes adjustments to its composition as warranted, taking into account changes in both our business and the businesses of the companies in the peer group.

Compensation Elements

In 2020, the principal elements of our executive compensation program, and the purposes for each element, were as follows:

Element	Type of Element	Compensation Element(s)	Objective
Base Salary	Fixed	• Cash	Designed to attract and retain highly talented executives by providing fixed compensation amounts that are competitive in the market and reward performance
Annual Incentive Bonuses	Variable	• Cash • PRSU awards that may be earned and settled for shares of our common stock	Designed to motivate our executives to achieve annual business objectives contained in our annual operating plan and provide financial incentives when we meet or exceed these annual objectives
Long-Term Incentive Compensation	Variable	• PRSU awards that may be earned and settled for shares of our common stock • RSU awards that may vest and be settled for shares of our common stock	Designed to align the interests of our executives and our stockholders by motivating executives to create sustainable long-term stockholder value

Base Salary

Base salary represents the fixed portion of our named executive officers' compensation, and is an important element of compensation intended to attract and retain highly talented individuals. Generally, we use base salary to provide each executive officer with a specified level of cash compensation during the year with the expectation that he or she will perform his or her responsibilities to the best of his or her ability and in our best interests.

Generally, we establish the initial base salaries of our named executive officers through arm's-length negotiation at the time we hire the individual, taking into account his or her position, qualifications, experience, prior salary level, and the base salaries of our other executive officers. Thereafter, the compensation and talent committee reviews the base salaries of our named executive officers each year as part of its annual compensation review, with input from our Chief Executive Officer (except with respect to his own base salary) and makes adjustments as it determines to be reasonable and necessary to reflect the scope of the named executive officer's performance, individual contributions and responsibilities, position in the case of a promotion, and market conditions.

At the end of 2019, the compensation and talent committee reviewed the base salaries of our incumbent named executive officers, taking into consideration a competitive market analysis and the recommendations of our Chief Executive Officer, as well as the other factors described in "*Compensation-Setting Process—Setting Target Total Direct Compensation*" above. Following this review, in March 2020, the compensation and talent committee made no changes to the base salaries of our named executive officers.

The base salaries of our incumbent named executive officers as approved in March 2020 were as follows:

Name	2019 Base Salary	2020 Base Salary	Percentage Adjustment
Mason R. Holland, Jr. (1) *Executive Chairman of the Board*	$325,779	$325,779	0%
Stephen M. Swad(2) *Former CFO*	$425,000	$425,000	0%
Annmarie Fini(3) *EVP*	—	$348,676	—
Raymond A. August(4) *Former CEO*	$525,000	$525,000	0%
James P. Restivo(5) *Former CTO*	$375,000	$375,000	0%

(1) Mr. Holland's base salary was temporarily reduced to $35,568 in 2020 as part of the Company's COVID-19 cost saving efforts. The reduction was in effect from May 17, 2020 until August 23, 2020.

(2) Mr. Swad served as our Chief Financial Officer until his appointment as our President and Chief Executive Officer, effective August 24, 2020. The base salary listed reflects his service as Chief Financial Officer. Mr. Swad's base salary was temporarily reduced to $340,000 in 2020 as part of the Company's COVID-19 cost saving efforts. This salary reduction was in effect until Mr. Swad's appointment as President and Chief Executive Officer.

(3) Ms. Fini was appointed our Executive Vice President of Customer Success on January 1, 2020 and her base salary was set at $348,676. Ms. Fini's base salary was temporarily reduced to $278,940 in 2020 as part of the Company's COVID-19 cost saving efforts. The reduction was in effect from May 17, 2020 until August 23, 2020.

(4) Mr. August served as our President and Chief Executive Officer until his separation from our Company, effective August 24, 2020, and his actual annual base salary for 2020 was prorated for this period of service. He continued to serve our Company during the transition to Mr. Swad as our President and Chief Executive Officer until December 31, 2020. Mr. August's base salary was temporarily reduced to $35,568 in 2020 as part of the Company's COVID-19 cost saving efforts. The reduction was in effect from May 17, 2020 until August 20, 2020.

(5) Mr. Restivo served as our Chief Technology Officer until his separation from our Company, effective September 25, 2020, and his actual annual base salary for 2020 was prorated for this period of service. He continued to serve our Company in an advisory role until December 31, 2020. Mr. Restivo's base salary was temporarily reduced to $300,000 in 2020 as part of the Company's COVID-19 cost saving efforts. The reduction was in effect from May 17, 2020 until August 23, 2020.

Mr. Swad was appointed our President and Chief Executive Officer, effective August 24, 2020. At that time, his annual base salary was adjusted from $340,000 reflecting his reduced salary due to COVID-19 cost saving efforts in May 2020, to $475,000 for the remainder of 2020.

Ms. Wegner was appointed our Chief Financial Officer, effective August 24, 2020, and her annual base salary was adjusted to $350,000 for the remainder of 2020. Ms. Wegner's annual base salary was not impacted by the COVID-19 cost saving efforts.

The base salaries paid to our named executive officers during 2020 are set forth in the "*2020 Summary Compensation Table*" below.

Annual Incentive Bonuses

We use an annual bonus plan to motivate the members of our management team, including our named executive officers, to achieve our key annual business objectives. In 2014, our stockholders approved the Benefitfocus, Inc. Management Incentive Bonus Program (the "Management Incentive Bonus Program"), which is designed to provide a long-term framework for performance-based bonus plans going forward, continue to reward the members of our management team based on their responsibilities and for their contributions to the successful achievement of certain corporate goals and objectives, and to share the success and risks of our Company based upon the achievement of these business goals and objectives.

For 2020, bonuses were to be earned pursuant to the Management Incentive Bonus Program (the "2020 Bonus Program") based on our revenue and adjusted EBITDA for the year as established under our 2020 annual operating plan. The 2020 Bonus Program is designed such that participants are to receive half of their target bonus payment in the form of a PRSU award and half, plus any amount earned in excess of target for overachievement, in cash. Any overachievement opportunity that is payable in cash is earned by meeting pre-established metrics set forth in the 2020 Bonus Program.

Target Annual Incentive Bonus Opportunities

For purposes of the 2020 Bonus Program, bonus payments were based upon an eligible percentage of each participant's base salary. At the end of 2019, the compensation and talent committee reviewed the target annual incentive bonus opportunities of our incumbent named executive officers, taking into consideration the recommendations of our then-incumbent Chief Executive Officer (except with respect to his own target annual incentive bonus opportunity) as well as the other factors described in "*Compensation-Setting Process—Setting Target Total Direct Compensation*" above. Following this review, in March 2020, the compensation and talent committee decided to maintain the target annual incentive bonus opportunities of our other incumbent named executive officers at their 2019 levels.

The target annual incentive bonus opportunities for our incumbent named executive officers for 2020 were as follows:

Name	2020 Target Annual Incentive Bonus Opportunity (as a percentage of base salary)	2020 Target Annual Incentive Bonus Opportunity (cash portion)	2020 Target Annual Incentive Bonus Opportunity (PRSU portion)
Stephen M. Swad(1) *President, CEO and Director*	100%	$ 41,855	$ 0
Alpana Wegner(2) *CFO*	50%	$ 61,494	$ 24,486
Mason R. Holland, Jr. *Executive Chairman of the Board*	100%	$ 162,889	$ 162,889
Annmarie Fini *EVP*	50%	$ 87,169	$ 87,169
Raymond A. August(3) *Former President, CEO and Director*	100%	$ 262,500	$ 262,500
James P. Restivo(4) *Former CTO*	75%	$ 140,625	$ 140,625
Stephen M. Swad(1) *Former CFO*	75%	$ 159,375	$ 159,375

(1) Mr. Swad was appointed as our Chief Financial Officer on July 10, 2019 and served in that role until his appointment as our President and Chief Executive Officer, effective August 24, 2020, and his target annual incentive bonus opportunities for 2020 were prorated for his period of service in each position. The incremental increase in his annual incentive target for his time as Chief Executive Officer is payable in cash. The PRSU portion shown in the table reflects the value of his annual incentive target grant as Chief Financial Officer on May 1, 2020.

(2) Ms. Wegner was appointed our Chief Financial Officer, effective August 24, 2020, and her target annual incentive bonus opportunities for 2020 were prorated for this period of service. The cash and

PRSU portions shown in the table reflect her total target values in 2020. The incremental increase in her annual incentive target for her time as Chief Financial Officer is payable in cash. The PRSU portion shown in the table reflects the value of her annual incentive target grant as Vice President, Corporate Controller on May 1, 2020.

(3) Mr. August served as our President and Chief Executive Officer until his separation from our Company, effective August 24, 2020. He continued to serve our Company during the transition to Mr. Swad as our President and Chief Executive Officer until December 31, 2020.

(4) Mr. Restivo served as our Chief Technology Officer until his separation from our Company, effective September 25, 2020. He continued to serve our Company in an advisory role until December 31, 2020.

Potential bonus payments for our named executive officers under the 2020 Bonus Program could range from zero to 150% of their target annual incentive bonus opportunity. Any amounts earned in excess of the target annual incentive bonus opportunity is payable in cash.

In May 2020, the compensation and talent committee granted PRSU awards to our incumbent named executive officers for the portion of their target annual incentive bonus opportunities payable in the form of PRSUs, with the number of units subject to each award determined by dividing 50% of each named executive officer's target annual incentive bonus opportunity by the average closing price of our common stock for the 20 trading days preceding the date of grant. Using this formula, the maximum number of units subject to each PRSU award granted to our named executive officers in their role as of May 2020 was as follows:

Name	PRSU Award (#)(1)
Mason R. Holland, Jr. (2)	
Executive Chairman of the Board	16,283
Annmarie Fini (3)	
EVP	8,713
Raymond A. August(4)	
Former President, CEO and Director	26,240
James P. Restivo(5)	
Former CTO	14,057
Stephen M. Swad(6)	
Former CFO	15,931

(1) Each PRSU award represents a contingent right to receive one share of our common stock.

(2) Mr. Holland will serve as our Executive Chairman until the 2021 Annual Meeting of Stockholders. His unvested equity awards will continue to vest until his separation date, and subsequently any unvested equity awards will accelerate and become fully vested.

(3) Ms. Fini was appointed our Executive Vice President, effective January 1, 2020.

(4) Mr. August served as our President and Chief Executive Officer until his separation from our Company, effective August 24, 2020. He continued to serve our Company during the transition to Mr. Swad as our President and Chief Executive Officer through December 31, 2020. On December 31, 2020, pursuant to his separation agreement, he received immediate vesting of time-based vesting equity awards that would have vested within 12 months of the termination date, other than his RSU granted in April 2019, and any unvested equity awards were forfeited.

(5) Mr. Restivo served as our Chief Technology Officer until his separation from our Company, effective September 25, 2020. He continued to serve our Company in an advisory role through December 31, 2020. On December 31, 2020, pursuant to his separation agreement, he received immediate vesting of time-based vesting equity awards that would have vested within 12 months of the termination date and any unvested equity awards were forfeited.

(6) Mr. Swad served as our Chief Financial Officer until his appointment as our President and Chief Executive Officer, effective August 24, 2020. His unvested equity awards continue to vest. When Mr. Swad was appointed our President and Chief Executive Officer, no additional PRSU awards were granted. The incremental increase in his annual incentive target for his time as Chief Executive Officer is payable in cash. The PRSU award shown in the table reflects the annual incentive target grant as Chief Financial Officer on May 1, 2020.

Ms. Wegner was appointed our Chief Financial Officer, effective August 24, 2020, and no additional PRSU awards were granted in connection with her appointment. In May 2020, she was granted 2,447 PRSU awards for her role as Vice President, Corporate Controller.

Corporate Performance Measures

For purposes of the 2020 Bonus Program, the compensation and talent committee selected revenue (weighted 30%), and adjusted EBITDA (weighted 70%) as the corporate performance measures for the year. The compensation and talent committee selected these performance measures based on its belief that they were the best indicators of our successful execution of our annual operating plan, and our ability to continue to grow while moving towards profitability. For purposes of the 2020 Bonus Program:

- revenue was to be calculated as reflected in our audited financial statements for 2020; and
- adjusted EBITDA was to be calculated as net income (or loss) before net interest, taxes, and depreciation and amortization expense, adjusted to eliminate stock-based compensation expense, expense related to the impairment of goodwill and intangible assets, transaction and acquisition-related costs expensed, restructuring costs, gain or loss on extinguishment of debt, and costs not core to our business.

In March 2020, the compensation and talent committee set the target and performance payout levels for each of the corporate performance measures for purposes of the 2020 Bonus Program. For 2020, the target performance level for revenue was $270 million and the target performance level for adjusted EBITDA was $35 million. The threshold, target, and maximum performance and the payment levels for each corporate performance measure were as follows:

Revenue (Weighted 30%)	**Achievement Percentage (1)**	**Payout Percentage (1)**
$290,000,000 (Maximum)	107.4%	150%
$270,000,000 (Target)	100.0%	100%
$250,000,000 (Threshold)	92.6%	50%
<$250,000,000	<92.6%	0%

(1) In the event of actual performance between the threshold and target, and target and maximum, performance levels, the payout percentage was to be calculated between each designated segment on a linear basis.

Adjusted EBITDA (Weighted 70%)	**Achievement Percentage (1)**	**Payout Percentage (1)**
$42,000,000 (Maximum)	120%	150%
$35,000,000 (Target)	100%	100%
$28,000,000 (Threshold)	80%	50%
<$28,000,000	<80%	0%

(1) In the event of actual performance between the threshold and target, and target and maximum, performance levels, the payout percentage was to be calculated between each designated segment on a linear basis.

Thus, the threshold performance level for each corporate performance measure was the minimum performance level that had to be achieved before our named executive officers could earn any annual bonus payment with respect to that measure. If the threshold performance level was not achieved, then no award payment would be made under the 2020 Bonus Program with respect to that measure.

