

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

**Form 10-K**

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

For the fiscal year ended September 30, 2023

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 001-35231

**MITEK SYSTEMS, INC.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)  
600 B Street, Suite 100  
San Diego, California  
(Address of principal executive offices)

87-0418827  
(I.R.S. Employer  
Identification No.)

92101  
(Zip Code)

Registrant's telephone number: (619) 269-6800  
Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	MITK	NASDAQ Capital Market

Securities registered pursuant to Section 12(g) of the Act:  
Preferred Stock Purchase Rights  
(Title of class)

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

Large Accelerated Filer	<input type="checkbox"/>	Accelerated Filer	<input checked="" type="checkbox"/>
Non-Accelerated Filer	<input type="checkbox"/>	Smaller Reporting Company	<input type="checkbox"/>
		Emerging Growth Company	<input type="checkbox"/>

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

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

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

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

The aggregate market value of the voting stock held by non-affiliates of the registrant, based upon the closing sale price of the registrant's common stock on March 31, 2023, the last business day of the registrant's most recently completed second fiscal quarter, as reported on the Nasdaq Capital Market, was approximately \$428,814,692. Shares of stock held by officers and directors 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 registrant does not have any non-voting stock issued or outstanding.

There were 46,790,611 shares of the registrant's common stock outstanding as of March 12, 2024.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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MITEK SYSTEMS, INC.  
FORM 10-K  
For The Fiscal Year Ended September 30, 2023

[Important Note About Forward-Looking Statements](#)

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## IMPORTANT NOTE ABOUT FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K, including the “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” contains “forward-looking statements” that are often identified by the use of future events and future results that are subject to the safe harbors created under the meaning, that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially and adversely from those expressed or implied by such forward-looking statements.

Statements that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities and Exchange Act of 1934, as amended (the “Exchange Act”). Forward-looking statements can be identified by the use of words such as “estimate,” “plan,” “project,” “forecast,” “intend,” “expect,” “anticipate,” “believe,” “seek,” “target,” or similar expressions.

In addition to those factors discussed under Item 1A—“Risk Factors,” important factors could cause actual results to differ materially from our expectations. These factors include, but are not limited to:

- adverse economic conditions;
- general decreases in demand for our products and services;
- changes in timing of introducing new products into the market;
- intense competition (including entry of new competitors), including among competitors with substantially greater resources than us;
- increased or adverse federal, state, and local government regulation;
- inadequate capital;
- unexpected costs;
- revenues and net income lower than anticipated;
- litigation;
- the possible fluctuation and volatility of operating results and financial conditions;
- the impact of legal, regulatory, or supervisory matters on our business, results of operations, or financial condition;
- inability to carry out our marketing and sales plans;
- the loss of key employees and executives;
- our sales and marketing strategy, including our international sales and channel partner strategy;
- customer product adoption and purchasing patterns, including renewal, expansion and conversion from on-premises to cloud services;
- management’s plans, beliefs and objectives for future operations;
- our ability to provide compelling, uninterrupted and secure cloud services to our customers;
- the impact of geopolitical events;
- our acquisitions, including the expected impacts of such acquisitions;
- expected impact of changes in accounting pronouncements and other financial and non-financial reporting standards;
- exposure to interest rate changes;
- inflation; and
- the impact of climate change, natural disasters and actual or threatened public health emergencies.

These statements represent the beliefs and assumptions of our management based on the information currently available to us. 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 identified above, and those discussed in the section titled “Risk Factors” included in Part I, Item 1A. Furthermore, such forward-looking statements speak only as of the date of report. Except as required by law, we undertake no obligations to update any forward-looking statements to reflect events or circumstances that occur after the date of this report.

## PART I

### ITEM 1. BUSINESS.

#### Overview

Mitek Systems, Inc. (“Mitek,” the “Company,” “we,” “us,” and “our”) is a leading innovator of mobile image capture and digital identity verification solutions. We are a software development company with expertise in computer vision, artificial intelligence and machine learning. We currently serve more than 7,900 financial services organizations and leading marketplace and financial technology (“fintech”) brands around the globe. Customers count on Mitek to deliver trusted and convenient online experiences, detect and reduce fraud, and meet Know Your Customer (“KYC”) and Anti-Money Laundering (“AML”) regulatory compliance. The Company’s solutions are embedded in native mobile apps and web browsers to facilitate digital consumer experiences. Mitek’s identity verification and authentication technologies and services make it possible for banks, financial services organizations and the world’s leading marketplace and sharing platforms to verify an individual’s identity during numerous stages of the customer lifecycle, allowing them to reduce risk and meet regulatory requirements. The Company’s advanced mobile deposit system enables secure, fast and convenient deposit services. Thousands of organizations use Mitek solutions to optimize the security of mobile check deposits, new account openings and more.

In May of 2021, Mitek acquired ID R&D, Inc. (“ID R&D” and such acquisition, the “ID R&D Acquisition”), an award-winning provider of AI-based voice and face biometrics and liveness detection. ID R&D delivers innovative, biometric capabilities that raise the bar on usability and performance. The ID R&D Acquisition helps simplify and secure the entire transaction lifecycle for both businesses and consumers, provides businesses and financial institutions with access to one authentication solution to deploy throughout the entire transaction cycle, and can provide consumers with a simple, intuitive approach to fighting fraud.

In March of 2022, Mitek acquired HooYu Ltd. (“HooYu”), a leading KYC technology provider in the United Kingdom. Such technology helps to ensure businesses know the true identity of their customers by linking biometric verification with real-time data aggregation across many different sources, including credit bureaus, international sanctions lists, local law-enforcement, and others.

Mitek markets and sells its products and services worldwide through internal, direct sales teams located in the U.S., Europe, and Latin America as well as through channel partners. Our partner sales strategy includes channel partners who are financial services technology providers and identity verification providers. These partners integrate our products into their solutions to meet the needs of their customers, typically provisioning Mitek services through their respective platforms.

#### Product and Technology Overview

##### Technology

During the twelve months ended September 30, 2023, we had one operating segment: the development, sale, and service of our proprietary software solutions related to mobile image capture and identity verification.

Our digital technology solutions are provided in two parts: (i) a software development kit for mobile image capture and (ii) a cloud software platform which uses artificial intelligence and machine learning to classify and extract data to enable mobile check deposit as well as aid the authentication of identity documents including passports, identity cards, and driver’s licenses using a camera-equipped device.

Our technology uses patented algorithms that analyze images of identity documents in many ways. These include image quality analysis, image repair and optimization, document identification and classification, data extraction, and numerous authenticators.

##### Products

###### Mobile Deposit®

Mitek’s Mobile Deposit® solution is used today by millions of consumers in the United States and Canada for mobile check deposit. Mobile Deposit® enables individuals and businesses to remotely deposit checks using their camera-equipped smartphone or tablet. Mobile Deposit® is embedded within the financial institutions’ digital banking apps used by consumers and now processes more than one billion check deposits annually. Mitek began selling Mobile Deposit® in early 2008 and received its first patent for this product in August 2010.

Mobile Deposit® allows consumers to take photographs of the front and back of a check and then remotely deposit the check all within their financial institution’s mobile banking app. Mitek delivers a simple and easy user experience with our proprietary mobile automatic capture which assists users in capturing a high quality image of a check by holding their mobile device over the check.

### *Mobile Verify®*

Mobile Verify® is an identity verification solution that can be integrated into mobile apps, mobile websites, and desktop applications. Mobile Verify® combines an optimal image capture experience with our leading document authentication technology — helping our customers validate an identity document presented in a digital transaction is genuine and unaltered. Adding a second layer for identity proofing, Mobile Verify® matches the portrait extracted from the identity document with a selfie of its presenter by doing a biometric face comparison.

The Mobile Verify® identity verification engine is a modular cross-platform architecture that uses machine learning and advanced computer vision algorithms. To achieve the highest accuracy rates, Mitek’s technology was conceptualized to verify the authenticity of an identity document in the following systematic approach:

- Guided document capture, enabling users to take a quality photo for optimal processing;
- Document classification computer vision algorithms that recognize and classify thousands of diverse identity documents from around the world allowing for reliable data extraction;
- Data extraction that goes beyond traditional Optical Character Recognition (“OCR”) to deconstruct the document and analyze the content of each field; and
- Evaluation of authenticity elements, using a combination of machine learning techniques and unique computer vision algorithms to help determine the authenticity of a document by evaluating several elements within the document.

### *Mobile Fill®*

Mobile Fill®, which includes automatic image capture, minimizes the number of clicks and expedites form fill completion. In mere seconds, and just by taking a photo of an identity document, people can easily complete application forms and quickly become approved customers. Organizations can use Mobile Fill® for a variety of purposes, including streamlining the process of opening a checking, savings, or credit card account, paying a bill, activating an offer, and more. Mobile Fill® is available for native apps and web browser applications.

### *MiSnap™*

Mitek MiSnap™ is a patented mobile-capture software development kit (“SDK”) that enables an intuitive user experience and instant capture of quality images of identity documents and checks. The key to successful mobile check deposit, data pre-fill and ID document verification is the quality of the image capture. Mitek’s MiSnap™ helps enable every user to capture a quality image the first time.

### *CheckReader™*

CheckReader™ enables financial institutions to automatically extract data from checks once they have been scanned or photographed by the application. Easily integrated into mobile and server-based applications providing automatic image pre-processing and recognition capabilities, CheckReader™ allows for the automatic recognition of all fields on checks and generic payments documents, whether handwritten or machine printed. CheckReader™ is utilized as a core component throughout a wide range of check processing applications, including ATMs, centralized and back office processes, remittance, merchants, and fraud applications. CheckReader™ is deployed worldwide in over forty countries.

### *Check Fraud Defender*

The premier AI-powered and cloud-hosted model for fighting check fraud, Check Fraud Defender uses Mitek’s proprietary check image science to spot visual anomalies in checks submitted by participating banks to better isolate suspected fraud and reduce bank and consumer losses. Check Fraud Defender helps banks fight check fraud by analyzing more than 18 visual elements of a check to give a more comprehensive view of possible fraud.

### *Check Intelligence*

Check Intelligence enables financial institutions to automatically extract data from a check image received across any deposit channel—branch, ATM, remote deposit capture, and mobile. Through the automatic recognition of all fields on checks, whether handwritten or machine printed, Check Intelligence speeds up the time to deposit for banks and customers and helps enable financial institutions to comply with check clearing regulations. With built-in image quality analysis and image usability analysis, Check Intelligence also ensures that the check meets the Check Clearing for the 21st Century Act requirements and other industry and regulatory standards.

### *Mitek Verified Identity Platform (“MiVIP®”)*

MiVIP® is an end-to-end KYC platform that helps companies to quickly design, build, and deploy robust KYC journeys with little or no development resources. We combine facial biometrics, liveness detection, ID document validation, database checks, geolocation, digital footprint analysis, and more to provide the clearest picture of who is requesting access to a business’ services. The

platform provides robust identity verification through comprehensive document verification, biometric comparison, and liveness detection. The platform also simplifies the end user experience with omni-channel journey support in which users can easily switch between a mobile and desktop experience without losing their journey progress, or pause and pick up their journey at a later time via a different device.

#### *MiPass®*

MiPass®, with its state-of-the-art facial and voice biometric capabilities, provides increased protection against today’s most sophisticated forms of identity theft and increasingly dangerous fraud techniques, such as deepfakes and synthetic identities. These technologies ensure the highest level of security against evolving threats while delivering a superior consumer experience.

As more interactions move online, passwords are a challenging and a highly imperfect solution for granting account access to customers. Asking trusted customers to re-assert their identity at every touchpoint only leads to frustration and abandonment and passwords leave customers vulnerable to identity theft and account takeover attacks. The availability, simplicity, and convenience of biometrics on consumer devices has opened the door for organizations in all industries to transform the trusted customer experience. MiPass® strengthens a business’s trust in a consumer’s real-world identity using a sophisticated combination of biometrics that are extremely difficult to falsify – face, liveness detection, and voice allowing organizations to replace passwords and one-time passcodes with biometric authentication that can be easily embedded into existing platforms and customer experiences.

#### *ID\_CLOUD™*

ID\_CLOUD™ is a fully automated identity verification solution that can be integrated into a customer’s application to instantly read and validate identity documents. ID\_CLOUD™ automated technology enables global enterprises to improve their customer acquisition technology while meeting AML requirements in a safe and cost-effective manner. This solution is available in the cloud, via mobile websites, and desktop applications. Additionally, a version of ID\_CLOUD™ is available that works locally on a desktop which is connected to a propriety hardware scanner for reading and validating identity documents.

#### *IDLive® Face*

IDLive® Face is the industry’s first passive facial liveness detection product. The technology is critical to frictionless fraud prevention in solutions that use face biometrics for authentication and digital identity proofing. IDLive® Face is iBeta Levels 1 and 2 Presentation Attack Detection (“PAD”) compliant and is used to process millions of monthly transactions for customers worldwide.

#### *IDVoice®*

IDVoice® is a robust AI-driven voice biometric engine that enables fast, convenient authentication on mobile, web, and telephone channels. The product is also optimized to enable embedded security and personalization on Internet of Things devices. IDVoice® has achieved top rankings in the industry’s leading benchmark challenges.

#### *IDLive® Voice*

IDLive® Voice helps stop spoofing attacks on voice biometric systems by distinguishing live voice from synthesized speech, voice deepfakes, and recordings.

#### *IDLive Doc™*

IDLive Doc™ works to fight fraud related to digitally displayed document images. This AI-based product validates the physical presence of documents used when verifying customer identities online. The product can be added to any onboarding or electronic KYC solution, providing another layer of fraud prevention for banks, gig economy companies, telecom companies, and others.

### **Sales and Marketing**

We derive revenue predominately from the sale of licenses (to both our on premise and transactional software as a service (“SaaS”) products) and transaction fees to use our products, and to a lesser extent by providing maintenance and professional services for the products we offer. The revenue we derive from the sale of such licenses is derived from both the sale to our channel partners of licenses to sell the applications we offer as well as the direct sale of licenses and services to customers.

We have an internal marketing group that develops corporate and digital marketing strategies. The internal team executes these strategies with the help of external resources as needed to support both direct sales and channel partners’ sales efforts.

### **Intellectual Property**

Our success depends in large part upon our proprietary technology. We attempt to protect our intellectual property rights primarily through a combination of patents, copyrights, trademarks, trade secrets, employee and third-party non-disclosure agreements, and other measures. We believe that factors such as the technological and creative skills of our personnel, new product development, frequent product enhancements, name recognition, and reliable product maintenance are essential to establishing and

maintaining a technological leadership position. There can be no assurance that our means of protecting our proprietary rights in the U.S. or abroad will be adequate. We seek to protect our software, documentation, and other written materials under trade secret and copyright laws, which afford only limited protection. Further, there can be no assurance that our patents will offer any protection or that they will not be challenged, invalidated, or circumvented. If we are unable to protect our intellectual property, or we infringe on the intellectual property rights of a third-party, our operating results could be adversely affected.

As of September 30, 2023, the U.S. Patent and Trademark Office has issued us 100 patents with expiration dates ranging from 2026 through 2037 and we have filed for 20 additional domestic and international patents. In addition, we generally enter into confidentiality agreements with certain employees.

### **Market Opportunities, Challenges & Risks**

We believe that financial institutions, fintechs, and other companies see our patented solutions as a way to provide a superior digital customer experience to meet growing consumer demands of trust and convenience online and, at the same time, assist them in meeting regulatory requirements. The value of digital transformation to our customers is a possible increase in top line revenue and a reduction in the cost of sales and service. As the use of new technology increases, so does associated fraud and cyber-attacks. The negative outcomes of fraud and cyber-attacks encompass financial losses, brand damage, and loss of loyal customers. We predict growth in our deposits business as a result of the increased consumer adoption of digital financial services provided to them by their banks and identity verification products based on current trends in payments, online lending, more stringent regulations, growing usage of sharing apps and online marketplaces, and the ever-increasing demand for digital services.

Factors adversely affecting the pricing of, or demand for, our digital solutions, such as competition from other products or technologies, any decline in the demand for digital transactions, or negative publicity or obsolescence of the software environments in which our products operate, could result in lower revenues or gross margins. Further, because substantially all of our revenues are from a few types of technology, our product concentration may make us especially vulnerable to market demand and competition from other technologies, which could reduce our revenues.

The sales cycle for our software and services can be lengthy and the implementation cycles for our software and services by our channel partners and customers can also be lengthy, often as long as six months and sometimes longer for larger customers. If implementation of our products by our channel partners and customers is delayed or otherwise not completed, our business, financial condition, and results of operations may be adversely affected.

Revenues related to most of our on premise licenses for mobile products are required to be recognized up front upon satisfaction of all applicable revenue recognition criteria. Revenue related to our SaaS products is recognized ratably over the life of the contract or as transactions are used depending on the contract criteria. The recognition of future revenues from these licenses is dependent upon a number of factors, including, but not limited to, the term of our license agreements, the timing of implementation of our products by our channel partners and customers, and the timing of any re-orders of additional licenses and/or license renewals by our channel partners and customers.

During each of the last few years, sales of licenses to one or more channel partners have comprised a significant portion of our revenue each year. This is attributable to the timing of renewals or purchases of licenses and does not represent a dependence on any single channel partner. If we were to lose a channel partner relationship, we do not believe such a loss would adversely affect our operations because either we or another channel partner could sell our products to the end-users that had purchased products from the channel partner we lost. However, in that case, we or another channel partner must establish a relationship with the end-users, which could take time to develop.

We have a growing number of competitors in the mobile image capture and identity verification industry, many of which have greater financial, technical, marketing, and other resources. However, we believe our patented mobile image capture and identity verification technology, our growing portfolio of products and coverage for the financial services industry and our market expertise gives us a distinct competitive advantage. To remain competitive, we will continue to offer products that are attractive to the consumer as well as being compliant, accurate, and convenient. To help us remain competitive, we intend to further our investment in research and development as well as partnering with other technology providers.