2020 Annual Incentive Bonus Decisions

In March 2021, the compensation and talent committee determined that, for 2020, our revenue was $268.1 million, and our adjusted EBITDA was $44.0 million. From there, the compensation and talent committee determined that we had achieved 99.3% of the target performance level for revenue and 125.8% of the target performance level for adjusted EBITDA, resulting in an aggregate weighted payment percentage of 133.6%, as set forth in the following table:

Corporate Performance Measure	Percentage of Measure Achieved	Payment Percentage	Plan Weight	Weighted Payment Percentage
Revenue	99.3%	95.4%	30%	28.6%
Adjusted EBITDA	125.8%	150%	70%	105.0%
Total				133.6%

In light of the Company's financial results in terms of revenue during the past year, our board of directors exercised a discretionary downward adjustment to the amounts earned by the Company's executive officers under the Management Incentive Bonus Program and the long-term incentive awards, with both paying out 90% of target for 2020.

Based on these determinations, the compensation and talent committee approved the following total annual incentive bonus payments for our named executive officers for 2020:

Name	Target Annual Incentive Bonus ($)	Annual Incentive Bonus Payment ($)	Total Annual Incentive Bonus Payment (# of shares)(1)
Stephen M. Swad(2) *President, CEO and Director*	$ 168,625	$ 150,676	0
Alpana Wegner(3) *CFO*	$ 62,125	$ 55,512	0
Mason R. Holland, Jr. (4) *Executive Chairman of the Board*	$ 325,779	$ 146,600	14,654
Annmarie Fini *EVP*	$ 174,338	$ 78,452	7,841
Raymond A. August(5) *Former President, CEO and Director*	$ 525,000	$ 236,250	23,616
James P. Restivo(6) *Former CTO*	$ 281,250	$ 126,563	12,651
Stephen M. Swad(2) *Former CFO*	$ 205,594	$ 41,597	14,337

(1) Represents the number of PRSUs earned, which is capped at the target level.

(2) Mr. Swad was appointed as our Chief Financial Officer on July 10, 2019 and served in that role until his appointment as our President and Chief Executive Officer, effective August 24, 2020, and his target annual incentive bonus opportunities for 2020 were prorated for his period of service in each position. All PRSUs granted to Mr. Swad in 2020 were for his service as our Former Chief Financial Officer, and no additional PRSUs were granted and the difference was paid in cash, when his position changed to President and Chief Executive Officer.

(3) Ms. Wegner was appointed our Chief Financial Officer, effective August 24, 2020, and previously served as our Vice President, Corporate Controller. Her target annual incentive bonus opportunities for 2020 were prorated for the period of service in each position. The table above reflects her target annual incentive bonus for her period of service as our Chief Financial Officer. During her prior period of service as Vice President, Corporate Controller in 2020, when she was not an executive officer, her target annual incentive bonus was $31,444, the annual incentive bonus payment was $6,391, and the total number of PRSUs earned was 2,202. All PRSUs granted to Ms. Wegner in 2020 were for her service as Vice President, Corporate Controller, and no additional PRSUs were granted and the difference was paid in cash, when her position changed to Chief Financial Officer.

(4) Mr. Holland will serve as our Executive Chairman until the 2021 Annual Meeting of Stockholders. His unvested equity awards will continue to vest until his separation date, and subsequently any unvested equity awards will accelerate and become fully vested.

(5) Mr. August served as our President and Chief Executive Officer until his separation from our Company, effective August 24, 2020. He continued to serve our Company during the transition to Mr. Swad as our President and Chief Executive Officer through December 31, 2020. On December 31, 2020, pursuant to his separation agreement, he received immediate vesting of time-based vesting equity awards that would have vested within 12 months of the termination date, other than his RSU granted in April 2019, and any unvested equity awards were forfeited.

(6) Mr. Restivo served as our Chief Technology Officer until his separation from our Company, effective September 25, 2020. He continued to serve our Company in an advisory role through December 31, 2020. On December 31, 2020, pursuant to his separation agreement, he received immediate vesting of time-based vesting equity awards that would have vested within 12 months of the termination date and any unvested equity awards were forfeited.

Other than the amounts described above, we did not pay our executive officers, including our named executive officers, any other annual bonuses or incentive amounts in 2020 under the 2020 Bonus Program.

The annual incentive bonus payments made to our named executive officers for 2020 are set forth in the "*2020 Summary Compensation Table*" below.

Long-Term Incentive Compensation

We view long-term incentive compensation in the form of equity awards as a critical element of our executive compensation program. The realized value of these equity awards bears a direct relationship to our stock price, and, therefore, these awards are an incentive for our named executive officers to create value for our stockholders. Equity awards also help us retain qualified executive officers in a competitive market.

Long-term incentive compensation opportunities in the form of equity awards are granted to our Chief Executive Officer and our other named executive officers by the compensation and talent committee. The amount and forms of such equity awards are determined by the compensation and talent committee after considering the factors described in "*Compensation-Setting Process – Setting Target Total Direct Compensation*" above. The amounts and relative weighting of the equity awards are also intended to provide competitively sized awards and resulting target total direct compensation opportunities that the compensation and talent committee believes are reasonable and appropriate taking into consideration the factors described in the preceding sentence.

In April 2020, the compensation and talent committee determined that the equity awards to be granted to our named executive officers should be in the form of PRSU awards that may be earned and settled for shares of our common stock and time-based RSU awards that may vest and be settled for shares of our common stock. Further, the compensation and talent committee determined that the PRSU awards should comprise 50% of each named executive officer's equity award, while the RSU awards should comprise 50% of the award. The aggregate value and number of shares of our common stock subject to the PRSU and RSU awards granted to our incumbent named executive officers were determined by the compensation and talent committee after considering the factors described in "*Compensation-Setting Process – Setting Target Total Direct Compensation*" above.

Mr. August in his role as Chief Executive Officer until August 2020 received the largest equity award based on his overall responsibility for our performance and success at the time of the grant. With respect to the equity awards granted to our other named executive officers, further differentiation in the size of their awards was based on the compensation and talent committee's review of the competitive market data for their respective positions and the size of the equity awards previously granted to them.

In response to the COVID-19 pandemic, the Company took swift expense reduction actions to mitigate risks and ensure the stability of the Company given the uncertainties surrounding COVID-19. These actions impacted the annual long-term incentive compensation grants in the following ways:

- We delayed our annual grant date from April 1 to May 1, 2020. Future vesting dates continue to occur on the anniversary of the date of grant.
- We reduced the long-term incentive target goals from 2019 levels by 25% for all executives.
- We reduced the vesting period for PRSUs from four years to three years.

The equity awards granted to our incumbent named executive officers in May 2020, which, in the case of the PRSU awards, represented the maximum number of units eligible to be earned based on maximum performance, were as follows:

Name	Performance-Based Restricted Stock Unit Award (maximum #)	Restricted Stock Unit Award (#)	Aggregate Grant Date Fair Value ($)
Mason R. Holland, Jr. (1)			
Executive Chairman of the Board	18,318	12,212	$ 312,017
Annmarie Fini			
EVP	39,211	26,141	$ 667,897
Raymond A. August(2)			
Former President, CEO and Director	196,806	131,204	$ 3,352,262
James P. Restivo(3)			
Former CTO	42,172	28,115	$ 718,333
Stephen M. Swad(4)			
Former CFO	84,438	56,292	$ 1,438,261

(1) Mr. Holland will serve as our Executive Chairman until the 2021 Annual Meeting of Stockholders. His unvested equity awards will continue to vest until his separation date, and subsequently any unvested equity awards will accelerate and become fully vested.

(2) Mr. August served as our President and Chief Executive Officer until his separation from our Company, effective August 24, 2020. He continued to serve our Company during the transition to Mr. Swad as our President and Chief Executive Officer through December 31, 2020. On December 31, 2020, pursuant to his separation agreement, he received immediate vesting of time-based vesting equity awards that would have vested within 12 months of the termination date, other than his RSU granted in April 2019, and any unvested equity awards were forfeited.

(3) Mr. Restivo served as our Chief Technology Officer until his separation from our Company, effective September 25, 2020. He continued to serve our Company in an advisory role through December 31, 2020. On December 31, 2020, pursuant to his separation agreement, he received immediate vesting of time-based vesting equity awards that would have vested within 12 months of the termination date and any unvested equity awards were forfeited.

(4) Mr. Swad served as our Chief Financial Officer until his appointment as our President and Chief Executive Officer, effective August 24, 2020. No PRSU awards were granted for his period of service as Chief Executive Officer in 2020. His unvested equity awards continue to vest.

Ms. Wegner was appointed our Chief Financial Officer, effective August 24, 2020, and no PRSU awards were granted for this period of service.

PRSU Awards

The PRSU awards were to be earned to the extent that we achieved pre-established target levels for software services revenue (weighted 50%) and adjusted EBITDA (weighted 50%) for the performance period beginning on January 1, 2020 and ending on December 31, 2020. The compensation and talent committee selected these performance measures based on its belief that they were the best indicators of long-term enterprise value creation from revenue that continues for multiple years, and our successful execution of our annual operating plan, and our ability to continue to grow while moving towards profitability. Each unit granted pursuant to the PRSU awards represented a contingent right to receive one share of our common stock for each unit earned for the performance period.

For purposes of the PRSU awards, software services revenue means revenue from subscription services plus revenue from our platform, as reported in our financial statements. Adjusted EBITDA means net income (loss) before net interest, taxes, and depreciation and amortization expense, adjusted to eliminate stock-based compensation expense, expense related to the impairment of goodwill and intangible assets, transaction and acquisition-related costs expensed, restructuring costs, gain or loss on extinguishment of debt and costs not core to our business, as reported in our year-end financial report.

The number of units (and, correspondingly, the number of shares) that could be earned under the PRSU awards was to vary from 0% to 150% of the target number of units granted, with the earned shares (if any) to vest in three equal annual installments beginning on May 1, 2020. The levels of performance required to earn the target number of units was approved by the compensation and talent committee at the time of grant as follows:

Software Services Revenue (Weighted 50%)	**Achievement Percentage (1)**	**Payout Percentage (1)**
$248,400,000 (Maximum)	115%	150%
$216,000,000 (Target)	100%	100%
$183,600,000 (Threshold)	85%	50%
<$183,600,000	<85%	0%

(1) In the event of actual performance between the threshold and target, and target and maximum, performance levels, the payout percentage was to be calculated between each designated segment on a linear basis.

Adjusted EBITDA (Weighted 50%)	**Achievement Percentage (1)**	**Payout Percentage (1)**
$40,250,000 (Maximum)	115%	150%
$35,000,000 (Target)	100%	100%
$29,750,000 (Threshold)	85%	50%
<$29,750,000	<85%	0%

(1) In the event of actual performance between the threshold and target, and target and maximum, performance levels, the payout percentage was to be calculated between each designated segment on a linear basis.

Thus, the threshold performance level for each corporate performance measure was the minimum performance level that had to be achieved before our named executive officers could earn any PRSU award with respect to that measure. If the threshold performance level was not achieved, then no award would be earned under the 2020 Long-Term Incentive Program with respect to that measure.

The compensation and talent committee viewed these performance levels as challenging, but achievable with maximum effort. In addition software services revenue and adjusted EBITDA targets required to earn any units under the terms of the PRSU awards were established at levels that represented strong growth and improvement relative to our actual 2020 results. The decision to link these awards to software services revenue and adjusted EBITDA was aligned with our long-term strategic plan and reflected our focus on stimulating growth as a key driver of stockholder value creation. The PRSU awards also included threshold levels of performance below which no units would be earned.

In March 2021, the compensation and talent committee evaluated our software services revenue and adjusted EBITDA performance for 2020 and determined that our software services revenue was $214.8 million and our adjusted EBITDA was $44.0 million. From there, the compensation and talent committee determined that we had achieved 99.5% of the target performance level for revenue and 125.8% of the target performance level for adjusted EBITDA, resulting in an aggregate weighted payment percentage of 124.1%, as set forth in the following table:

Corporate Performance Measure	Percentage of Measure Achieved	Payment Percentage	Plan Weight	Weighted Payment Percentage
Software Services Revenue	99.5%	98.2%	50%	49.1%
Adjusted EBITDA	125.8%	150.0%	50%	75.0%
Total				124.1%

In light of the Company’s financial results in terms of revenue during the past year, our board of directors exercised a discretionary downward adjustment to the amounts earned by the Company’s executive officers under the Management Incentive Bonus Program and the long-term incentive awards, with both paying out 90% of target for 2020.

Time-Based RSU Awards

The time-based RSU awards vest in equal annual installments over a three-year period, with the first installment vesting on May 1, 2021, contingent upon each named executive officer remaining continuously employed by us through each applicable vesting date. Upon vesting, the RSU awards may be settled by issuing that number of shares of our common stock that equal the number of units that have vested.

Additional Equity Award Granted to Mr. Swad

In connection with the amendment of his employment agreement in August 2020, Mr. Swad was granted an RSU award valued at approximately $700,000, vesting in three equal annual installments beginning on the first anniversary of the grant date, subject to Mr. Swad’s continuous service to us through that date (and subject to certain accelerated vesting provisions as set forth in the Swad Employment Agreement) (the “Swad Retention Award”). The Swad Retention Award was granted to Mr. Swad by the compensation and talent committee to serve as a long-term retention device to ensure his continued employment with us.

Equity Awards Granted to Ms. Wegner

In connection with her appointment as our Chief Financial Officer in August 2020, Ms. Wegner was granted an RSU award valued at approximately $250,000, vesting in three equal annual installments beginning on the first anniversary of the grant date, subject to Ms. Wegner’s continuous service to us through that date (and subject to certain accelerated vesting provisions as set forth in the Wegner Employment Agreement) (the “Wegner Retention Award”). The Wegner Retention Award was granted to Ms. Wegner by the compensation and talent committee to serve as a long-term retention device to ensure her continued employment with us.