### **Competition**

The market for our products and solutions is intensely competitive, subject to rapid change, and significantly affected by the introduction of new products or technologies and other market activities of industry participants. We face direct and indirect competition from a broad range of competitors who offer a variety of products and solutions to our current and potential customers. Our principal competition comes from: (i) customer-developed solutions; (ii) companies offering alternative methods of identity verification; (iii) companies offering competing technologies capable of mobile remote deposit capture or authenticating identity documents and facial photo comparison; and (iv) alternate forms of user authentication, including face and voice recognition.

It is also possible that we will face competition from new industry participants or alternative technologies. Moreover, as the market for automated document processing, image recognition and authentication, check imaging, and fraud detection software

develops, a number of companies with significantly greater resources than we have could attempt to enter or increase their presence in our industry, either independently or by acquiring or forming strategic alliances with our competitors, or otherwise increase their focus on the industry. In addition, current and potential competitors have established or may establish cooperative relationships among themselves or with third parties to increase the ability of their products to address the needs of our current and potential customers.

Our products are compliant with Service-Oriented Architecture standards and compete, to various degrees, with products produced by a number of substantial competitors. Competition among product providers in this market generally focuses on price, accuracy, reliability, global coverage, and technical support. We believe our primary competitive advantages in this market are: (i) our mobile auto image capture user experience used by millions of consumers; (ii) our patented data science; (iii) scalability; and (iv) an architectural software design that allows our products to be more readily modified, improved with added functionality, and configured for new products, thereby allowing our software to be easily upgraded.

Increased competition may result in price reductions, reduced gross margins, and loss of market share, any of which could have a material adverse effect on our business, operating results, and financial condition.

#### **Research and Development**

We develop software products internally and also purchase or license rights to third-party intellectual property. We believe that our future success depends in part on our ability to maintain and improve our core technologies, enhance our existing products, and develop new products that meet an expanding range of customer requirements.

Internal research and development allows us to maintain closer technical control over our products and gives us the ability to determine which modifications and enhancements are most important and when they should be implemented to ensure the proper functioning and improved performance of our products. We intend to expand our existing product offerings and introduce new mobile image capture and digital identity verification capabilities that meet a broader set of needs of our customers. We intend to continue to support the major industry standard operating environments.

Our research and development organization includes software engineers and scientists, many of whom have advanced degrees, as well as additional personnel in quality assurance and related disciplines. All our scientists and software engineers are involved in product development.

The development team includes specialists in artificial intelligence, computer vision, software engineering, user interface design, product documentation, product management, and quality assurance. The team is responsible for maintaining and enhancing the performance, quality, and utility of all of our products. In addition to research and development, our engineering staff provides customer technical support on an as-needed basis.

#### **Human Capital Resources**

As of September 30, 2023, we had 590 employees, 160 in the U.S. and 430 internationally, 573 of which are full time. Our total employee base consists of 329 sales and marketing, professional services, and document review employees, 189 research and development and support employees, and 72 employees in executive, finance, network administration, and other capacities. In addition, we engaged various consultants in the areas of research and development, product development, finance, and marketing during fiscal year 2023. We have never had a work stoppage and none of our employees are represented by a labor organization. Substantially all of our employees, other than a certain number of our executive officers and employees with customary employment arrangements within Europe, are at will employees, which means that each employee can terminate his or her relationship with us and we can terminate our relationship with him or her at any time. We offer industry competitive wages and benefits and are committed to maintaining a workplace environment that promotes employee productivity and satisfaction. We consider our relations with our employees to be good. We are also focused on understanding our diversity and inclusion strengths and opportunities and executing on a strategy to support further progress. We continue to focus on building a pipeline for talent to create more opportunities for workplace diversity and to support greater representation within the Company.

#### **Available Information**

We are subject to the reporting requirements of the Exchange Act. Consequently, we are required to file reports and information with the SEC, including reports on the following forms: 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. These reports and other information concerning us may be accessed, free of charge, through the SEC's website at [www.sec.gov](http://www.sec.gov) and our website at [www.miteksystems.com](http://www.miteksystems.com). These reports are placed on our website as soon as reasonably practicable after they are filed with the SEC. Information contained in, or that can be accessed through, our website is not incorporated by reference into, nor is it in any way a part of, this Form 10-K.



## ITEM 1A. RISK FACTORS.

### Risk Factor Summary

*Below is a summary of the principal factors that make an investment in our common stock speculative or risky. This summary does not address all of the risks that we face. Additional discussion of the risks summarized in this risk factor summary, and other risks that we face, can be found below and should be carefully considered, together with other information in this Annual Report on Form 10-K and our other filings with the Securities and Exchange Commission before making investment decisions regarding our common stock.*

- We currently derive substantially all of our revenue from a few types of technologies. If these technologies and the related products do not achieve or continue to achieve market acceptance, our business, financial condition, and results of operations would be adversely affected.
- We cannot predict the impact that the decline of the use of checks, changes in consumer behavior facilitated by advances in technologies, and the development of check alternatives, or the plateau of the penetration of active mobile banking users may have on our business.
- Claims that our products infringe upon the rights, or have otherwise utilized proprietary information, of third parties may give rise to costly litigation against us or our customers who we may be obligated to indemnify, and we could be prevented from selling those products, required to pay damages, and obligated to defend against litigation or indemnify our customers.
- If the patents we own or license, or our other intellectual property rights, do not adequately protect our technologies, we may lose market share to our competitors and be unable to operate our business profitably.
- We face competition from several companies that may have greater resources than we do, which could result in price reductions, reduced margins, or loss of market share.
- We must continue to engage in extensive research and development in order to remain competitive.
- Defects or malfunctions in our products could hurt our reputation, sales and profitability.
- Our lengthy sales cycles and the difficulty in predicting timing of sales or delays may impair our operating results.
- Our historical order flow patterns, which we expect to continue, have caused forecasting difficulties for us. If we do not meet our forecasts or analysts' forecasts for us, the price of our common stock may decline.
- Entry into new lines of business, and our offering of new products and services, resulting from our acquisitions may result in exposure to new risks.
- Adverse economic conditions or reduced spending on information technology solutions may adversely impact our revenue and profitability.
- We may need to raise additional capital to fund continuing operations and an inability to raise the necessary capital or the inability to do so on acceptable terms could threaten the success of our business.
- We expect to incur additional expenses related to the integration of ID R&D, Inc. and HooYu Ltd.
- We may be unable to successfully integrate our business with the respective businesses of ID R&D, and HooYu and realize the anticipated benefits of the acquisitions.
- Our actual financial and operating results following the acquisitions of ID R&D and HooYu could differ materially from any expectations or guidance provided by us concerning our future financial and operating results.
- Our annual and quarterly results have fluctuated greatly in the past and will likely continue to do so, which may cause substantial fluctuations in our common stock price.
- We face risks related to the storage of our customers' and their end users' confidential and proprietary information. Our products may not provide absolute security. We may incur increasing costs in an effort to minimize those risks and to respond to cyber incidents.
- Due to our operations in non-U.S. markets, we are subject to certain risks that could adversely affect our business, results of operations or financial condition.
- Our international operations may increase our exposure to potential liability under anti-corruption, trade protection, tax, and other laws and regulations.
- Fluctuations in foreign currency exchange and interest rates could adversely affect our results of operations.
- Compliance with changing regulations concerning corporate governance and public disclosure may result in additional expenses.

- We have a history of losses and we may not be able to maintain profitability in the future.
- An “ownership change” could limit our ability to utilize our net operating loss and tax credit carryforwards, which could result in our payment of income taxes earlier than if we were able to fully utilize our net operating loss and tax credit carryforwards.
- Our cash and cash equivalents could be adversely affected if the financial institutions at which we hold our cash and cash equivalents fail.
- Our business could be adversely affected in the event we default under our debt agreements.
- Our revenues are dependent on our ability to maintain and expand existing customer relationships and our ability to attract new customers.
- Evolving domestic and international data privacy regulations may restrict our ability, and that of our customers, to solicit, collect, process, disclose and use personal information or may increase the costs of doing so, which could harm our business.
- From time-to-time our Board explores and considers strategic alternatives, including financings, strategic alliances, acquisitions, or the possible sale of our company. Our Board may not be able to identify or complete any suitable strategic alternatives, and announcements regarding any such strategic alternatives could have an impact on our operations or stock price.
- Future sales of our common stock by our insiders may cause our stock price to decline.
- A potential proxy contest for the election of directors at our annual meeting could result in potential operational disruption, divert our resources, and could potentially result in adverse consequences under certain of our agreements.
- Our corporate documents and the Delaware General Corporation Law (the “DGCL”) contain provisions that could discourage, delay, or prevent a change in control of our company, prevent attempts to replace or remove current management, and reduce the market price of our stock.
- Our restated certificate of incorporation and third amended and restated bylaws provide for indemnification of officers and directors at our expense and limits their liability, which may result in a major cost to us and hurt the interests of our stockholders because corporate resources may be expended for the benefit of officers and/or directors.
- The market price of our common stock has been volatile and your investment in our stock could suffer a decline in value.
- Because we do not intend to pay cash dividends, our stockholders will benefit from an investment in our common stock only if our stock price appreciates in value.
- As a result of our failure to timely file this Annual Report on Form 10-K for year ended September 30, 2023, and our Quarterly Report on Form 10-Q for the quarter ended December 31, 2023, we are currently ineligible to file new short form registration statements on Form S-3 or to have resale registration statements declared effective in a timely manner, which may impair our ability to raise capital on terms favorable to us, in a timely manner or at all.
- Our third amended and restated bylaws provide that a state or federal court located within in the State of Delaware will be the sole and exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.
- If we are unable to retain and recruit qualified personnel, or if any of our key executives or key employees discontinues his or her employment with us, it may have a material adverse effect on our business.
- Legislation and governmental regulations enacted in the U.S. and other countries that apply to us or to our customers may require us to change our current products and services and/or result in additional expenses, which could adversely affect our business and results of operations.
- Future sales of our common stock could cause the market price of our common stock to decline.
- If financial or industry analysts do not publish research or reports about our business, or if they issue negative or misleading evaluations of our stock, our stock price and trading volume could decline.
- We have identified material weaknesses in our internal control over financial reporting, and if our remediation of such material weaknesses is not effective, or if we fail to develop and maintain an effective system of disclosure controls and internal control over financial reporting, our ability to produce timely and accurate financial statements or comply with applicable laws and regulations could be impaired.
- Natural disasters or other catastrophic events may disrupt our business.