The equity awards granted to our named executive officers during 2020 are set forth in the "*2020 Summary Compensation Table"* and the "*2020 Grants of Plan-Based Awards Table*" below.

COVID-19-Related Incentive Compensation Adjustments

As noted above, in response to the COVID-19 pandemic, the Company took swift expense reduction actions to mitigate risks and ensure the stability of the Company given the uncertainties surrounding COVID-19. These actions impacted the annual long-term incentive compensation grants in the following ways:

- We delayed our annual grant date from April 1 to May 1, 2020. Future vesting dates continue to occur on the anniversary of the date of grant.
- We reduced the long-term incentive target goals from 2019 levels by 25% for all executives.
- We reduced the vesting period for PRSUs from four years to three years.

Perquisites and Other Personal Benefits

Currently, we do not view perquisites and other personal benefits as a significant component of our executive compensation program. Accordingly, we do not provide significant perquisites or other personal benefits to our named executive officers, except as generally made available to our employees, or in situations where we believe it is appropriate to assist an individual in the performance of his or her duties, to make him or her more efficient and effective, and for recruitment and retention purposes. For a summary of perquisites received by our named executive officers that were, in the aggregate, $10,000 or more for each individual, see the *"2020 Summary Compensation Table"* below.

In the future, we may provide perquisites or other personal benefits in limited circumstances, such as those described below. All future practices with respect to perquisites or other personal benefits will be approved and subject to periodic review by the compensation and talent committee.

Health and Welfare Benefits

Our named executive officers are eligible to receive the following health and welfare benefits, including flexible spending accounts, medical, dental, and vision insurance, business travel insurance, an employee assistance program, accidental death and dismemberment insurance, health savings accounts, short-term and long-term disability insurance and basic life insurance. These benefits are provided to our named executive officers on the same basis as to all of our employees.

We have also established a tax-qualified Section 401(k) retirement savings plan for our named executive officers and other employees who satisfy certain eligibility requirements. Under this plan, participants may elect to make pre-tax contributions of their cash compensation not to exceed the statutory income tax limitation. Currently, we match contributions made by participants in the plan as follows: $0.50 on the dollar for the first 6% of employee contributions to the plan. Employee matching contributions are subject to a five-year vesting schedule. We intend for the plan to qualify under Section 401(a) of the Internal Revenue Code so that contributions by participants to the plan, and income earned on plan contributions, are not taxable to participants until withdrawn from the plan.

We design our employee benefits programs to be affordable and competitive in relation to the market as well as compliant with applicable laws and practices. We adjust our employee benefits programs as needed based upon regular monitoring of applicable laws and practices and the competitive market.

Other Compensation Policies

Stock Ownership Policy

We maintain a stock ownership policy for our executive officers to further align their respective interests with the interests of our stockholders, and to further promote our commitment to sound corporate governance. This policy requires our Chief Executive Officer to own a minimum number of shares of our common stock equal to a value of five times his annualized base salary, our President to own a minimum number of shares of our common stock equal to a value of three times his annualized base salary, and our other executive officers who are subject to Section 16 of the Exchange Act to own a minimum number of shares of our common stock equal to a value of one time their annualized base salary.

The number of shares of our common stock necessary to meet the minimum ownership level may be accumulated during the first five years following the adoption of the policy in March 2017. As of December 31, 2020, all of our executive officers subject to the policy had achieved his or her required ownership level.

Compensation Recovery Policy

Currently, we have not implemented a policy regarding retroactive adjustments to any cash or equity-based incentive compensation paid to our executive officers and other employees where the payments were predicated upon the achievement of financial results that were subsequently the subject of a financial restatement. We intend to adopt a general compensation recovery, or clawback, policy covering our annual and long-term incentive award plans and arrangements once the SEC adopts final rules implementing the requirement of Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Hedging and Pledging Transactions

Under our Insider Trading Policy, we strongly discourage our employees (including our named executive officers) and the non-employee members of our board of directors from hedging our securities, holding shares of our common stock in a margin account, or pledging shares of our common stock as collateral for a loan.

Tax and Accounting Considerations

We take the applicable tax and accounting requirements into consideration in designing and operating our executive compensation program.

Deductibility of Executive Compensation

Generally, Section 162(m) of the Internal Revenue Code limits our ability to deduct, for federal income tax purposes, compensation in excess of $1 million paid to “covered employees”. Under Section 162(m), “covered employees” are any individuals who served as the principal executive officer or principal financial officer at any time during the taxable year, each of the three other most highly compensated executive officers whose compensation may be required to be disclosed to our stockholders under the Exchange Act in the taxable year, and each person who was a covered employee for any taxable year beginning after December 31, 2016.

For 2017 and prior years, the limitation on deductibility pursuant to Section 162(m) did not apply to compensation that qualified under applicable regulations as “performance-based compensation”. In December 2017, a significant tax bill was enacted, commonly referred to as the “Tax Cuts and Jobs Act,” which amended Section 162(m) to repeal the performance-based compensation exception to Section 162(m), effective for tax years beginning on or after December 31, 2017. Accordingly, commencing with our fiscal year ending December 31, 2018, compensation to our covered employees in excess of $1 million will generally not be deductible. However, compensation in excess of $1 million will remain exempt from this deduction limit if it qualifies as “performance-based compensation” within the meaning of Section 162(m) as in effect prior to the enactment of the Tax Cuts and Jobs Act and is payable pursuant to a binding written agreement in effect on November 2, 2017 that has not been modified in any material respect on or after that date. Because of the technical nature of the application and interpretation of Section 162(m) and the regulations and guidance issued thereunder, there is no assurance that any compensation granted in the past that was intended to satisfy the requirements for deductibility under Section 162(m) will ultimately be deductible.

While the treatment applicable to performance-based compensation arrangements made pursuant to written binding contracts in effect as of November 2, 2017 may help minimize the effect of the Section 162(m) deduction limit in the short-term, we expect that, going forward, some portion of our named executive officers' compensation might not be fully deductible by us for federal income tax purposes.

In approving the amount and form of compensation for our named executive officers, the compensation and talent committee considers all elements of our cost of providing such compensation, including the potential impact of Section 162(m). The compensation and talent committee may, in its judgment, approve compensation for our named executive officers that is not deductible for federal income tax purposes when it believes that such compensation is in the best interests of the Company and our stockholders.

Accounting for Stock-Based Compensation

The compensation and talent committee takes accounting considerations into account in designing compensation plans and arrangements for our executive officers and other employees. Chief among these is FASB ASC Topic 718, the standard which governs the accounting treatment of certain stock-based compensation. Among other things, FASB ASC Topic 718 requires us to record a compensation expense in our income statement for all equity awards granted to our executive officers and other employees. This compensation expense is based on the grant date "fair value" of the equity award and, in most cases, will be recognized ratably over the award's requisite service period (which, generally, will correspond to the award's vesting schedule). This compensation expense is also reported in the compensation tables below, even though recipients may never realize any value from their equity awards.

2020 Summary Compensation Table

The following table sets forth summary compensation information for our named executive officers for the fiscal years ended December 31, 2020, 2019 and 2018.

Name and principal position	Year	Salary ($)(1)	Stock awards ($)(2)	Non-equity incentive plan compensation ($)	All other compensation ($)(3)	Total ($)
Stephen M. Swad[(4)]	2020	$435,250[(5)]	$1,945,487	$ 193,002	$ 35,139	$2,608,878
President, CEO and Director and Former CFO	2019	$171,635	$2,891,200	$ 46,929	$ 159	$3,109,923
Alpana Wegner[(6)]	2020	$290,268[(7)]	$ 462,504	$ 62,015	$ 6,766	$ 821,553
CFO						
Mason R. Holland, Jr. [(8)]	2020	$260,175[(9)]	$ 416,026	$ 146,600	$ 3,535	$ 826,336
Executive Chairman of the Board	2019	$321,602	$ 493,272	$ 57,719	$ 2,294	$ 874,887
	2018	$306,288	$ 555,462	$ 173,361	$ 19,158	$1,054,269
Annmarie Fini[(10)]	2020	$342,545[(11)]	$ 623,359	$ 78,452	$ 6,769	$1,051,125
EVP						
Raymond A. August[(12)]	2020	$417,187[(13)]	$2,949,983	$ 236,250	$ 9,960	$3,613,380
Former President, CEO and Director	2019	$518,269	$6,162,380	$ 93,015	$ 10,063	$6,783,727
	2018	$499,346	$3,372,807	$ 279,376	$ 21,468	$4,172,997
James P. Restivo[(14)]	2020	$369,231[(15)]	$ 718,323	$ 126,563	$ 8,868	$1,222,985
Former CTO	2019	$371,602	$ 899,076	$ 49,829	$ 10,063	$1,330,570
	2018	$357,674	$ 769,256	$ 100,715	$ 20,874	$1,248,519

(1) Reflects base salary earned during the fiscal year covered.

(2) The reported amounts represent the aggregate grant date fair value of awards of RSUs and PRSUs computed in accordance with FASB ASC Topic 718, excluding the estimate of forfeitures. The reported amounts for PRSUs also assume target performance goals will be achieved and are consistent with the estimate of aggregate compensation cost recognized over the service period determined as of the grant date under FASB ASC Topic 718. For 2020, the grant date fair value of all PRSUs at maximum payout potential are $2,233,139, $478,429, $756,944, $3,620,435 and $861,996 for Mr. Swad, Mr. Holland, Ms. Fini and Messrs. August and Restivo, respectively. Ms. Wegner was not granted PRSUs in her capacity as Chief Financial Officer in 2020.

(3) All other compensation consisted of the following in 2020:

Name	Year	Medical Insurance Premiums ($)(1)	Life Insurance Premiums ($)	Disability Insurance Premiums ($)	Health Savings Account Contributions ($)	401(k) Plan Matching Contributions ($)	Other ($)(2)	Total ($)
Stephen M. Swad	2020	—	$ 249	$ 186	$ 1,250	$ 6,277	$27,177	$35,139
	2019	—	$ 96	$ 63	—	—	—	$ 159
Alpana Wegner	2020	—	$ 249	$ 186	$ 1,250	$ 5,081	—	$ 6,766
Mason R. Holland, Jr.	2020	—	$ 249	$ 186	$ 1,250	$ 1,850	—	$ 3,535
	2019	—	$ 249	$ 164	$ 1,250	$ 631	—	$ 2,294
	2018	$ 9,831	$ 552	$ 484	$ 1,250	$ 7,041	—	$19,158
Annmarie Fini	2020	—	$ 249	$ 186	$ —	$ 6,334	—	$ 6,769
Raymond A. August	2020	—	$ 249	$ 186	$ 1,250	$ 8,275	—	$ 9,960
	2019	—	$ 249	$ 164	$ 1,250	$ 8,400	—	$10,063
	2018	$ 9,803	$ 1,032	$ 749	$ 1,250	$ 8,634	—	$21,468
James P. Restivo	2020	—	$ 249	$ 186	$ 1,250	$ 7,183	—	$ 8,868
	2019	—	$ 249	$ 164	$ 1,250	$ 8,400	—	$10,063
	2018	$ 9,803	$ 1,032	$ 555	$ 1,250	$ 8,234	—	$20,874

(1) Historically, we have provided our associates and their qualifying family members with medical insurance at no cost to those individuals. In 2019, the Company moved to a self-funded health plan, and, as a result, as of January 2019, the Company no longer provides this benefit.

(2) The Company provided Mr. Swad with a corporate apartment as part of his employment agreement.

(4) Mr. Swad served as our Chief Financial Officer until his appointment as our President and Chief Executive Officer, effective August 24, 2020.

(5) Mr. Swad's base salary was temporarily reduced to $340,000 as part of the Company's COVID-19 cost saving efforts. This salary reduction was in effect until Mr. Swad's appointment as President and Chief Executive Officer.

(6) Ms. Wegner began serving as our Chief Financial Officer on August 24, 2020.

(7) Ms. Wegner's base salary while serving as Vice President, Corporate Controller was $244,860 and following Ms. Wegner's appointment as Chief Financial Officer on August 24, 2020, her base salary was $350,000. Her total base salary for 2020 reflects the total of the prorated amounts for the respective periods of service.

(8) Mr. Holland will serve as our Executive Chairman until the 2021 Annual Meeting of Stockholders. Following his separation date, he will receive the separation benefits as provided in his employment agreement. His unvested equity awards will continue to vest until his separation date, and subsequently any unvested equity awards will accelerate and become fully vested.
(9) Mr. Holland's base salary was temporarily reduced to $35,568 as part of the Company's COVID-19 cost saving efforts. The reduction was in effect from May 17, 2020 until August 23, 2020.
(10) Ms. Fini began serving as our Executive Vice President of Customer Success on January 1, 2020.
(11) Ms. Fini's base salary was temporarily reduced to $278,940 as part of the Company's COVID-19 cost saving efforts. The reduction was in effect from May 17, 2020 until August 23, 2020.
(12) Mr. August served as our President and Chief Executive Officer until his separation from our Company, effective August 24, 2020. He continued to serve our Company during the transition to Mr. Swad as our President and Chief Executive Officer through December 31, 2020. On December 31, 2020, pursuant to his separation agreement, he received immediate vesting of time-based vesting equity awards that would have vested within 12 months of the termination date, other than his RSU granted in April 2019, and any unvested equity awards were forfeited.
(13) Mr. August's base salary was temporarily reduced to $35,568 as part of the Company's COVID-19 cost saving efforts. The reduction was in effect from May 17, 2020 until August 20, 2020.
(14) Mr. Restivo served as our Chief Technology Officer until his separation from our Company, effective September 25, 2020. He continued to serve our Company in an advisory role through December 31, 2020. On December 31, 2020, pursuant to his separation agreement, he received immediate vesting of time-based vesting equity awards that would have vested within 12 months of the termination date and any unvested equity awards were forfeited.
(15) Mr. Restivo's base salary was temporarily reduced to $300,000 as part of the Company's COVID-19 cost saving efforts. The reduction was in effect from May 17, 2020 until August 23, 2020.