## Risk Factors

*The following risk factors and other information included in this Form 10-K should be carefully considered. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we presently deem less significant may also impair our business operations. If any of the following risks actually occur, our business, financial condition, results of operations, cash flows, projected results, and future prospects could be materially and adversely affected. In these circumstances, the market price of our common stock could decline, and you could lose all or part of your investment or interest.*

### Risks Associated With Our Business and Operations

***We currently derive substantially all of our revenue from a few types of technologies. If these technologies and the related products do not achieve or continue to achieve market acceptance, our business, financial condition, and results of operations would be adversely affected.***

We currently derive substantially all of our revenue from license sales and services provided with our software products to customers incorporating our intelligent mobile imaging technology and software products. If we are unable to achieve or continue to achieve market acceptance of our core technologies or products incorporating such technologies, we will not generate significant revenue growth from the sale of our products.

Additionally, factors adversely affecting the pricing of or demand for our products and services, such as competition from other products or technologies, any decline in the demand for mobile image processing, negative publicity, or obsolescence of the software environments in which our products operate could adversely affect our business, financial condition, and results of operations.

***We cannot predict the impact that the decline of the use of checks, changes in consumer behavior facilitated by advances in technologies, and the development of check alternatives, or the plateau of the penetration of active mobile banking users may have on our business.***

Over the last few years, the use of checks has started to decline. Advances in technologies have enabled the development of check alternatives like Zelle and Venmo, which have caused certain changes in consumer behavior. As check alternatives become more widely accepted by consumers, the use of checks could continue to decline, which could have a negative effect on our business. In addition, as the mobile banking market matures, the growth of active mobile banking users is slowing, which may negatively impact our ability to grow our business.

***Claims that our products infringe upon the rights, or have otherwise utilized proprietary information, of third parties may give rise to costly litigation against us or our customers who we may be obligated to indemnify, and we could be prevented from selling those products, required to pay damages, and obligated to defend against litigation or indemnify our customers.***

In the past, third parties have brought claims against us and against our customers who use our products asserting that certain technologies incorporated into our products infringe on their intellectual property rights. Although we have resolved past claims against us that we have infringed on third-party patents, there can be no assurance that we will not receive additional claims against us asserting that our products infringe on the intellectual property rights of third parties or that our products otherwise utilize such third parties' proprietary information.

On July 7, 2018, United Services Automobile Association ("USAA") filed a lawsuit against Wells Fargo Bank, N.A. ("Wells Fargo") in the Eastern District of Texas alleging that Wells Fargo's remote deposit capture systems (which in part utilize technology provided by the Company to Wells Fargo through a partner) infringe four USAA owned patents related to mobile deposits (the "First Wells Lawsuit"). On August 17, 2018, USAA filed a second lawsuit (the "Second Wells Lawsuit" and together with the First Wells Lawsuit, the "Wells Lawsuits") against Wells Fargo in the Eastern District of Texas asserting that an additional five patents owned by USAA were infringed by Wells Fargo's remote deposit capture system. In neither lawsuit was the Company named in the Complaint as an infringer and at no time did USAA allege specifically that the Company's products by themselves infringed any of the asserted patents. Subsequently, on November 6, 2019, a jury in the First Wells Lawsuit found that Wells Fargo willfully infringed at least one of the Subject Patents (as defined below) and awarded USAA \$200 million in damages. In the Second Wells Lawsuit, USAA dropped two of the patents from the litigation, and the judge in the case found that one of the remaining three patents was invalid. On January 10, 2020, a jury in the Second Wells Lawsuit found that Wells Fargo willfully infringed at least one of the patents at issue in that case and awarded USAA \$102 million in damages. No Mitek product was accused of infringing either of the two patents in question in the Second Wells Lawsuit as the litigation involved broad banking processes and not the Company's specific mobile deposit features. USAA and Wells Fargo subsequently reached a settlement, and on April 1, 2021, the Court granted the parties' joint motion and stipulation of dismissal of the Wells Lawsuits with prejudice.

Wells Fargo filed petitions for *Inter Partes* Review ("IPR") with the Patent Trial and Appeal Board ("PTAB") challenging the validity of the four patents in the First Wells Lawsuit. Three of those four petitions were instituted, while one (relating to U.S. Patent No. 9,818,090 ("the '090 Patent")) was denied institution. On November 24, 2020, and January 26, 2021, the PTAB issued final written decisions determining that Wells Fargo had not demonstrated by a preponderance of the evidence that any claims of the U.S. Patent Nos. 8,977,571 ("the '571 Patent"), 8,699,779 ("the '779 Patent"), or 9,336,517 ("the '517 Patent") were unpatentable.

On September 30, 2020, USAA filed suit against PNC Bank (the “First PNC Lawsuit”) in the Eastern District of Texas alleging infringement of U.S. Patent Nos. 10,482,432 (“the ‘432 Patent”) and 10,621,559. These two patents are continuations of an asserted patent in the Second Wells Lawsuit and relate to similar subject matter. On October 19, 2020, PNC Bank’s integration partner, NCR Corporation, sent an indemnification demand to the Company requesting indemnification from all claims related to the First PNC Lawsuit. The complaint against PNC Bank does not claim that any Company product infringes any of the asserted patents. At this time, the Company does not believe it is obligated to indemnify NCR Corporation or end-users of NCR Corporation resulting from the patent infringement allegations by USAA. On December 4, 2020, USAA filed an amended complaint against PNC Bank also asserting two patents at issue in the First Wells Lawsuit—the ‘779 Patent and the ‘571 Patent. On February 2, 2021, NCR Corporation sent a second indemnification demand to the Company requesting indemnification of the claims described in the amended complaint. On March 31, 2021, USAA filed another suit against PNC Bank in the Eastern District of Texas alleging infringement of two patents from the Second Wells Lawsuit, U.S. Patent Nos. 10,013,605 (“the ‘605 Patent”) and 10,013,681 (“the ‘681 Patent”) (the “Second PNC Lawsuit”). On July 7, 2021, USAA filed a third lawsuit against PNC Bank (the “Third PNC Lawsuit”) and together with the First PNC Lawsuit and the Second PNC Lawsuit, the “PNC Lawsuits”) asserting infringement of U.S. Patents 10,769,598; 10,402,638; and 9,224,136. A jury trial was held in May 2022 on the consolidated First PNC Lawsuit and Second PNC Lawsuit. The jury found that PNC willfully infringed at least one patent claim and awarded USAA \$218 million in damages. The Court denied PNC Bank’s equitable defenses and entered a Final Judgment in the consolidated First PNC Lawsuit and Second PNC Lawsuit on August 19, 2022. A jury trial was held in September 2022 on the Third PNC Lawsuit. The jury found that PNC infringed at least one patent claim and awarded USAA \$4.3 million in damages. The Court entered a Final Judgment in the Third PNC Lawsuit on February 16, 2023.

While neither the Wells Lawsuits nor the PNC Lawsuits name the Company as a defendant, given (among other factors) the Company’s prior history of litigation with USAA and the continued use of the Company’s products by its customers, on November 1, 2019, the Company filed a complaint in the U.S. District Court for the Northern District of California seeking declaratory judgment that its products do not infringe the ‘779 Patent, the ‘571 Patent, the ‘517 Patent, and the ‘090 Patent (collectively, the “Subject Patents”). On January 15, 2020, USAA filed motions requesting the dismissal of the declaratory judgement of the Subject Patents and transfer of the case to the Eastern District of Texas, both of which the Company opposed. On April 21, 2020, the Court in the Northern District of California transferred the Company’s declaratory judgement action to the Eastern District of Texas and did not rule on USAA’s motion to dismiss. On April 28, 2021, the Court in the Eastern District of Texas granted USAA’s motion to dismiss the Company’s declaratory judgment action on jurisdictional grounds. The Court’s ruling did not address the merits of the Company’s claim of non-infringement. The Company appealed the ruling on the motion to dismiss and the decision to transfer the declaratory judgment action from California to Texas to the U.S. Court of Appeals for the Federal Circuit. The Federal Circuit heard oral argument on the Company’s appeal on April 4, 2022 and on May 20 2022, issued an opinion vacating and remanding the district court’s order granting USAA’s motion to dismiss. On August 1, 2022, the parties submitted additional briefing to the district court in light of Federal Circuit’s opinion. The court held another hearing on USAA’s motion to dismiss the Company’s declaratory judgment action on jurisdictional grounds, and once again granted USAA’s motion to dismiss on February 23, 2023. The Company timely filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit. The appeal is fully briefed, and the Company is awaiting oral argument. The Company continues to believe that its products do not infringe the Subject Patents and will vigorously defend the right of its end-users to use its technology.

In April, May, and June 2020, the Company filed petitions for IPR with the PTAB of the U.S. Patent & Trademark Office challenging the validity of the Subject Patents. On November 6 and 17, 2020, the PTAB decided to exercise its discretion and deny institution of the four petitions due to the alleged relationship between the Company and Wells Fargo, who previously filed petitions for IPR on the Subject Patents. The PTAB did not address the merits of the Company’s petitions or the prior art cited in those petitions. The Company continues to believe that the prior art cited in the petitions renders all the claims of the Subject Patents invalid. On each of December 6, 2020, December 17, 2020, and February 23, 2021, the Company filed requests for rehearing and Precedential Opinion Panel (“POP”) review of the four denied IPR petitions. The Patent Office denied the requests for rehearing and for POP review.

In September 2020, the Company filed an additional two petitions for IPR with the U.S. Patent & Trademark Office challenging the validity of the ‘681 Patent and the ‘605 Patent—two of the patents at issue in the Second Wells Lawsuit. In March 2021, the PTAB decided not to institute the two petitions.

On July 7, July 14, and July 21 2021, PNC Bank filed six additional petitions for IPR with the U.S. Patent & Trademark Office challenging the validity of the ‘779 Patent, the ‘571 Patent, the ‘559 Patent, and the ‘432 Patent. On August 27, 2021, PNC filed two additional petitions for IPR challenging the validity of the ‘681 Patent and the ‘605 Patent. In October and November of 2021, PNC Bank filed four more petitions for IPR challenging the validity of the ‘638 Patent, the ‘136 Patent, and the ‘598 Patent. The Patent Office denied institution with respect to the petitions challenging the ‘432 Patent, the ‘605 Patent, the ‘681 Patent, and the ‘638 Patent, but instituted *inter partes* review on the petitions relating to the ‘779 Patent, the ‘571 Patent, the ‘559 Patent, and the ‘598 Patent—finding a reasonable likelihood that at least one challenged patent claim was invalid. The U.S. Patent & Trademark Office issued a final written decision in each of the IPRs challenging the ‘779 Patent, the ‘571 Patent, and the ‘559 Patent and found all challenged claims of each patent unpatentable. USAA filed requests for rehearing and requests for POP review. The requests for POP review and for rehearing were denied in March 2023.

On August 16, 2021, USAA filed suit against BBVA USA (“BBVA”) in the Eastern District of Texas alleging infringement of the same patents at issue in the PNC Lawsuits. While the Company’s IPR petitions were mentioned in the complaint, the Company was not named as a defendant or mentioned in connection with any alleged infringement. BBVA then sent the Company an indemnification demand on September 7, 2021. For the same reasons discussed above in connection with PNC Bank and PNC Lawsuits, the Company does not believe it is obligated to indemnify BBVA. On June 6, 2022, the Court granted the parties’ request to administratively close the case and stay all deadlines in view of the pending appeal in the PNC Lawsuits.

On July 29, 2022, USAA filed another patent infringement lawsuit against Truist Bank (“Truist”) in the Eastern District of Texas. The lawsuit alleges infringement of the ’090 Patent, the ’432 Patent, and the U.S. Patent No. 11,182,753 (“the ’753 Patent”). The Company was not named as a defendant or mentioned in connection with any alleged infringement. On October 5, 2022, Truist’s integration partner, NCR Corporation, sent an indemnification demand to the Company requesting indemnification from all claims related to the lawsuit. For the same reasons discussed above in connection with the PNC Lawsuits, the Company does not believe it is obligated to indemnify NCR Corporation or end-users of NCR Corporation resulting from the patent infringement allegations by USAA. On October 7, 2022, Truist filed a motion to transfer venue to the Western District of North Carolina. The motion was denied on April 8, 2023. On December 30, 2022, Truist filed a motion for leave to file counterclaims against USAA alleging patent infringement of U.S. Patent Nos. 7,336,813; 7,519,214; 8,136,721; and 9,760,797, which was granted on April 8, 2023. On March 13, 2023, USAA moved for leave to file a First Amended Complaint, adding an additional allegation of patent infringement of U.S. Patent No. 11,544,944 (“the ’944 Patent”). On April 4, 2023, Truist sent another indemnification demand to the Company requesting indemnification related to the lawsuit. On May 3, 2023, USAA moved for leave to file a Second Amended Complaint, adding an additional allegation of patent infringement of U.S. Patent No. 11,625,770 (“the ’770 Patent”). On May 30, 2023, Truist sent another indemnification demand to the Company requesting indemnification related to the Second Amended Complaint. On October 6, 2023, the parties filed a Notice of Settlement and Joint Motion and Stipulation of Dismissal. All claims and causes of actions between the parties were dismissed with prejudice on October 10, 2023 in view of the settlement.

In October and November of 2022, Truist filed a petition for IPR with the U.S. Patent & Trademark Office challenging the validity of the ’090 Patent, the ’432 Patent, and the ’753 Patent. The Patent Office instituted the petitions directed to the ’090 and ’753 Patents, but denied institution of the petition directed to the ’432 Patent. In view of the settlement between USAA and Truist, the IPRs were withdrawn.

Furthermore, we may initiate other claims or litigation against parties for infringement of our intellectual property rights or to establish the validity of our intellectual property rights. Litigation, either as plaintiff or defendant, could result in significant expense to us, whether or not such litigation is resolved in our favor. Even if we were to prevail, any litigation could be costly and time-consuming and would divert the attention of our management and key personnel from our business operations.

***If the patents we own or license, or our other intellectual property rights, do not adequately protect our technologies, we may lose market share to our competitors and be unable to operate our business profitably.***

Our success depends significantly on our ability to protect our rights to the technologies used in our products, including Mobile Deposit®. We rely on trademark, trade secret, copyright, and patent law, as well as a combination of non-disclosure, confidentiality, and other contractual arrangements to protect our technology and rights. However, these legal protections afford only limited protection and may not adequately protect our rights or permit us to gain or maintain any competitive advantage.

In addition, we cannot be assured that any of our pending patent applications will result in the issuance of a patent. The Patent and Trademark Office (“PTO”) may deny or require significant narrowing of claims in our pending patent applications, and patents issued as a result of the pending patent applications, if any, may not provide us with significant commercial protection or may not be issued in a form that is advantageous to us. We could also incur substantial costs in proceedings before the PTO. Our issued and licensed patents and those that may be issued or licensed in the future may expire or may be challenged, invalidated, or circumvented, which could limit our ability to stop competitors from marketing technologies related to ours. Additionally, upon expiration of our issued or licensed patents, we may lose some of our rights to exclude others from making, using, selling or importing products using the technology based on the expired patents.

We also must rely on contractual provisions with the third parties that license technology to us and that obligate these third parties to protect our rights in the technology licensed to us. There is no guarantee that these third parties would be successful in attempting to protect our rights in any such licensed technology. There is no assurance that competitors will not be able to design around our patents or other intellectual property or any intellectual property or technology licensed to us.

We also rely on unpatented proprietary technology. We cannot assure you that we can meaningfully protect all our rights in our unpatented proprietary technology or that others will not independently develop substantially equivalent proprietary technology or otherwise gain access to our unpatented proprietary technology. We seek to protect our know-how and other unpatented proprietary technology with confidentiality agreements and intellectual property assignment agreements with our employees, consultants, partners, and customers. However, such agreements may not be enforceable or may not provide meaningful protection for our proprietary information in the event of unauthorized use or disclosure or other breaches of the agreements or in the event that our competitors discover or independently develop similar or identical designs or other proprietary information.

In addition, we rely on the use of registered and common law trademarks with respect to the brand names of some of our products. Common law trademarks provide less protection than registered trademarks. Loss of rights in our trademarks could adversely affect our business, financial condition, and results of operations.

Furthermore, the laws of foreign countries may not protect our intellectual property rights to the same extent as the laws of the U.S. If we cannot adequately protect our intellectual property rights in these foreign countries, our competitors may be able to compete more effectively against us, which could adversely affect our competitive position, as well as our business, financial condition, and results of operations.

***We face competition from several companies that may have greater resources than we do, which could result in price reductions, reduced margins, or loss of market share.***

We compete against numerous companies in the mobile imaging software market. Competition in this market may increase as a result of a number of factors, such as the entrance of new or larger competitors or alternative technologies. These competitors may have greater financial, technical, marketing and public relations resources, larger client bases, and greater brand or name recognition. These competitors could, among other things:

- announce new products or technologies that have the potential to replace our existing product offerings;
- force us to charge lower prices; or
- adversely affect our relationships with current clients.