Employment Agreements

We have entered into employment agreements with the named executive officers that were in their executive officer roles at December 31, 2020, namely, Mr. Swad, Ms. Wegner, Mr. Holland and Ms. Fini. Each of these agreements was approved on our behalf by the compensation and talent committee or our board of directors at the recommendation of the compensation and talent committee. We believe that these arrangements were necessary to induce these individuals to forego other employment opportunities or leave their then-current employer for the uncertainty of a demanding position in a new and unfamiliar organization.

In filling each of our executive positions, our board of directors or the compensation and talent committee, as applicable, recognized that it would need to develop competitive compensation packages to attract qualified candidates in a dynamic labor market. At the same time, our board and the compensation and talent committee were sensitive to the need to integrate new executive officers into the executive compensation structure that we were seeking to develop, balancing both competitive and internal equity considerations.

The employment agreements of Mr. Swad, Ms. Wegner, Mr. Holland and Ms. Fini contain certain protections in the event of their termination of employment under specified circumstances, including, in the case of Mr. Swad, Ms. Wegner, and Mr. Holland, following a change in control of the Company. We believe that these protections were necessary to induce these individuals to leave their former employment for the uncertainty of a demanding position and help from a retention standpoint. These arrangements provide reasonable compensation to the executive officer if he or she is terminated or resigns under certain circumstances to facilitate his or her transition to new employment. Further, in some instances we seek to mitigate any potential employer liability and avoid future disputes or litigation by requiring a departing executive officer to sign a separation and release agreement acceptable to us as a condition to receiving post-employment compensation payments or benefits. We also believe that these arrangements help maintain their continued focus and dedication to their assigned duties to maximize stockholder value if there is a potential transaction that could involve a change in control of the Company.

Under the employment agreements, unless an acquirer has not assumed or substituted a comparable award for an outstanding equity award in connection with a change in control, all payments, benefits and acceleration of vesting of outstanding equity awards in the event of a change in control of the Company are payable only if there is a subsequent loss of employment by an executive officer (a so-called "double-trigger" arrangement). In the case of the acceleration of vesting of outstanding equity awards, we use this double-trigger arrangement to protect against the loss of retention value following a change in control of the Company and to avoid windfalls, both of which could occur if vesting of either equity or cash-based awards accelerated automatically as a result of the transaction. Additionally, we do not use excise tax payments (or "gross-ups") relating to a change in control of the Company and have no such obligations in place with respect to any executive officers.

We believe that having in place reasonable and competitive post-employment compensation arrangements in the event of a change in control of the Company are essential to attracting and retaining highly qualified executive officers. The compensation and talent committee does not consider the specific amounts payable under the post-employment compensation arrangements when determining the annual compensation for our executive officers. We do believe, however, that these arrangements are necessary to offer compensation packages that are competitive.

For an estimate of the potential payments and benefits that they would have been eligible to receive if a hypothetical change in control or other trigger event had occurred on December 31, 2020, see "*Potential Payments Upon Termination or Change in Control*" below.

Employment Agreement with Stephen M. Swad

In July 2019, we entered into an employment agreement with Stephen M. Swad. Under the agreement, we agreed to pay Mr. Swad a base salary of $425,000 per year. Mr. Swad is also eligible to receive a target bonus of up to 75% of his then-current base pay, subject to adjustment, upon achievement of our Company's annual performance targets. Mr. Swad received a one-time signing bonus consisting of (i) a cash bonus of $325,000, subject to repayment if he terminates his employment for other than "good reason" or the Company terminates his employment for "cause" within 12 months of his employment commencement, and (ii) a grant of RSUs valued at $2,000,000, with 25% vesting on the first anniversary of the date of grant, and the remaining 75% of the RSUs vesting in equal amounts quarterly for the following three years. Additionally, Mr. Swad received a one-time grant of RSUs valued at $1,000,000 on August 1, 2019, vesting in four equal annual installments beginning on the first anniversary of the date of grant, subject to the terms of the related award grant notice.

In connection with Mr. Swad's appointment as President and Chief Executive Officer, the Company and Mr. Swad entered into an amendment to the Swad Employment Agreement dated August 25, 2020 (the "Swad Amendment"). The Swad Amendment increases Mr. Swad's annual base salary to $475,000, increases the percentage of his annual salary that he is eligible to receive as an annual bonus to 100%, extends the time the Company will rent him an apartment in Charleston through January 2022, provides he will receive RSUs valued at $700,000 vesting in three equal annual installments beginning on the first anniversary of the grant date, and updates his title and duties to reflect his becoming the Company's Chief Executive Officer. See "*Outstanding Equity Awards as of December 31, 2020*" below for a description of, among other things, equity awards granted to Mr. Swad in 2020, all of which remained outstanding as of that year end.

In the event we terminate Mr. Swad's employment without cause or Mr. Swad resigns for "good reason" at any time prior to a change in control, we will provide Mr. Swad: (i) salary continuation at a rate equal to his base salary then in effect for a period of 12 months following his termination date, (ii) a portion of his targeted annual bonus paid in a lump sum, and (iii) an insurance premium in an amount equal to that which was paid on his behalf prior to the termination of his employment paid during the same period in which he is receiving salary continuation payments. Any outstanding RSUs, PRSUs and stock rights will continue to vest for a period of 12 months.

In the event we or our acquirer terminates Mr. Swad's employment without cause or Mr. Swad resigns for "good reason" at the time of, or within 12 months following, a change in control of our Company, we or our acquirer will provide Mr. Swad: (i) salary continuation at a rate equal to his base salary then in effect for a period of (A) 24 months if such termination occurs within the first 18 months of employment, (B) 15 months if such termination occurs within the nineteenth 19th through the 30th month of employment, and (C) 12 months of if such termination occurs after the 30th month of employment, (ii) his targeted annual bonus paid in a lump sum, (iii) an insurance premium in an amount equal to that which was paid on his behalf prior to the termination of his employment paid during the same period in which he is receiving salary continuation, and (iv) accelerated vesting of all unvested and outstanding RSU awards, PRSU awards and any other stock rights.

"Good Reason" is defined as any of the following without Mr. Swad's express written consent: (i) a material decrease in his base salary, (ii) a material diminution in his authority, duties and responsibilities to our Company, (iii) a change in his position such that he no longer reports directly to our board of directors, (iv) a material diminution in the budget over which he has authority, (v) a material change in the geographic location of his position, or (vi) an uncured material breach of the agreement by our Company.

"Cause" is defined as reasonable determination by the board of directors of any of the following: (i) any act of dishonesty, fraud or misrepresentation in relation to his duties to our Company, (ii) Mr. Swad's conviction of, or plea of nolo contendere to, a felony or a crime involving moral turpitude, (iii) Mr. Swad's proven gross misconduct that results in a reasonable probability of material injury (whether tangible or reputational) to our Company, (iv) Mr. Swad's proven unauthorized use or disclosure of any proprietary information or trade secrets of our Company or any other third party to whom he owes an obligation of nondisclosure as a result of his relationship with us, or (v) Mr. Swad's uncured failure to perform in any material respect his duties under the agreement.

During and after his employment, Mr. Swad is subject to a covenant related to the non-disclosure of trade secrets and confidential information. For one year following the date of termination, for any reason, Mr. Swad is subject to covenants related to the non-solicitation of customers, employees or consultants and a covenant not to compete with the Company within the United States.

Employment Agreement with Alpana Wegner

In August 2020, we entered into an employment agreement with Alpana Wegner. Under the agreement, we agreed to pay Ms. Wegner a base salary of $350,000 per year. Ms. Wegner is also eligible to receive a target annual incentive bonus of up to 50% of her then-current base pay, subject to adjustment, upon achievement of our Company's annual performance targets. Ms. Wegner received a one-time grant of RSUs valued at $250,000, vesting in three equal annual installments beginning on the first anniversary of the grant date, subject to the terms of the related award grant notice. See "*Outstanding Equity Awards as of December 31, 2020*" below for a description of, among other things, equity awards granted to Ms. Wegner in 2020, all of which remained outstanding as of that year end.

In the event we terminate Ms. Wegner's employment without cause or Ms. Wegner resigns for "good reason" at any time prior to a change in control, we will provide Ms. Wegner: (i) salary continuation at a rate equal to her base salary then in effect for a period of 12 months following her termination date, and (ii) an insurance premium in an amount equal to that which was paid on her behalf prior to the termination of her employment paid during the same period in which she is receiving salary continuation payments. Further, any outstanding RSUs, PRSUs and stock rights vesting that would have otherwise vested in the 12 months following her termination will immediately vest and become exercisable.

In the event we or our acquirer terminates Ms. Wegner's employment without cause or Ms. Wegner resigns for "good reason" at the time of, or within 12 months following, a change in control of our Company, we or our acquirer will provide Ms. Wegner: (i) salary continuation at a rate equal to her base salary then in effect for a period of 12 months, (ii) an insurance premium in an amount equal to that which was paid on her behalf prior to the termination of her employment paid during the same period in which she is receiving salary continuation, and (iii) accelerated vesting of all unvested and outstanding RSU awards, PRSU awards and any other stock rights.

“Good Reason” is defined as any of the following without Ms. Wegner’s express written consent: (i) a material decrease in her base salary or targeted annual bonus, or (ii) a material diminution in her authority, duties and responsibilities to our Company.

“Cause” is defined as reasonable determination by the board of directors of any of the following: (i) Ms. Wegner’s violation of any applicable material law or regulation respecting the business of the Company; (ii) Ms. Wegner’s conviction of, or plea of nolo contendere to, a felony or any crime involving fraud, embezzlement or any other act of moral turpitude; (iii) any act of dishonesty, fraud or misrepresentation made in connection with Ms. Wegner’s responsibilities as an employee; (iv) Ms. Wegner’s gross misconduct that results in a reasonable probability of material injury (whether tangible or reputational) to the Company; or (v) Ms. Wegner’s uncured failure to perform in any material respect her duties under the agreement.

During and after her employment, Ms. Wegner is subject to a covenant related to the non-disclosure of trade secrets and confidential information. For one year following the date of termination, for any reason, Ms. Wegner is subject to covenants related to the non-solicitation of customers, employees or consultants and a covenant not to compete with the Company within the United States.

Employment Agreements with Mason R. Holland, Jr.

In January 2007, we entered into an employment agreement with Mason Holland, our Executive Chairman, which sets forth the terms and conditions of his employment in that position. The agreement continues for terms of three years, which will be extended automatically each day, for an additional day, so that the remaining term continues to be three years in length. Either we or Mr. Holland may at any time fix the term to a finite term of three years. Under the terms of the agreement, we must pay Mr. Holland salary at a rate of not less than $200,000 per year. The board of directors will review Mr. Holland’s salary at least annually and must increase his salary by at least 5% per year. Mr. Holland waived his base salary increase in 2020. We may not decrease Mr. Holland’s base salary under these agreements without his consent.

Mr. Holland is eligible to participate in any management incentive programs we establish, and he may receive incentive compensation based upon achievement of targeted levels of performance and other criteria established by the board of directors or compensation and talent committee. In the event we achieve the annual financial targets approved by the board, Mr. Holland will be entitled to an annual bonus in an amount at least equal to his then-current base salary.

On January 26, 2021, the Company decided to eliminate the position of Executive Chairman and announced that Mr. Holland would step down from his position as Executive Chairman and a member of the board of directors, to be effective at the 2021 Annual Meeting of Stockholders. On January 26, 2021, the Company and Mr. Holland entered into an advisory and board observation agreement, pursuant to which Mr. Holland was to serve as an advisor to the board with observer rights after the 2021 Annual Meeting of Stockholders. On March 5, 2021, the board and Mr. Holland agreed that Mr. Holland will not serve as an advisor to the Company or earn any related advisor compensation and that Mr. Holland will forgo all observer rights under the advisory and board observation agreement after the 2021 Annual Meeting of Stockholders. The remaining terms of the advisory and board observation agreement remain in full force and effect.

Following the 2021 Annual Meeting of Stockholders, in accordance with the terms of his previously negotiated employment agreement, Mr. Holland is legally entitled to and will receive certain benefits for termination without cause as a result of the elimination of the position of Executive Chairman, including: (i) a pro rata payment of his 2021 annual bonus, (ii) payment each month, for a period of 36 months, of 1/12 of the sum of his current base salary and a pro rata share of his annual bonus paid at target, and (iii) continuation of his benefits, including life insurance, disability, medical, dental, and hospitalization, for 36 months following the separation date. Additionally, upon his separation date, any remaining unvested incentive equity awards previously granted to Mr. Holland will accelerate and become fully vested.

During and after his employment, Mr. Holland is subject to a covenant related to the non-disclosure of trade secrets and confidential information. For 24 months following the separation date, for any reason, except with adequate justification, Mr. Holland is subject to covenants related to the non-solicitation of customers, employees or consultants and a covenant not to compete with the Company. In the event Mr. Holland, during the 24 months following the separation date, becomes employed by a company that engages, in whole or part, in the same or substantially the same business as ours, he will forfeit any remaining severance payments.