We may be unable to compete successfully against our current and potential competitors and if we lose business to our competitors or are forced to lower our prices, our revenue, operating margins, and market share could decline. If our competitors offer deep discounts on certain products or services in an effort to recapture or gain market share or to sell other products or services, we may need to lower prices or offer other favorable terms in order to compete successfully. For these and other reasons, in the future we may choose to make changes to our pricing practices. Such changes could materially and adversely affect our margins, and our revenues may be negatively affected if our competitors are able to recapture or gain market share.

***We must continue to engage in extensive research and development in order to remain competitive.***

Our ability to compete effectively with our mobile imaging software products depends upon our ability to meet changing market conditions and develop enhancements to our products on a timely basis in order to maintain our competitive advantage. The markets for products incorporating mobile imaging software technology and products are characterized by rapid advancements in technology and changes in user preferences. Our continued growth will ultimately depend upon our ability to develop additional technologies and attract strategic alliances for related or separate products. There can be no assurance that we will be successful in developing and marketing product enhancements and additional technologies, that we will not experience difficulties that could delay or prevent the successful development, introduction and marketing of these products, or that our new products and product enhancements will adequately meet the requirements of the marketplace, will be of acceptable quality, or will achieve market acceptance.

***Defects or malfunctions in our products could hurt our reputation, sales and profitability.***

Our business and the level of customer acceptance of our products depend upon the continuous, effective, and reliable operation of our products. Our products are extremely complex and are continually being modified and improved, and as such may contain undetected defects or errors when first introduced or as new versions are released. To the extent that defects or errors cause our products to malfunction and our customers' use of our products is interrupted, our reputation could suffer and our revenue could decline or be delayed while such defects are remedied. We may also be subject to liability for the defects and malfunctions of third-party technology partners and others with whom our products and services are integrated. In addition, our products are typically intended for use in applications that are critical to a customer's business. As a result, we believe that our customers and potential customers have a greater sensitivity to product defects than the market for software products in general. There can be no assurance that, despite our testing, errors will not be found in new products or releases after commencement of commercial shipments, resulting in loss of revenues or delay in market acceptance, diversion of development resources, damage to our reputation, adverse litigation, or increased service and warranty costs, any of which would have a material adverse effect upon our business, operating results, and financial condition.

***Our lengthy sales cycles and the difficulty in predicting timing of sales or delays may impair our operating results.***

The long sales cycle and the implementation cycles for our software and services may cause operating results to vary significantly from period to period. The sales cycle for our products can be six months or more and varies substantially from customer to customer. Because we sell complex and deeply integrated solutions, it can take many months of customer education to secure sales and implement our product. Since our potential customers may evaluate our products before, if ever, executing definitive agreements, we may incur substantial expenses and spend significant management and legal effort in connection with a potential customer.

***Our historical order flow patterns, which we expect to continue, have caused forecasting difficulties for us. If we do not meet our forecasts or analysts' forecasts for us, the price of our common stock may decline.***

Historically, a significant portion of our sales have resulted from shipments during the last few weeks of the quarter from orders received in the final month of the applicable quarter. We do, however, base our expense levels, in significant part, on our expectations of future revenue. As a result, we expect our expense levels to be relatively fixed in the short term. Any concentration of sales at the end of the quarter may limit our ability to plan or adjust operating expenses. Therefore, if anticipated shipments in any quarter do not occur or are delayed, expenditure levels could be disproportionately high as a percentage of sales, and our operating results for that quarter would be adversely affected. As a result, we believe that period-to-period comparisons of our results of operations are not and will not necessarily be meaningful, and you should not rely upon them as an indication of future performance. If our operating results for a quarter are below the expectations of public market analysts and investors, it could have a material adverse effect on the price of our common stock.

***Entry into new lines of business, and our offering of new products and services, resulting from our acquisitions may result in exposure to new risks.***

New lines of business, products or services could have a significant impact on the effectiveness of our system of internal controls and could reduce our revenues and potentially generate losses. New products and services, or entrance into new markets, may require substantial time, resources and capital, and profitability targets may not be achieved. Entry into new markets entails inherent risks associated with our inexperience, which may result in costly decisions that could harm our profit and operating results. There are material inherent risks and uncertainties associated with offering new products, and services, especially when new markets are not fully developed or when the laws and regulations regarding a new product are not mature. Factors outside of our control, such as developing laws and regulations, regulatory orders, competitive product offerings and changes in commercial and consumer demand for products or services may also materially impact the successful implementation of new products or services. Failure to manage these risks, or failure of any product or service offerings to be successful and profitable, could have a material adverse effect on our financial condition and results of operations.

***Adverse economic conditions or reduced spending on information technology solutions may adversely impact our revenue and profitability.***

Unpredictable and unstable changes in economic conditions, including a recession, inflation, increased government intervention, or measures taken in response to a global pandemic like COVID-19, or other changes, may adversely affect our general business strategy. In particular an economic downturn affecting small and medium sized businesses could significantly affect our business as many of our existing and target customers are in the small and medium sized business sector and these businesses are more likely to be significantly affected by economic downturns than larger, more established businesses. Additionally, these customers often have limited discretionary funds, which they may choose to spend on items other than our products and services, causing our revenue to decline.

***We may need to raise additional capital to fund continuing operations and an inability to raise the necessary capital or the inability to do so on acceptable terms could threaten the success of our business.***

We currently anticipate that our available capital resources and operating cash flows will be sufficient to meet our expected working capital and capital expenditure requirements for at least the next 12 months. However, such resources may not be sufficient to fund the long-term growth of our business. If we determine that it is necessary to raise additional funds, we may choose to do so through public or private equity or debt financings, a bank line of credit, strategic collaborations, licensing, or other arrangements. We cannot be sure that any additional funding, if needed, will be available on terms favorable to us, if at all. Furthermore, any additional equity or equity-related financing may be dilutive to our stockholders, new equity securities may have rights, preferences or privileges senior to those of existing holders of our shares of common stock, and debt or equity financing, if available, may subject us to restrictive covenants and significant interest costs. If we obtain funding through a strategic collaboration or licensing arrangement, we may be required to relinquish our rights to certain of our technologies, products or marketing territories. If we are unable to obtain the financing necessary to support our operations, we may be required to defer, reduce or eliminate certain planned expenditures or significantly curtail our operations.

***We expect to incur additional expenses related to the integration of ID R&D, Inc. and HooYu Ltd.***

We expect to incur additional expenses in connection with the integration of the business, policies, procedures, operations, technologies, and systems of ID R&D, a New York corporation and HooYu Ltd. There are a number of systems and functions that are being integrated into our larger organization, including, but not limited to, management information, accounting and finance, billing, payroll and benefits, and regulatory compliance. In addition, the acquisitions of non-public entities such as ID R&D and HooYu, are particularly challenging because their prior practices may not meet the requirements of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley") and/or accounting principles generally accepted in the U.S. ("GAAP"). While we have assumed that a certain level of expenses would be incurred to integrate this business, there are a number of factors beyond our control that could affect the total amount or the timing of all of the expected integration expenses. Moreover, many of the expenses that will be incurred, by their nature, are difficult to estimate accurately at the present time.

***We may be unable to successfully integrate our business with the respective businesses of ID R&D, and HooYu and realize the anticipated benefits of the acquisitions.***

Our management will be required to continue to devote significant attention and resources to integrating our business practices and operations with that of ID R&D and HooYu. In particular, the acquisitions of ID R&D and HooYu involve the combination of companies that previously operated independently in different countries. Potential difficulties we may encounter as part of the integration process include, but are not limited to, the following:

- complexities associated with managing our business and the respective businesses of ID R&D and HooYu following the completion of the acquisition, including the challenge of integrating complex systems, technology, networks, and other assets of each of the companies in a seamless manner that minimizes any adverse impact on customers, suppliers, employees, and other constituencies;
- integrating the workforces of the companies while maintaining focus on providing consistent, high quality customer service; and
- potential unknown liabilities and unforeseen increased expenses or delays associated with the acquisitions, including costs to integrate the companies that may exceed anticipated costs.

Any of the potential difficulties listed above could adversely affect our ability to maintain relationships with customers, suppliers, employees, and other constituencies or our ability to achieve the anticipated benefits of the acquisitions or otherwise adversely affect our business and financial results.

***Our actual financial and operating results following the acquisitions of ID R&D and HooYu could differ materially from any expectations or guidance provided by us concerning our future financial and operating results.***

The combined company resulting from the acquisitions of ID R&D and HooYu may not perform as we or the market expects. Expectations regarding each of ID R&D's and HooYu's impact on our financial and operating results are subject to numerous assumptions, including assumptions derived from our diligence efforts concerning the status of and prospects for the businesses of ID R&D and HooYu, respectively, and assumptions relating to the near-term prospects for our industry generally and the market for the products of ID R&D and HooYu in particular. Additional assumptions that we have made relate to numerous matters, including, without limitation, the following:

- projections of future revenues;
- anticipated financial performance of products and products currently in development;
- our expected capital structure after the acquisitions, including after the distribution of any earnout shares that may (under certain circumstances) become payable to the former shareholders of ID R&D;
- our ability to maintain, develop and deepen relationships with the respective customers of ID R&D and HooYu; and
- other financial and strategic risks of the acquisitions.

We cannot provide any assurances with respect to the accuracy of our assumptions, including our assumptions with respect to future revenues or revenue growth rates, if any, of ID R&D or HooYu. Risks and uncertainties that could cause our actual results to differ materially from currently anticipated results include, but are not limited to, risks relating to our ability to realize incremental revenues from the acquisitions in the amounts that we currently anticipate; risks relating to the willingness of customers and other partners of ID R&D or HooYu to continue to conduct business with the combined company; and numerous risks and uncertainties that affect our industry generally and the markets for our products and those of each of ID R&D and HooYu. Any failure to realize the financial benefits we currently anticipate from the acquisitions would have a material adverse impact on our future operating results and financial condition and could materially and adversely affect the trading price or trading volume of our common stock.

***Our annual and quarterly results have fluctuated greatly in the past and will likely continue to do so, which may cause substantial fluctuations in our common stock price.***

Our annual and quarterly operating results have in the past, and may in the future, fluctuate significantly depending on factors including the timing of customer projects and purchase orders, new product announcements and releases by us and other companies, gain or loss of significant customers, price discounting of our products, the timing of expenditures, customer product delivery requirements, the availability and cost of components or labor, and economic conditions, both generally and in the information technology market. Revenues related to our licenses for mobile imaging software products are required to be recognized upon satisfaction of all applicable revenue recognition criteria. The recognition of future revenues from these licenses is dependent on a number of factors, including, but not limited to, the terms of our license agreements, the timing of implementation of our products by our channel partners and customers and the timing of any re-orders of additional licenses and/or license renewals by our channel partners and customers. Any unfavorable change in these or other factors could have a material adverse effect on our operating results for a particular quarter or year, which may cause downward pressure on our common stock price.

Historically, sales of licenses to our channel partners have comprised a significant part of our revenue. This is attributable to the timing of the purchase or renewal of licenses and does not represent a dependence on any single channel partner. If we were to lose a channel partner relationship, we do not believe such a loss would adversely affect our operations because either we or another channel



partner could sell our products to the end-users that had purchased products from the channel partner we lost. However, in that case, we or another channel partner must establish a relationship with the end-users, which could take time to develop, if it develops at all.

We expect quarterly and annual fluctuations to continue for the foreseeable future. These fluctuations may result in volatility in our results of operations, have an adverse effect on the market price of our common stock, or both.

***We face risks related to the storage of our customers' and their end users' confidential and proprietary information. Our products may not provide absolute security. We may incur increasing costs in an effort to minimize those risks and to respond to cyber incidents.***

Our products are designed to maintain the confidentiality and security of our customers' and their end users' confidential and proprietary information that is stored on our systems, which may include sensitive financial data and personally identifiable information about consumers. However, any accidental or willful security breaches or other unauthorized access to this data could expose us to liability for the loss of such information, time-consuming and expensive litigation, and other possible liabilities as well as negative publicity.

We devote significant resources to addressing security vulnerabilities in our products, systems and processes, however our maintenance and regular upgrades of our products, systems and processes, which are designed to protect the security of our products and the confidentiality, integrity and availability of information belonging to us and our clients, may not provide absolute security. Techniques used to obtain unauthorized access or to sabotage systems change frequently, are increasingly sophisticated, and generally are difficult to recognize and react to. We may be unable to anticipate these techniques or implement adequate preventative or reactionary measures.

As cyber-attacks become more sophisticated, the need to develop our infrastructure to secure our business and customer data can lead to increased cybersecurity protection costs. Such costs may include making organizational changes, deploying additional personnel and protection technologies, training employees, and engaging third-party experts and consultants. These efforts come at the potential cost of revenues and human resources that could be utilized to continue to enhance our product offerings.

A successful penetration or circumvention of the security of our products could cause serious negative consequences, including significant disruption of our operations, misappropriation of our confidential information or that of our clients, or damage to our systems or those of our clients and counterparties, and could result in violations of applicable privacy and other laws, financial loss to us or to our clients, loss of confidence in our security measures, client dissatisfaction, significant litigation exposure, and harm to our reputation, all of which could have a material adverse effect on us. We may not have adequate insurance coverages for a cybersecurity breach or may realize increased insurance premiums as a result of a security breach.

If an actual or perceived breach of security occurs, client perception of the effectiveness of our security measures could be harmed and could result in the loss of clients. Actual or anticipated attacks and risks may cause us to incur increasing costs, including costs to deploy additional personnel and protection technologies, train employees, and engage third party experts and consultants.

***Due to our operations in non-U.S. markets, we are subject to certain risks that could adversely affect our business, results of operations or financial condition.***

We generate revenue in markets outside of the U.S. The risks inherent in global operations include:

- lack of familiarity with, and unexpected changes in, foreign laws and legal standards, including employment laws and privacy laws, which may vary widely across the countries in which we sell our products;
- increased expense to comply with U.S. laws that apply to foreign corporations, including the Foreign Corrupt Practices Act (the "FCPA");
- compliance with, and potentially adverse tax consequences of foreign tax regimes;
- fluctuations in currency exchange rates, currency exchange controls, price controls, and limitations on repatriation of earnings;
- local economic conditions;
- increased expense related to localization of products and development of foreign language marketing and sales materials;
- longer accounts receivable payment cycles and difficulty in collecting accounts receivable in foreign countries;
- increased financial accounting and reporting burdens and complexities;
- restrictive employment regulations;
- difficulties and increased expense in implementing corporate policies and controls;
- international intellectual property laws, which may be more restrictive or may offer lower levels of protection than U.S. law;

- compliance with differing and changing local laws and regulations in multiple international locations, including regional data privacy laws, as well as compliance with U.S. laws and regulations where applicable in these international locations; and
- limitations on our ability to enforce legal rights and remedies.

If we are unable to successfully manage these and other risks associated with managing and expanding our international business, the risks could have a material adverse effect on our business, results of operations, or financial condition. Further, operating in international markets requires significant management attention and financial resources. Due to the additional uncertainties and risks of doing business in foreign jurisdictions, international acquisitions tend to entail risks and require additional oversight and management attention that are typically not attendant to acquisitions made within the U.S. We cannot be certain that the investment and additional resources required to establish, acquire or integrate operations in other countries will produce desired levels of revenue or profitability.

***Our international operations may increase our exposure to potential liability under anti-corruption, trade protection, tax, and other laws and regulations.***

The FCPA and other anti-corruption laws and regulations (“Anti-Corruption Laws”) prohibit corrupt payments by our employees, vendors, or agents. From time to time, we may receive inquiries from authorities in the U.S. and elsewhere about our business activities outside of the U.S. and our compliance with Anti-Corruption Laws. While we have implemented policies, training, and internal controls designed to reduce the risk of corrupt payments, our employees, vendors, or agents may violate our policies. Our acquisitions of ID Checker, ICAR, A2iA, ID R&D, and HooYu may significantly increase our exposure to potential liability under Anti-Corruption Laws. ID Checker, ICAR, A2iA, ID R&D, and HooYu were not historically subject to the FCPA, Sarbanes-Oxley, or other laws, to which we are subject, and we may become subject to liability if in the past, ID Checker’s, ICAR’s, A2iA’s, ID R&D’s, and HooYu’s operations did not comply with such laws.

Our failure to comply with Anti-Corruption Laws could result in significant fines and penalties, criminal sanctions against us, our officers or our employees, prohibitions on the conduct of our business, and damage to our reputation. Operations outside of the U.S. may be affected by changes in trade protection laws, policies and measures, and other regulatory requirements affecting trade and investment.

The transfer of personal data from the European Union (“EU”) to the U.S. has become a significant area of potential operational and compliance risk. In 2020, the Court of Justice of the European Union (“CJEU”) and the Swiss Federal Data Protection and Information Commissioner invalidated the U.S.-EU and U.S.-Swiss Privacy Shield frameworks, respectively. Privacy Shield was a mechanism for companies to transfer data from EU member states or Switzerland to the U.S. In its decision, the CJEU also indicated that individual EU member states could determine whether Standard Contractual Clauses (“SCCs”) (another “adequate” option for data transfers) are sufficient to securely transfer data out of the EU. A number of local country data protection authorities in the EU subsequently determined that SCCs were invalid for data transfers to the U.S. The EU Data Protection Board subsequently published updated SCCs to address some of the issues presented in the CJEU decision. Those new SCCs were required to be in place by December 27, 2022, and required significant effort for companies to review and revise their EU-U.S. data transfer agreements. Because of the legal challenges presented by these court and data protection authority decisions, there is uncertainty regarding the legal basis for data transfers to the U.S., which could lead to interruption of such transfers. The complex nature and shifting laws related to EU/UK/Switzerland to U.S. data transfers could cause operational interruptions, liabilities and reputational harm. These and other requirements could increase the cost of compliance for us and our customers, restrict our and our customers’ ability to store and process data, negatively impact our ability to offer our solutions in certain locations and limit our customers’ ability to deploy our solutions globally. These consequences may be more significant in countries with legislation that requires data to remain localized “in country,” as this could require us or our customers to establish data storage in other jurisdictions or apply local operational processes that are difficult and costly to integrate with global processes.