Employment Agreement with Annmarie Fini

In January 2020, we entered into an employment agreement with Annmarie Fini. Under the agreement, we agreed to pay Ms. Fini a base salary of $348,676 per year. Ms. Fini is eligible to receive a target annual incentive bonus of up to 50% of her then-current base pay, subject to adjustment, upon achievement of our Company's annual performance targets. Ms. Fini is eligible to receive an annual RSU award of up to 200% of her base salary. These RSU awards have a four-year vesting period, and will be subject to the terms of an RSU award agreement. See "*Outstanding Equity Awards as of December 31, 2020*" below for a description of, among other things, equity awards granted to Ms. Fini in 2020, all of which remained outstanding as of that year end.

In the event we terminate Ms. Fini's employment without cause, provided Ms. Fini executes a general release of claims, we will provide Ms. Fini salary continuation at a rate equal to her base salary then in effect for a period of six months following her termination date. Any outstanding RSUs, PRSUs and stock rights will not be subject to accelerated vesting.

In December 2020, we entered into an amendment to Ms. Fini's employment agreement to alter certain terms with regard to post-termination payments in connection with a change in control. Pursuant to the amended employment agreement, in the event we or our acquirer terminates Ms. Fini's employment without cause or Ms. Fini resigns for "good reason" at the time of, or within 12 months following, a change in control of our Company, we or our acquirer will provide Ms. Fini: (i) salary continuation at a rate equal to her base salary then in effect for a period of 6 months, (ii) an insurance premium in an amount equal to that which was paid on her behalf prior to the termination of her employment paid during the same period in which she is receiving salary continuation, and (iii) accelerated vesting of all unvested and outstanding RSU awards and PRSU awards.

"Cause" is defined as reasonable determination by the board of directors of any of the following: (i) Ms. Fini's violation of any applicable material law or regulation respecting the business of the Company; (ii) Ms. Fini's conviction of, or plea of nolo contendere to, a felony or any crime involving fraud, embezzlement or any other act of moral turpitude; (iii) any act of dishonesty, fraud or misrepresentation made in connection with Ms. Fini's responsibilities as an employee; (iv) Ms. Fini's gross misconduct that results in a reasonable probability of material injury (whether tangible or reputational) to the Company; or (v) Ms. Fini's material breach of any material obligations under any written agreement with the Company or Ms. Fini's continued failure to substantially perform her material employment duties, which breach or failure is not cured to the Company's reasonable satisfaction within five business days after notice thereof is delivered to Ms. Fini.

During and after her employment, Ms. Fini is subject to a covenant related to the non-disclosure of trade secrets and confidential information. For one year following the date of termination, for any reason, Ms. Fini is subject to covenants related to the non-solicitation of customers, employees or consultants and a covenant not to compete with the Company within the United States.

Employment Agreement with Raymond A. August

In July 2014, we entered into an employment agreement with Raymond A. August, which was subsequently amended in November 2017 and April 2019 (the "August Employment Agreement"). Under the agreement, we agreed to pay Mr. August a base salary of $500,000 per year. Mr. August was also eligible to receive a target bonus of up to 100% of his then-current base pay, subject to adjustment, upon achievement of our Company's annual performance targets. Mr. August served as our President and Chief Executive Officer until his separation from our Company, effective August 24, 2020. He continued to serve our Company during the transition to Mr. Swad as our President and Chief Executive Officer through December 31, 2020. Pursuant to the August Separation Agreement, Mr. August received benefits for being terminated without cause as set forth in the August Employment Agreement and in accordance with Company policies, including: (i) continued payment of his base salary for 18 months following the termination date; (ii) payment of a portion of his 2020 annual bonus; (iii) continuation coverage under COBRA for 18 months following the termination date; and (iv) immediate vesting of time-based vesting equity awards that would have vested within 12 months of the termination date, other than his April 2019 RSU grant. See "*Outstanding Equity Awards as of December 31, 2020*" below for a description of, among other things, equity awards granted to Mr. August in 2020, none of which remained outstanding as of that year end.

During and after his employment, Mr. August is subject to a covenant related to the non-disclosure of trade secrets and confidential information. For one year following the date of termination, for any reason, Mr. August is subject to covenants related to the non-solicitation of customers, employees or consultants and a covenant not to compete with the Company within the United States. The Company and Mr. August also agreed to abide by a non-disparagement covenant.

Employment Agreement with James P. Restivo

In December 2015, we entered into an employment agreement with James P. Restivo (the "Restivo Employment Agreement"). Under the agreement, we agreed to pay Mr. Restivo a base salary of $300,000 per year. Mr. Restivo was also eligible to receive a target bonus of up to 50% of his then-current base pay, subject to adjustment, upon achievement of our Company's annual performance targets. Mr. Restivo served as our Chief Technology Officer until his separation from our Company, effective September 25, 2020. He continued to serve our Company in an advisory role for a transition period through December 31, 2020. Pursuant to the Restivo Separation Agreement, Mr. Restivo received benefits for being terminated without cause as set forth in the Restivo Employment Agreement and in accordance with Company policies, including: (i) continued payment of his base salary for 6 months following the termination date; (ii) payment of a portion of his 2020 annual bonus; (iii) continuation coverage under COBRA for 6 months following the termination date; and (iv) immediate vesting of time-based vesting equity awards that would have vested within 12 months of the termination date. See "*Outstanding Equity Awards as of December 31, 2020*" below for a description of, among other things, equity awards granted to Mr. Restivo in 2020.

During and after his employment, Mr. Restivo is subject to a covenant related to the non-disclosure of trade secrets and confidential information. For one year following the date of termination, for any reason, Mr. Restivo is subject to covenants related to the non-solicitation of customers, employees or consultants and a covenant not to compete with the Company within the United States. The Company and Mr. Restivo also agreed to abide by a non-disparagement covenant.

Potential Payments on Change of Control

If the severance payments called for in our employment agreements with our named executive officers serving as of December 31, 2020, as described above under "*Employment Agreements*", had been triggered on December 31, 2020, we would have been obligated to make the following payments:

	Upon Termination without Cause or Resignation for Good Reason – No Change of Control				Upon Termination without Cause or Resignation for Good Reason – Change of Control			
Name	**Cash Severance ($)**	**Value of Accelerated Vesting(1) ($)**	**Value of Benefits ($)**	**Total ($)**	**Cash Severance ($)**	**Value of Accelerated Vesting(1) ($)**	**Value of Benefits ($)**	**Total ($)**
Stephen M. Swad *President, CEO and Director*	$ 814,637	$1,482,740	$13,054	$2,310,431	$1,450,296	$3,896,423	$26,109	$5,372,828
Alpana Wegner *CFO*	$ 450,635	$ 259,855	$13,054	$ 723,544	$ 450,635	$ 702,436	$13,054	$1,166,125
Mason R. Holland, Jr. *Executive Chairman of the Board*	$1,846,775	$ 775,462	$39,163	$2,661,400	$1,849,775	$ 775,462	$39,163	$2,661,400
Annmarie Fini EVP	$ 174,338	$ —	$ 6,527	$ 180,865	$ 174,338	$1,242,398	$ 6,527	$1,423,263
Raymond A. August(2) *Former President, CEO and Director*	—	—	—	—	—	—	—	—
James P. Restivo(3) *Former CTO*	—	—	—	—	—	—	—	—

(1) The value of accelerated vesting equals $14.48, the closing sale price per share of our common stock on the Nasdaq Global Market on December 31, 2020, multiplied by the number of shares subject to accelerated vesting.

(2) Mr. August served as our President and Chief Executive Officer until his separation from the Company, effective August 24, 2020. He continued to serve our Company during the transition to Mr. Swad as our President and Chief Executive Officer through December 31, 2020.

(3) Mr. Restivo served as our Chief Technology Officer until his separation from our Company, effective September 25, 2020. He continued to serve our Company in an advisory role through December 31, 2020.

2020 Grants of Plan-Based Awards Table

The following table summarizes equity awards and non-equity incentive plan awards granted to our named executive officers in 2020, as of the date of grant.

		Estimated Future Payouts Under Non-Equity Incentive Plan Awards(1)			Estimated Future Payouts Under Equity Incentive Plan Awards(2)			All other stock awards: Number of time-based RSUs(2)	Grant Date Fair Value of Stock Awards ($)(3)
Name	**Grant date**	**Threshold ($)**	**Target ($)**	**Maximum ($)**	**Threshold (#)**	**Target (#)**	**Maximum (#)**	**(#)**	
Stephen M. Swad*(4)*	May 1, 2020					15,931 (5)	15,931		$162,815
President, CEO and Director	May 1, 2020					56,292 (6)	84,438		$575,304
	May 1, 2020							56,292 (7)	$575,304
	May 1, 2020	$ 0	$ 46,219	$ 46,219					
	August 25, 2020	$ 0	$168,625	$168,625					
	September 1, 2020							61,010 (8)	$632,064
Alpana Wegner*(9)*	January 1, 2020							4,726 (10)	$ 99,199
CFO	May 1, 2020					2,447 (5)	2,447		$ 25,008
	May 1, 2020							11,014 (7)	$112,563
	May 1, 2020	$ 0	$ 7,101	$ 7,101					
	August 25, 2020	$ 0	$ 62,125	$ 62,125					
	September 1, 2020							21,789 (8)	$225,734

Mason R. Holland, *Jr.*[11]	May 1, 2020				16,283[5]	16,283		$ 166,412
Executive Chairman of the	May 1, 2020				12,212[6]	18,318		$ 124,807
Board	May 1, 2020						12,212[7]	$ 124,807
	May 1, 2020	$ 0	$162,889	$162,889				
Annmarie Fini	May 1, 2020				8,713[5]	8,713		$ 89,047
EVP	May 1, 2020				26,141[6]	39,211		$ 267,161
	May 1, 2020						26,141[7]	$ 267,161
	May 1, 2020	$ 0	$ 87,169	$ 87,169				
Raymond A. August[12]	May 1, 2020				26,240[5]	26,240		$ 268,173
Former President, CEO and	May 1, 2020				131,204[6]	196,806		$1,340,905
Director	May 1, 2020						131,204[7]	$1,340,905
	May 1, 2020	$ 0	$262,500	$262,500				
James P. Restivo[13]	May 1, 2020				14,057[5]	14,057		$ 143,663
Former CTO	May 1, 2020				28,115[6]	42,172		$ 287,332
	May 1, 2020						28,115[7]	$ 287,332
	May 1, 2020	$ 0	$140,625	$140,625				

(1) Represents the aggregate cash incentive components of the 2020 annual incentives payable to the named executive officer, as summarized in "*Compensation Discussion and Analysis—Compensation Elements*" above.

(2) Represents the aggregate equity incentive components of the 2020 annual incentives granted in the form of PRSUs and RSUs to the named executive officer, as summarized in "*Compensation Discussion and Analysis—Compensation Elements*" above.

(3) The reported amounts represent the aggregate grant date fair value of awards of PRSUs and RSUs computed in accordance with FASB ASC Topic 718, excluding the estimate of forfeitures. The reported amounts for PRSUs also assume target performance goals will be achieved and are consistent with the estimate of aggregate compensation cost recognized over the service period determined as of the grant date under FASB ASC Topic 718.

(4) Mr. Swad was appointed our President and Chief Executive Officer, effective August 24, 2020, and resigned as our Chief Financial Officer, effective August 24, 2020. His target annual incentive bonus opportunities for 2020 were prorated for his period of service in each position, and his unvested equity awards continue to vest.

(5) A percentage of the PRSUs were to vest upon the achievement of an annual revenue goal and an adjusted EBITDA goal, during the period of January 1, 2020 through December 31, 2020, as summarized in "*Compensation Discussion and Analysis—Compensation Elements*" above. Our board of directors determined that, on April 1, 2021, a total of 14,337, 2,202, 14,654, 7,841, 23,616 and 12,651 PRSUs vested for Mr. Swad, Ms. Wegner, Mr. Holland, Ms. Fini, and Messrs. August and Restivo, respectively.

(6) A percentage of the PRSUs were to vest upon the achievement of software service revenue and adjusted EBITDA goals during the period of January 1, 2020 through December 31, 2020, as summarized in "*Compensation Discussion and Analysis—Compensation Elements*" above. Our board of directors determined that, on April 1, 2021, a total of 50,661, 10,989, 23,526, 118,083 and 25,301 PRSUs vested for Mr. Swad, Mr. Holland, Ms. Fini, and Messrs. August and Restivo, respectively.

(7) Represents RSUs which vest in three equal annual installments beginning on May 1, 2021, subject to continued employment.

(8) The shares subject to this grant of RSUs vest in three equal annual installments beginning on September 1, 2021, subject to continued employment.

(9) Ms. Wegner was appointed our Chief Financial Officer, effective August 24, 2020, and previously served as our Vice President, Corporate Controller. Her target annual incentive bonus opportunities for 2020 were prorated for this period of service in each position.

(10) Represents RSUs which vest in four equal annual installments beginning on January 1, 2021, subject to continued employment.
(11) Mr. Holland will serve as our Executive Chairman until the 2021 Annual Meeting of Stockholders. Following his separation date, he will receive the separation benefits as provided in his employment agreement. His unvested equity awards will continue to vest until his separation date, and subsequently any unvested equity awards will accelerate and become fully vested.
(12) Mr. August served as our President and Chief Executive Officer until his separation from our Company, effective August 24, 2020. He continued to serve our Company during the transition to Mr. Swad as our President and Chief Executive Officer through December 31, 2020. On December 31, 2020, pursuant to his separation agreement, he received immediate vesting of time-based vesting equity awards that would have vested within 12 months of the termination date, other than his RSU granted in April 2019, and any unvested equity awards were forfeited.
(13) Mr. Restivo served as our Chief Technology Officer until his separation from our Company, effective September 25, 2020. He continued to serve our Company in an advisory role through December 31, 2020. On December 31, 2020, pursuant to his separation agreement, he received immediate vesting of time-based vesting equity awards that would have vested within 12 months of the termination date and any unvested equity awards were forfeited.

Outstanding Equity Awards as of December 31, 2020 Table

The following table lists the outstanding equity awards held by our named executive officers as of December 31, 2020:

	Stock awards							
Name	**Number of Securities Underlying Unexercised Options (#) Exercisable**	**Number of Securities Underlying Unexercised Options (#) Unexercisable**	**Option Exercise Price ($)**	**Option Expiration Date**	**Number of shares or units of stock that have not vested (#)**	**Market value of shares or units of stock that have not vested ($)(1)**	**Equity incentive plan awards: number of unearned units (#)**	**Equity incentive plan awards: market value of unearned units ($)(1)**
Stephen M. Swad[(2)]					53,006 [(3)]	$767,527		
President, CEO and Director					28,912 [(4)]	$418,646		
					56,292 [(5)]	$815,108		
							15,931 [(6)]	$230,681
							56,292 [(7)]	$815,108
					61,010 [(8)]	$883,425		
Alpana Wegner[(9)]					367 [(10)]	$ 5,314		
CFO					1,872 [(11)]	$ 27,107		
					2,022 [(12)]	$ 29,279		
					840 [(13)]	$ 12,163		
					217 [(14)]	$ 3,142		
					712 [(15)]	$ 10,310		
					3,248 [(16)]	$ 47,031		
					4,726 [(17)]	$ 68,432		
					11,014 [(5)]	$159,483		
							2,447 [(6)]	$ 35,433
					21,789 [(8)]	$315,505		
Mason R. Holland, *Jr*.[(18)]					1,390 [(13)]	$ 20,127		
Executive Chairman of the Board					2,052 [(15)]	$ 29,713		
					4,939 [(12)]	$ 71,517		
					1,738 [(19)]	$ 25,166		
					12,212 [(5)]	$176,830		
							16,283 [(6)]	$235,778
							12,212 [(7)]	$176,830

Annmarie Fini					1,219 (13)	$ 17,651		
EVP					2,848 (15)	$ 41,239		
					3,853 (17)	$ 55,791		
					6,856 (12)	$ 99,275		
					2,392 (19)	$ 34,636		
					1,450 (20)	$ 20,996		
					26,141 (5)	$ 378,522		
							8,713 (6)	$ 126,164
							26,141 (7)	$ 378,522
	7,000		$10.30	10/01/2022				
	2,000		$13.53	05/08/2023				
Raymond A. August(21)					4,545 (13)	$ 65,812		
Former President, CEO and Director					22,467 (22)	$ 325,322		
					16,535 (15)	$ 239,427		
					39,806 (12)	$ 576,391		
					18,684 (19)	$ 270,544		
					131,204 (5)	$1,899,834		
							26,240 (6)	$ 379,955
							131,204 (7)	$1,899,834
James Restivo(24)					5,316 (13)	$ 76,976		
Former CTO					1,411 (13)	$ 20,431		
					3,576 (15)	$ 51,780		
					4,004 (19)	$ 57,978		
					8,609 (12)	$ 124,658		
					28,115 (5)	$ 407,105		
							14,057 (6)	$ 203,545
							28,114 (7)	$ 407,091

(1) Based on $14.48 per share which was the closing price of our common stock on the Nasdaq Global Market on December 31, 2020, the last trading day of that fiscal year.

(2) Mr. Swad was appointed our President and Chief Executive Officer, effective August 24, 2020, and resigned from the Company as our Chief Financial Officer, effective August 24, 2020. His unvested equity awards continue to vest.

(3) The shares subject to this grant of RSUs vest 25% on August 1, 2020. 6.25% of the restricted stock units vest on each three-month anniversary thereafter, subject to continued employment.

(4) The shares subject to this grant of RSUs vest in four equal annual installments beginning on August 1, 2020, subject to continued employment.

(5) The shares subject to this grant of RSUs vest in three equal annual installments beginning on May 1, 2021, subject to continued employment.

(6) The amount reported represents the number of PRSUs granted to the named executive officer on May 1, 2020, as previously described, and assumes target performance goals will be achieved. A percentage of the PRSUs were to vest upon the achievement of an annual revenue goal and an adjusted EBITDA goal, during the period of January 1, 2020 through December 31, 2020, as summarized in "*Compensation Discussion and Analysis—Compensation Elements*" above. Our board of directors determined that, on April 1, 2021, a total of 14,337, 2,202, 14,654, 7,841, 23,616 and 12,651 PRSUs vested for Mr. Swad, Ms. Wegner, Mr. Holland, Ms. Fini, and Messrs. August and Restivo, respectively.

(7) The amount reported represents the number of PRSUs granted to the named executive officer on May 1, 2020, as previously described, and assumes target performance goals will be achieved. A percentage of the PRSUs were to vest upon the achievement of software service revenue and adjusted EBITDA goals during the period of January 1, 2020 through December 31, 2020, as summarized in "*Compensation Discussion and Analysis—Compensation Elements*" above. Our board of directors determined that, on April 1, 2021, a total of 50,661, 10,989, 23,526, 118,083 and 25,301 PRSUs vested for Mr. Swad, Mr. Holland, Ms. Fini, and Messrs. August and Restivo, respectively.

(8) The shares subject to this grant of RSUs vest in three equal annual installments beginning on September 1, 2021, subject to continued employment.

(9) Ms. Wegner was appointed our Chief Financial Officer, effective August 24, 2020, and previously served as our Vice President, Corporate Controller.

(10) The shares subject to this grant of RSUs vest in four equal annual installments beginning on October 1, 2017, subject to continued employment.

(11) The shares subject to this grant of RSUs vest in four equal annual installments beginning on January 1, 2018, subject to continued employment.

(12) The shares subject to this grant of PRSUs represented a contingent right to receive one share of our common stock upon the Company's achievement of annual recurring revenue bookings percentage growth goals during the period of January 1, 2018 through December 31, 2018 and vest in four equal annual installments beginning on April 1, 2019, subject to continued employment.

(13) The shares subject to this grant of RSUs vest in four equal annual installments beginning on April 1, 2018, subject to continued employment.

(14) The shares subject to this grant of RSUs vest in four equal annual installments beginning on February 1, 2019, subject to continued employment.

(15) The shares subject to this grant of RSUs vest in four equal annual installments beginning on April 1, 2019, subject to continued employment.

(16) The shares subject to this grant of RSUs vest in four equal annual installments beginning on November 1, 2019, subject to continued employment.

(17) The shares subject to this grant of RSUs vest in four equal annual installments beginning on January 1, 2021, subject to continued employment.

(18) Mr. Holland will serve as our Executive Chairman until the 2021 Annual Meeting of Stockholders. Following his separation date, he will receive the separation benefits as provided in his employment agreement. His unvested equity awards will continue to vest until his separation date, and subsequently any unvested equity awards will accelerate and become fully vested.

(19) The shares subject to this grant of RSUs vest in four equal annual installments beginning on April 1, 2020, subject to continued employment.

(20) The shares subject to this grant of RSUs vest in four equal annual installments beginning on September 1, 2020, subject to continued employment.

(21) Mr. August served as our President and Chief Executive Officer until his separation from our Company, effective August 24, 2020. He continued to serve our Company during the transition to Mr. Swad as our President and Chief Executive Officer through December 31, 2020. On December 31, 2020, pursuant to his separation agreement, he received immediate vesting of time-based vesting equity awards that would have vested within 12 months of the termination date, other than his RSU granted in April 2019, and any unvested equity awards were forfeited.

(22) The shares subject to this grant of RSUs vest in five equal annual installments beginning on December 31, 2018, subject to continued employment.

(23) The shares subject to this grant of RSUs vest in full on April 1, 2023, subject to continued employment.

(24) Mr. Restivo served as our Chief Technology Officer until his separation from our Company, effective September 25, 2020. He continued to serve our Company in an advisory role through December 31, 2020. On December 31, 2020, pursuant to his separation agreement, he received immediate vesting of time-based vesting equity awards that would have vested within 12 months of the termination date and any unvested equity awards were forfeited.

2020 Options Exercised and Stock Vested Table

The following table sets forth information on the aggregate number and value of all RSUs and PRSUs vested for each named executive officer in the year ended December 31, 2020.

Stock Vested during the year ended December 31, 2020

	Stock awards	
Name	Number of shares acquired on vesting (#)	Value realized on vesting(1) ($)
Stephen M. Swad *President, CEO and Director*	33,730	$ 388,040
Alpana Wegner *CFO*	4,272	$ 53,273
Mason R. Holland, Jr.(2) *Executive Chairman of the Board*	8,845	$ 78,809
Annmarie Fini *EVP*	11,760	$ 122,204
Raymond A. August(3) *Former President, CEO and Director*	59,500	$ 676,524
James Restivo(4) *Former CTO*	21,179	$ 188,704

(1) The aggregate value realized equals the fair market value of the shares acquired, based on the closing sale price of our common stock on the Nasdaq Global Market immediately preceding vesting.

(2) Mr. Holland will serve as our Executive Chairman until the 2021 Annual Meeting of Stockholders. Following his separation date, he will receive the separation benefits as provided in his employment agreement. His unvested equity awards will continue to vest until his separation date, and subsequently any unvested equity awards will accelerate and become fully vested.

(3) Mr. August served as our President and Chief Executive Officer until his separation from our Company, effective August 24, 2020. He continued to serve our Company during the transition to Mr. Swad as our President and Chief Executive Officer through December 31, 2020. On December 31, 2020, pursuant to his separation agreement, he received immediate vesting of time-based vesting equity awards that would have vested within 12 months of the termination date, other than his RSU granted in April 2019, and any unvested equity awards were forfeited.

(4) Mr. Restivo served as our Chief Technology Officer until his separation from our Company, effective September 25, 2020. He continued to serve our Company in an advisory role through December 31, 2020. On December 31, 2020, pursuant to his separation agreement, he received immediate vesting of time-based vesting equity awards that would have vested within 12 months of the termination date and any unvested equity awards were forfeited.

CEO PAY RATIO

As required by Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and Item 402(u) of the SEC's Regulation S-K, we are providing the following information about the relationship between the median of the annual total compensation of all our employees and the annual total compensation of Mr. Swad, our Chief Executive Officer on the date we selected to identify the median employee. The pay ratio included below is a reasonable estimate calculated in a manner consistent with Item 402(u) of Regulation S-K. However, due to the flexibility afforded by Item 402(u) in calculating the CEO Pay Ratio, our CEO Pay Ratio may not be comparable to the CEO pay ratios presented by other companies.

For 2020:

- the median of the annual total compensation of all our employees of our Company (other than Mr. Swad) was $85,703; and
- the compensation of Mr. Swad as Chief Executive Officer annualized for 2020 was $2,648,628.

Based on this information, for 2020 the ratio of the annual total compensation of Mr. Swad to the median of the annual total compensation of all our employees was estimated to be 31 to 1.

To identify the median employee, compensation data was gathered for our entire employee population as of December 1, 2019, including part-time employees and excluding our Chief Executive Officer and employees from companies acquired during 2019. We have no non-U.S. employees. We used total 2019 regular wages for the first payroll in December 2019 as the compensation measure that best reflects the compensation of all our employees. This compensation measure was consistently applied to all of our employees included in the calculation. In accordance with SEC rules, after identifying our median employee, the 2020 annual total compensation of the median employee and our Chief Executive Officer were determined using the same methodology that we use to determine our NEOs' annual total compensation for the Summary Compensation Table.

DIRECTOR COMPENSATION

Each of our non-employee directors receives an annual retainer of $180,000, payable at the director's election either 50% in cash and 50% in RSUs, or 100% in RSUs. We also pay such directors the following cash fees for each quarter they chair one of the board committees: audit, $6,250; compensation, $2,500; and nominating and governance committee, $1,875. Other members of the committees receive the following annual cash fees: audit, $9,000; compensation, $5,000; and nominating and governance, $3,750.

Our Company maintains stock ownership guidelines for directors. The guidelines require our directors to own stock in our Company with a cash value of $225,000 or 3,750 shares, whichever is less. Directors need not own the requisite number of shares until he or she has completed three years of service as a director of our Company. If the ownership requirement is not met after the director has completed three years of service as a director of our Company, then all payments made to him or her by our Company 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 a director, shares that are owned directly are counted along with (a) shares over which the director has investment or voting power, and (b) shares that may be acquired pursuant to vested, in-the-money options to acquire shares of our common stock. Shares used to achieve the minimum director ownership requirement may not be pledged, used as security, or otherwise encumbered by a director.

In response to the COVID-19 pandemic, and consistent with the actions taken for executives, the board of directors made the decision voluntarily to reduce their annual retainer compensation by 25% for 2020.

The following table sets forth the total compensation paid to each of our non-employee directors serving in 2020.

Name	Fees Earned or Paid in Cash ($)	Stock Awards ($)	Total ($)
Douglas A. Dennerline	$ 19,625	$89,071[(1)]	$108,696
Barry Libert[(2)]	—	—	—
A. Lanham Napier	$ 8,250	$89,071[(1)]	$ 97,321
Francis J. Pelzer V	$ 30,000	$89,071[(1)(3)]	$119,071
Ana M. White	$ 16,000	$61,316[(1)(4)]	$ 77,316

(1) On July 1, 2020, the board of directors approved grants of RSUs to each of Messrs. Dennerline and Pelzer for 11,250 shares of our common stock with an aggregate grant date fair value for each director of $125,438, computed in accordance with FASB ASC Topic 718. These grants of RSUs vest on the earlier of July 1, 2021 or the 2021 Annual Meeting of Stockholders of our Company, subject to the director's continued service on the board. These amounts reflected a 25% reduction in their annual retainer from initially $180,000 to $135,000.

(2) Mr. Libert began serving as a director of our Company on September 10, 2020 and resigned on January 26, 2021.

(3) Mr. Pelzer also holds an option to purchase 50,000 shares of our common stock, granted to him in 2013 for service on the board of directors. On December 31, 2020, all shares subject to this option were vested.

(4) Ms. White received an initial grant of 9,531 restricted stock units when she joined our Company as a director on January 15, 2019 and therefore was not eligible for the annual grant made to directors on July 1, 2020. Ms. White resigned from the board of directors, effective March 23, 2021.

Messrs. Holland and Swad are both named executive officers, and both also serve as directors, and neither received additional compensation for service provided as a director in 2020. Mr. August separated from our Company on August 24, 2020. Mr. August did not receive any further compensation related to being a director during his service as our Chief Executive Officer.

COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

Our compensation and talent committee consists of Messrs. Dennerline and Pelzer. Ms. White served as our compensation and talent committee Chair until she stepped down in March 2021. None of our executive officers serves as a member of the board of directors or compensation committee (or other committee performing equivalent functions) of another entity that has one or more executive officers serving on our board of directors or compensation and talent committee. No interlocking relationship exists between any member of our board of directors or any member of the compensation committee (or other committee performing equivalent functions) of any other company.

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

Equity Compensation Plan Information

The following table sets forth the indicated information as of December 31, 2020 with respect to our equity compensation plans:

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans
Equity compensation plans approved by security holders			
2016 Employee Stock Purchase Plan	—	$ —	98,571
Second Amended and Restated 2012 Stock Plan, as amended	2,712,805	$ 0.53	3,518,804
Total	2,712,805	$ 0.53	3,617,375

Our equity compensation plans consist of the Benefitfocus, Inc. 2016 Employee Stock Purchase Plan and the Second Amended and Restated 2012 Stock Plan, as amended, which were approved by our stockholders. We do not have any equity compensation plans or arrangements that have not been approved by our stockholders. Our Amended and Restated 2000 Stock Option Plan expired during 2020.

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth certain information regarding the beneficial ownership of our common stock as of April 20, 2021 unless otherwise noted below for the following:

- each person or entity known to own beneficially more than 5% of our outstanding common stock as of the date indicated in the corresponding footnote;
- each of the named executive officers named in the Summary Compensation table;
- each director; and
- all current directors and executive officers as a group.

Applicable percentage ownership is based on 32,834,103 shares of our common stock outstanding as of April 20, 2021, unless otherwise noted below. Beneficial ownership is determined in accordance with the rules of the SEC, based on factors including voting and investment power with respect to shares. Common stock subject to options currently exercisable, or exercisable within 60 days after April 20, 2021, and RSUs vesting within 60 days after April 20, 2021, are deemed outstanding for the purpose of computing the percentage ownership of the person holding those securities, but are not deemed outstanding for computing the percentage ownership of any other person. Unless otherwise indicated, the address for each listed stockholder is c/o Benefitfocus, Inc., 100 Benefitfocus Way, Charleston, South Carolina 29492.

Name and Address of Beneficial Owner	Shares Beneficially Owned	Percentage Beneficially Owned
A. Lanham Napier(1)	5,370,781	14.1%
Mason R. Holland, Jr.(2)	2,727,507	8.3%
Raymond A. August(3)	466,457	1.4%
Stephen M. Swad(4)	136,085	*
James P. Restivo(3)	83,547	*
Annmarie Fini	71,848	*
Francis J. Pelzer V(5)	72,337	*
Douglas A. Dennerline(6)	25,677	*
Alpana Wegner	13,986	*
Coretha M. Rushing	—	*
Zeynep Young	—	*
All current directors and executive officers as a group (8 individuals)	8,346,373	21.8%
5% or Greater Stockholders:		
BuildGroup Management, LLC(7)	5,333,334	14.0%
Indaba Capital Management, L.P.(8)	3,097,800	9.4%
Brown Brothers Harriman & Co.(9)	3,097,010	9.4%
Blackrock, Inc.(10)	2,326,999	7.1%
The Vanguard Group, Inc. (11)	2,320,594	7.1%
ArrowMark Colorado Holdings LLC(12)	1,881,994	5.7%

* Less than 1%.

(1) Includes 5,333,334 shares of common stock underlying 1,777,778 shares of the Company's Series A convertible preferred stock held by BuildGroup LLC. Mr. Napier is the Chief Executive Officer and a member of the board of directors of BuildGroup LLC and is the Co-founder and Co-Chief Executive Officer and a member of the board of managers of its investment manager, BuildGroup Management, LLC and therefore, may be deemed to have pecuniary interest in the shares of common stock held by BuildGroup.

(2) Includes 2,649,099 shares held by the Holland Family Trust and five shares held by Mr. Holland as custodian for his minor son. Mr. Holland and his wife share voting and investment control over the shares held by the Holland Family Trust.

(3) Includes shares that were subject to accelerated vesting in connection with the beneficial owner's separation from the Company.

(4) Includes 33,340 shares held by the Stephen M. Swad Revocable Living Trust.

(5) Includes 50,000 shares issuable upon the exercise of options exercisable on or before 60 days after April 20, 2021 and 11,250 shares held upon the vesting of RSUs exercisable within 60 days after April 20, 2021.

(6) Includes 11,250 shares held upon the vesting of RSUs exercisable within 60 days after April 20, 2021.

(7) Based solely on a Schedule 13D filed with the SEC on June 10, 2020 by BuildGroup Management, LLC. Includes 5,333,334 shares of common stock underlying 1,777,778 shares of the Company's Series A convertible preferred stock held by BuildGroup LLC. The address of BuildGroup Management, LLC is 3500 Jefferson Street, Suite 303, Austin, Texas 78731.

(8) Based solely on a Schedule 13D/A filed with the SEC on March 16, 2021 by Indaba Capital Management, L.P. The address of Indaba Capital Management, L.P. is One Letterman Drive, Building D, Suite DM 700, San Francisco, California 94129.

(9) Based solely on a Schedule 13G/A filed with the SEC on February 5, 2021 by Brown Brothers Harriman & Co. ("Brown Brothers"). Includes 3,097,010 shares of common stock held by Brown Brothers as a bank. The address of Brown Brothers is 140 Broadway, New York, New York 10005.

(10) Based solely on a Schedule 13G/A filed with the SEC on January 29, 2021 by BlackRock, Inc. Includes 2,579,785 shares of common stock held by BlackRock, Inc. as a parent holding company. The address of BlackRock, Inc. is 55 East 52nd Street, New York, New York 10055.

(11) Based solely on a Schedule 13G/A filed with the SEC on February 10, 2021 by The Vanguard Group, Inc. The address of The Vanguard Group, Inc. is 100 Vanguard Blvd., Malvern, Pennsylvania 19355.

(12) Based solely on a Schedule 13G/A filed with the SEC on February 16, 2021 by ArrowMark Colorado Holdings, LLC ("ArrowMark"). Includes 1,881,994 shares of common stock held by ArrowMark as an investment adviser. The address of ArrowMark is 100 Fillmore Street, Suite 325, Denver, Colorado 80206.

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

Certain Relationships and Related Party Transactions

The following is a summary of each transaction or series of similar transactions since January 1, 2020 to which we were or are a party in which:

- the amount involved exceeded or exceeds $120,000; and
- any of our directors or executive officers, any holder of 5% of our capital stock or any member of their immediate family had or will have a direct or indirect material interest.

Landlord—Daniel Island Executive Center, LLC and DIEC II, LLC

We lease real property from Daniel Island Executive Center, LLC, or DIEC, LLC, for use as our corporate headquarters in Charleston, South Carolina under two lease agreements. Pursuant to an amendment to each lease executed on December 12, 2016, both lease agreements expire on December 31, 2031. The initial term of the leases will reset to be co-terminus with certain new leases our Company may enter into with Daniel Island Executive Center II, LLC, or DIEC II, LLC. Under the two leases, an aggregate of $67.2 million of lease payments are due over the remainder of the terms as of December 31, 2020. We made payments related to these agreements in the amount of $7.7 million for the year ended December 31, 2020.

Pursuant to a lease agreement with DIEC II, LLC and subsequent amendment executed on December 12, 2016, we have extended our campus in Charleston, South Carolina with a Customer Success Center and, at our option and under a new lease, can have a two-story welcome center built. The lease agreement for the Customer Success Center expires December 31, 2031. The initial term of the lease will reset to be co-terminus with certain new leases our Company may enter into with DIEC II, LLC. Under the lease, an aggregate of $64.7 million of lease payments are due over the remainder of the term as of December 31, 2020. We made payments related to this agreement in the amount of $7.4 million for the year ended December 31, 2020.

On March 13, 2020, our Company executed an amendment to leases amending: (i) the Lease Agreement dated January 1, 2009, as amended, between the Company and DIEC, LLC; (ii) the Lease Agreement dated May 31, 2005, as amended, between the Company and DIEC, LLC; and (iii) the Commercial Lease Agreement dated December 13, 2013, as amended, between the Company and DIEC II, LLC. Pursuant to the amendment to leases, the Company paid DIEC, LLC and DIEC II, LLC $4.0 million for rent due to DIEC, LLC and DIEC II, LLC from January 1, 2021 to June 1, 2021, representing an approximately 17% discount on rent due for those periods.

DIEC, LLC and DIEC II, LLC are South Carolina limited liability companies. The Holland Family Trust, with which Mason Holland (our Executive Chairman of the board and a significant stockholder) is affiliated, is part owner of DIEC, LLC and DIEC II, LLC. See below under "Procedures for Approval of Related Party Transactions" for a description of the measures taken to ensure the price and negotiation process with respect to the above lease agreements were fair to the Company and our stockholders.

Indemnification Agreements

Our Restated Certificate and our Bylaws provide that we shall indemnify our directors and officers to the fullest extent permitted by law. In addition, as permitted by the laws of the State of Delaware, we have entered into indemnification agreements with each of our directors. Under the terms of our indemnification agreements, we are required to indemnify each of our directors, to the fullest extent permitted by the laws of the State of Delaware, if the indemnitee acted in good faith and in a manner the indemnitee reasonably believed to be in or not opposed to the best interests of our Company, and with respect to any criminal proceeding, had no reasonable cause to believe the indemnitee's conduct was unlawful. We must indemnify our officers and directors against any and all (A) costs and expenses (including attorneys' and experts' fees, expenses and charges) actually and reasonably paid or incurred in connection with investigating, defending, being a witness in or participating in, or preparing to investigate, defend, be a witness in or participate in, and (B) judgments, fines, penalties and amounts paid in settlement in connection with, in the case of either (A) or (B), any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, by reason of the fact that (x) such person is or was a director or officer, employee, agent or fiduciary of our Company or (y) such person is or was serving at our request as a director, officer, employee or agent or fiduciary of another corporation, partnership, joint venture, trust, employee benefits plan or other enterprise. The indemnification agreements will also require us, if so requested, to advance within 30 days of such request any and all costs and expenses that such director or officer incurred, provided that such person will return any such advance if it is ultimately determined that such person is not entitled to be indemnified for such costs and expenses. Our Bylaws also require that such person return any such advance if it is ultimately determined that such person is not entitled to indemnification by us as authorized by the laws of the State of Delaware.

We are not required to provide indemnification under our indemnification agreements for certain matters, including: (1) indemnification in connection with certain proceedings or claims initiated or brought voluntarily by the indemnitee; (2) indemnification related to disgorgement of profits made from the purchase or sale of securities of our Company under Section 16(b) of the Exchange Act, or similar provisions of state statutory or common law; (3) indemnification that is finally determined, under the procedures and subject to the presumptions set forth in the indemnification agreements, to be unlawful; or (4) indemnification for liabilities for which the director has received payment under any insurance policy for such person's benefit, our Restated Certificate or Bylaws or any other contract or otherwise, except with respect to any excess amount beyond the amount so received by such director or officer. The indemnification agreements will require us, to the extent that we maintain an insurance policy or policies providing liability insurance for directors, officers, employees, agents or fiduciaries of our Company or of any other corporation, partnership, joint venture, trust, employee benefits plan or other enterprise that such person serves at the request of our Company, to cover such person by such policy or policies to the maximum extent available.

Employment Agreements

We have entered into employment agreements with certain of our executive officers that provide for salary, bonus and severance compensation. For more information regarding these employment agreements, see "*Executive Compensation—Compensation Discussion and Analysis—Employment Agreements*".

Equity Issued to Executive Officers and Directors

We have granted RSUs and PRSUs to our executive officers and directors in 2020, as more fully described in "*Executive Compensation—Compensation Discussion and Analysis—Outstanding Equity Awards as of December 31, 2020*" and "*Director Compensation*".

BuildGroup LLC Investment

On May 22, 2020, we entered into a preferred stock purchase agreement with BuildGroup LLC, pursuant to which, upon the closing of the private placement on June 4, 2020, BuildGroup LLC received 1,777,778 shares of Preferred Stock, which are convertible, before payment of any dividend in kind, into 5,333,334 shares of our common stock. An additional 1,844,632 shares of our common stock will be issued upon conversion of the Preferred Stock assuming (x) conversion of the Preferred Stock at the initial conversion price of $15.00 per share, and (y) payment of the regular quarterly dividend on the Preferred Stock in kind, at the Company's election, instead of being paid in cash from the September 30, 2020 dividend payment through the March 31, 2024 dividend payment. As of the date of filing this Amendment with the SEC, no dividends have been paid in kind. The gross proceeds of the issuance of Preferred Stock were approximately $80 million.

The Certificate of Designations for the Preferred Stock states that as long as not less than 60% of the shares of the Preferred Stock originally issued remain outstanding, the holders of the 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 Preferred Stock Directors, consisting of (A) two directors if the Company's board of directors consists of nine or fewer directors; or (B) three directors if the board consists of 10 directors. Currently, Mr. Napier and Ms. Young serve as the Preferred Stock Directors designated by BuildGroup LLC.

Procedures for Approval of Related Party Transactions

Our audit committee, pursuant to its written charter, is responsible for reviewing and approving or ratifying any related party transaction reaching a certain threshold of significance. In situations involving a related party transaction with a member of our board of directors, the disinterested directors take on this responsibility. In the course of its review and approval or ratification of a related party transaction, the committee or disinterested directors, among other things, consider(s), consistent with Item 404 of Regulation S-K, the following:

- the nature and amount of the related person's interest in the transaction;
- the material terms of the transaction, including, without limitation, the amount and type of transaction; and
- any other matters our audit committee deems appropriate, including advice of independent counsel and other relevant advisors (for example, independent real estate advisory firms with respect to leasing matters and/or independent financial advisors with respect to financial transactions).

Any director who is a related person with respect to a transaction under review is not permitted to participate in the deliberations or vote regarding approval or ratification of the transaction. However, such director may be counted in determining the presence of a quorum at a meeting of the committee that considers the transaction.

Director Independence

The board of directors has established an audit committee, compensation and talent committee, and nominating and governance committee. Our audit committee consists of independent directors Messrs. Pelzer (Chair) and Dennerline and Ms. Rushing. Our compensation and talent committee consists of independent directors Messrs. Dennerline and Pelzer. Our nominating and governance committee consists of independent directors Messrs. Dennerline and Pelzer.

The board of directors has undertaken a review of the independence of our directors and has determined that Messrs. Dennerline, Napier and Pelzer and Mss. Rushing and Young are independent within the meaning of the Nasdaq Listing Rules. In addition, the board has determined that Messrs. Dennerline and Pelzer and Ms. Rushing meet the additional test for independence for audit committee members and Messrs. Dennerline and Pelzer meet the additional test for independence for compensation committee members imposed by SEC regulations and the Nasdaq Listing Rules.

Item 14. Principal Accounting Fees and Services.

Our audit committee has adopted a policy for the pre-approval of all audit and permitted non-audit services that may be performed by our independent registered public accounting firm. Under this policy, each year, at the time it engages an independent registered public accounting firm, our audit committee pre-approves the engagement terms and fees and may also pre-approve detailed types of audit-related and permitted tax services, subject to certain dollar limits, to be performed during the year. All other permitted non-audit services are required to be pre-approved by our audit committee on an engagement-by-engagement basis.

The following table summarizes the aggregate fees billed for professional services rendered to us by our independent registered public accounting firm, Ernst & Young LLP ("EY") in 2019 and 2020. A description of these various fees and services follows the table.

	2019	2020
Audit Fees	$2,020,145	$1,658,714
Audit-Related Fees	—	—
Tax Fees	—	—
All Other Fees	—	—

Audit Fees

The aggregate fees billed to us by EY in connection with the annual audit of our financial statements, for the review of our financial statements included in our Quarterly Report on Form 10-Q and Annual Report on Form 10-K and for other services normally provided in connection with statutory and regulatory filings, were $2,020,145 and $1,658,714 for the years ended December 31, 2019 and 2020, respectively. The decrease in audit fees in 2020 relates primarily to work performed in connection with certain transactions and adoption of the new lease accounting standard in 2019 that did not occur in 2020.

Audit-Related Fees

No audit-related fees were billed to us by EY for the years ended December 31, 2019 or 2020.

Tax Fees

No tax fees were billed to us by EY for the years ended December 31, 2019 or 2020.

All Other Fees

No other fees were billed to us by EY for the years ended December 31, 2019 or 2020.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

(b) Exhibits.

Exhibit Number	Exhibit Title	Incorporated by Reference (Unless Otherwise Indicated)			
		Form	**File**	**Exhibit**	**Filing Date**
3.1	Restated Certificate of Incorporation of Benefitfocus, Inc.	10-Q	—	3.1.3	November 12, 2013
3.1.1	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	—	3.1	June 8, 2020
3.2	Amended and Restated Bylaws of Benefitfocus, Inc.	8-K	—	3.2.1	September 19, 2016
4.1	Specimen Certificate for Common Stock.	S-1/A	333-190610	4.1	September 5, 2013
4.2	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
4.2.1	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	—	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	—	4.1	December 28, 2018
4.4	Form of 1.25% Convertible Senior Notes due 2023 (included in Exhibit 4.3).	8-K	—	4.1	December 28, 2018
4.5	Description of Securities	10-K	—	4.5	March 10, 2021
10.1	Benefitfocus, Inc. Amended and Restated 2012 Stock Plan.#	DEF 14A	—	—	April 25, 2014
10.1.1	Form of Grant Notice and Stock Option Agreement under the 2012 Stock Plan, as amended.#	S-1	333-190610	10.6	August 14, 2013
10.2	Form of Management Incentive Bonus Program.#	S-1	333-190610	10.7	August 14, 2013
10.2.1	Benefitfocus, Inc. Management Incentive Bonus Program.#	DEF 14A	—	—	April 25, 2014
10.3	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

10.4	Form of Employment Agreement.#	S-1	333-190610	10.11	August 14, 2013
10.5	Form of Indemnification Agreement.#	S-1	333-190610	10.12	August 14, 2013
10.6	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
10.6.1	Third Amendment to Lease between Daniel Island Executive Center, LLC and Benefitfocus.com, Inc., dated as of December 12, 2016.	8-K	—	10.13.1	December 14, 2016
10.7	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
10.7.1	First Amendment to Lease between Daniel Island Executive Center, LLC and Benefitfocus.com, Inc., dated as of December 12, 2016.	8-K	—	10.14.1	December 14, 2016
10.8	Master Business Agreement between Aetna Life Insurance Company and Benefitfocus.com, Inc., dated as of November 28, 2006.+	S-1	333-190610	10.15	August 14, 2013
10.9	Lease between DIEC II, LLC and Benefitfocus.com, Inc., dated as of December 13, 2013.	10-K	—	10.19	March 21, 2014
10.9.1	Amendment to Lease between DIEC II, LLC and Benefitfocus.com, Inc., dated as of December 12, 2016.	8-K	—	10.16.1	December 14, 2016
10.10	Form of Independent Director Compensation Agreement.	8-K	—	10.21	June 23, 2014
10.11	Employment Agreement, dated June 25, 2014, by and between Benefitfocus.com, Inc. and Ray August.#	8-K	—	10.22	April 8, 2015
10.11.1	First Amendment to Employment Agreement, dated November 20, 2017, by and between Benefitfocus.com, Inc. and Raymond A. August.#	10-K	—	10.18.1	March 15, 2018
10.11.2	Second Amendment to Employment Agreement, dated April 1, 2019, by and between Benefitfocus.com, Inc. and Raymond A. August.#	10-Q	—	10.17.2	August 7, 2019

10.12	Senior Secured Credit Facility, dated as of February 20, 2015, by and among Benefitfocus, Inc., Benefitfocus.com, Inc., Benefit Informatics, Inc., BenefitStore, Inc., several lenders, Silicon Valley Bank, as administrative agent, issuing lender and swingline lender and Comerica Bank, as documentation agent.	10-Q	—	10.23	May 6, 2015
10.12.1	First Amendment Agreement, dated as of June 16, 2015, by and among Benefitfocus, Inc., Benefitfocus.com, Inc., Benefit Informatics, Inc., BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.	8-K	—	10.25	June 16, 2015
10.12.2	Second Amendment Agreement, dated as of December 18, 2015, by and among Benefitfocus, Inc., Benefitfocus.com, Inc., Benefit Informatics, Inc., BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.	10-K	—	10.23	February 25, 2016
10.12.3	Third Amendment Agreement, dated as of March 24, 2016, by and among Benefitfocus, Inc., Benefitfocus.com, Inc., BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.	8-K	—	10.26	March 29, 2016
10.12.4	Fourth Amendment Agreement, dated as of October 28, 2016, by and among Benefitfocus, Inc., Benefitfocus.com, Inc. and BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.	10-Q	—	10.16.4	May 8, 2020

10.12.5	Fifth Amendment Agreement, dated as of December 12, 2016, by and among Benefitfocus, Inc., Benefitfocus.com, Inc. and BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.	8-K	—	10.32	December 14, 2016
10.12.6	Sixth Amendment Agreement, dated as of April 26, 2017, by and among Benefitfocus, Inc., Benefitfocus.com, Inc. and BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.	10-Q	—	10.16.6	May 8, 2020
10.12.7	Seventh Amendment Agreement, dated as of March 29, 2018, by and among Benefitfocus, Inc., Benefitfocus.com, Inc. and BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.	10-Q	—	10.16.7	May 8, 2020
10.12.8	Eighth Amendment Agreement, dated as of December 19, 2018, by and among Benefitfocus, Inc., Benefitfocus.com, Inc. and BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.	10-Q	—	10.16.8	May 8, 2020
10.13	Guarantee and Collateral Agreement, dated as of February 20, 2015, made by Benefitfocus, Inc., Benefitfocus.com, Inc., Benefit Informatics, Inc., BenefitStore, Inc., and other grantors, in favor of Silicon Valley Bank, as administrative agent.	10-Q	—	10.24	May 6, 2015
10.14	Benefitfocus, Inc. 2016 Employee Stock Purchase Plan.#	DEF14A	—	—	April 22, 2016

10.15	Waiver to Credit Agreement, dated as of September 1, 2016, by and among the Benefitfocus, Inc., Benefitfocus.com, Inc. and BenefitStore, Inc., the several banks and other financial institutions or entities party thereto and Silicon Valley Bank, as administration agent and collateral agent for the lenders.	8-K	—	10.28	September 1, 2016
10.16	Lease between DIEC II, LLC and Benefitfocus.com, Inc., dated as of December 12, 2016.	8-K	—	10.31	December 14, 2016
10.17	Form of Call Option Transaction Notice.	8-K	—	10.1	December 28, 2018
10.18	Employment Agreement, dated December 1, 2015, by and between Benefitfocus.com and James Restivo.#	10-K	—	10.25	February 26, 2019
10.19	Employment Agreement, dated July 2, 2019, by and between Benefitfocus.com and Stephen M. Swad.#	10-Q	—	10.26	November 7, 2019
10.19.1	First Amendment to Employment Agreement, dated August 25, 2020, by and between Benefitfocus.com and Stephen M. Swad.#	8-K	—	10.1	August 26, 2020
10.20	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	—	10.26	May 8, 2020
10.21	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	—	10.27	May 8, 2020
10.22	Employment Agreement, dated January 1, 2020, by and between Benefitfocus.com, Inc. and Annmarie Fini.#	10-Q	—	10.28	May 8, 2020
10.23	Amendment to Leases between Daniel Island Executive Center, LLC, DIEC II, LLC and Benefitfocus.com, Inc., dated as of March 13, 2020.	8-K	—	10.26	March 19, 2020

10.24	Preferred Stock Purchase Agreement, dated May 22, 2020, by and between Benefitfocus, Inc. and BuildGroup LLC.	8-K	—	10.1	May 26, 2020
10.25	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	—	10.2	May 26, 2020
10.26	Registration Rights Agreement, dated June 4, 2020, by and between Benefitfocus, Inc. and BuildGroup LLC.	8-K	—	10.1	June 8, 2020
10.27	Co-Sale and Voting Agreement, dated June 4, 2020, by and among Benefitfocus, Inc., BuildGroup LLC, and Mason R. Holland, Jr.	8-K	—	10.2	June 8, 2020
10.28	Benefitfocus, Inc. Second Amended and Restated Stock Plan, as amended.#	8-K	—	10.24.1	June 12, 2020
10.29	Employment Agreement, dated August 25, 2020, by and between Benefitfocus.com and Alpana Wegner.#	8-K	—	10.2	August 26, 2020
10.30	Separation and Release Agreement, dated August 24, 2020, by and between Benefitfocus.com and Raymond A. August.#	8-K	—	10.3	August 26, 2020
10.31	Separation and Release Agreement dated September 29, 2020, by and between Benefitfocus.com and James P. Restivo.#	8-K	—	10.1	September 30, 2020
21.1	List of Subsidiaries of Registrant.	10-K	—	21.1	March 10, 2021
23.1	Consent of Ernst & Young LLP.	10-K	—	23.1	March 10, 2021
31.1	Certification of the President and Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	10-K	—	31.1	March 10, 2021
31.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	10-K	—	31.2	March 10, 2021

31.3	Certification of the President and Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	—	—	—	Filed herewith
31.4	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.	10-K	—	32.1	March 10, 2021
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.	10-K	—	101.INS	March 10, 2021
101.SCH	Inline XBRL Taxonomy Extension Schema Document.	10-K	—	101.SCH	March 10, 2021
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.	10-K	—	101.CAL	March 10, 2021
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.	10-K	—	101.DEF	March 10, 2021
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.	10-K	—	101.LAB	March 10, 2021
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.	10-K	—	101.PRE	March 10, 2021
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)	—	—	—	Filed herewith

Management contract or compensatory plan.

\+ The registrant has received confidential treatment with respect to portions of this exhibit. Those portions have been omitted from the exhibit and filed separately with the SEC.

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: April 30, 2021

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

Exhibit 31.3

**CERTIFICATION PURSUANT TO
SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002**

I, Stephen M. Swad, certify that:

1. I have reviewed this Amendment No. 1 to the Annual Report on Form 10-K of Benefitfocus, Inc.; and

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.

Date: April 30, 2021

/s/ Stephen M. Swad
Stephen M. Swad
President and Chief Executive Officer
(Principal executive officer)

Exhibit 31.4

**CERTIFICATION PURSUANT TO
SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002**

I, Alpana Wegner, certify that:

1. I have reviewed this Amendment No. 1 to the Annual Report on Form 10-K of Benefitfocus, Inc.; and

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.

Date: April 30, 2021

/s/ Alpana Wegner
Alpana Wegner
Chief Financial Officer
(Principal financial and accounting officer)