If we fail to comply with such laws and regulations, we may be subject to significant fines, penalties or liabilities for noncompliance, thereby harming our business. For example, in 2016, the EU adopted the General Data Protection Regulation (“GDPR”), which establishes new requirements regarding the handling of personal data and which became effective in May 2018. Non-compliance with the GDPR may result in monetary penalties of up to 4% of worldwide revenue.

Due to our international operations, we are subject to certain foreign tax regulations. Such regulations may not be clear, not consistently applied, and subject to sudden change, particularly with regard to international transfer pricing. Our earnings could be reduced by the uncertain and changing nature of such tax regulations.

***Fluctuations in foreign currency exchange and interest rates could adversely affect our results of operations.***

Our business is generally conducted in U.S. dollars. However, we earn revenues, pay expenses, own assets and incur liabilities in countries using currencies other than the U.S. dollar. Because our consolidated financial statements are presented in U.S. dollars, we must translate revenues and expenses into U.S. dollars at the average exchange rate during each reporting period, as well as assets and liabilities into U.S. dollars at exchange rates in effect at the end of each reporting period. The costs of operating in The Netherlands, Spain, France, and other European markets are subject to the effects of exchange fluctuations of the Euro and British pound sterling

against the U.S. dollar. Therefore, increases or decreases in the value of the U.S. dollar against other major currencies will affect our net revenues, net income (loss), and the value of balance sheet items denoted in foreign currencies, and can adversely affect our operating results.

***Compliance with changing regulations concerning corporate governance and public disclosure may result in additional expenses.***

Our business is subject to laws, rules, regulations, and standards relating to corporate governance and public disclosure, including the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), Sarbanes-Oxley, and various other new regulations promulgated by the SEC and rules promulgated by the national securities exchanges.

The Dodd-Frank Act, enacted in July 2010, expands federal regulation of corporate governance matters and imposes requirements on publicly-held companies, including us, to, among other things, provide stockholders with a periodic advisory vote on executive compensation and also adds compensation committee reforms and enhanced pay-for-performance disclosures. While some provisions of the Dodd-Frank Act were effective upon enactment, and others have been implemented upon the SEC’s adoption of related rules and regulations, the Dodd-Frank Act is not yet fully implemented and the scope and timing of the adoption of additional rules and regulations thereunder is uncertain and accordingly, the cost of compliance with the Dodd-Frank Act is also uncertain. In addition, Sarbanes-Oxley specifically requires, among other things, that we maintain effective internal control over financial reporting and disclosure of controls and procedures. In particular, we must perform system and process evaluation and testing of our internal control over financial reporting to allow management to report on the effectiveness of our internal control over financial reporting, as required by Section 404 of Sarbanes-Oxley Act (“Section 404”). Our independent registered public accounting firm is required to attest to our internal control over financial reporting. Our testing, or the subsequent testing by our independent registered public accounting firm may reveal deficiencies in our internal control over financial reporting that are deemed to be material weaknesses. Our compliance with Section 404 requires that we incur substantial accounting expenses and expend significant management efforts. We currently have limited internal audit capabilities and will need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge. Moreover, if we are not able to comply with the requirements of Section 404, or if we or our independent registered public accounting firm, if applicable, identifies deficiencies in our internal control over financial reporting that are deemed to be material weaknesses, the market price of our stock could decline, and we could be subject to sanctions or investigations by the SEC or other regulatory authorities, which would require additional financial and management resources.

These and other new or changed laws, rules, regulations and standards are, or will be, subject to varying interpretations in many cases due to their lack of specificity. As a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies, which could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. Our efforts to comply with evolving laws, regulations and standards are likely to continue to result in increased general and administrative expenses and a diversion of management time and attention from revenue-generating activities to compliance activities. Further, compliance with new and existing laws, rules, regulations and standards may make it more difficult and expensive for us to maintain director and officer liability insurance, and we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. Members of our board of directors (the “Board”) and our principal executive officer and principal financial officer could face an increased risk of personal liability in connection with the performance of their duties. As a result, we may have difficulty attracting and retaining qualified directors and executive officers, which could harm our business. We continually evaluate and monitor regulatory developments and cannot estimate the timing or magnitude of additional costs we may incur as a result.

***We have a history of losses and we may not be able to maintain profitability in the future.***

Although we generated net income for the twelve months ended September 30, 2022, 2021, and 2020, operations resulted in a net loss of \$0.7 million and \$11.8 million for the twelve months ended September 30, 2019, 2018, respectively. We may continue to incur significant losses for the foreseeable future which may limit our ability to fund our operations and we may not generate income from operations in the future. As of September 30, 2023, September 30, 2022, and September 30, 2021, we had an accumulated deficit of \$9 million, \$17 million, and \$6 million, respectively. Our future profitability depends upon many factors, including several that are beyond our control. These factors include, without limitation:

- changes in the demand for our products and services;
- loss of key customers or contracts;
- the introduction of competitive software;
- the failure to gain market acceptance of our new and existing products;
- the failure to successfully and cost effectively develop, introduce and market new products, services and product enhancements in a timely manner; and
- the timing of recognition of revenue.

In addition, we incur significant legal, accounting, and other expenses related to being a public company. As a result of these expenditures, we will have to generate and sustain increased revenue to achieve and maintain future profitability.

***An “ownership change” could limit our ability to utilize our net operating loss and tax credit carryforwards, which could result in our payment of income taxes earlier than if we were able to fully utilize our net operating loss and tax credit carryforwards.***

Federal and state tax laws impose restrictions on the utilization of net operating loss (“NOL”) and tax credit carryforwards in the event of an “ownership change” as defined by Section 382 of the Internal Revenue Code of 1986, as amended (“Section 382”). Generally, an “ownership change” occurs if the percentage of the value of the stock that is owned by one or more direct or indirect “five percent shareholders” increases by more than 50% over their lowest ownership percentage at any time during an applicable testing period (typically, three years). Under Section 382, if a corporation undergoes an “ownership change,” such corporation’s ability to use its pre-change NOL and tax credit carryforwards and other pre-change tax attributes to offset its post-change income may be limited. While no “ownership change” has resulted in annual limitations, future changes in our stock ownership, which may be outside of our control, may trigger an “ownership change.” In addition, future equity offerings or acquisitions that have equity as a component of the consideration could result in an “ownership change.” If an “ownership change” occurs in the future, utilization of our NOL and tax credit carryforwards or other tax attributes may be limited, which could potentially result in increased future tax liability to us.

***Our cash and cash equivalents could be adversely affected if the financial institutions at which we hold our cash and cash equivalents fail.***

Our cash and cash equivalents that we use to satisfy our working capital and operating expense needs are held in accounts at various financial institutions. The balance held in deposit accounts often exceeds the Federal Deposit Insurance Corporation (“FDIC”) deposit insurance limit or similar government deposit insurance schemes. Our cash and cash equivalents could be adversely impacted, including the loss of uninsured deposits and other uninsured financial assets, if one or more of the financial institutions in which we hold our cash or cash equivalents fails or is subject to other adverse conditions in the financial or credit markets.

We maintain a significant amount our cash and cash equivalents in Silicon Valley Bank, a division of First Citizens Bank (“SVB”), and our deposits at this institution exceeds insured limits. In March 2023, SVB failed and the FDIC took control of SVB. The Federal Reserve subsequently announced that account holders would be made whole and we were able to access all of our cash held at SVB. There is no guarantee that the Federal Reserve Board, the U.S. Treasury Department and the FDIC will provide access to uninsured funds in the future in the event of the closure of any other banks or financial institutions in a timely fashion or at all. Any inability to access or delay in accessing these funds could adversely affect our business, financial position, and liquidity.

If we do not effectively diversify our bank deposits and investment portfolio, the value and liquidity of our investments may fluctuate substantially which could affect our access to capital and results of operations in a material way. Furthermore, our access to our cash and cash equivalents in amounts adequate to finance our operations could be significantly impaired if the financial institutions with which we have arrangements directly face liquidity constraints or failures. Investor concerns regarding the U.S. or international financial systems could result in less favorable commercial financing terms, including higher interest rates or costs and tighter financial and operating covenants, or systemic limitations on access to credit and liquidity sources, thereby making it more difficult for us to acquire financing on acceptable terms or at all. Any material decline in available funding or our ability to access our cash and cash equivalents could adversely impact our results of operations and liquidity.

***Our business could be adversely affected in the event we default under our debt agreements.***

In the event we default on any debt agreement, including those related to our convertible notes due 2026, our business, ability to make distributions, financial condition, results of operations and cash flows could be adversely affected. If we were unable to obtain a waiver of a default from the lenders or holders of that indebtedness, as applicable, those lenders or holders could accelerate repayment under that indebtedness. An acceleration could have a material adverse impact on our business, financial condition and results of operations.

Our ability to meet our payment obligations under our debt instruments depends on our ability to generate significant cash flows in the future. This, to some extent, is subject to market, economic, financial, competitive, legislative, and regulatory factors as well as other factors that are beyond our control. There can be no assurance that our business will generate cash flow from operations, or that additional capital will be available to us, in amounts sufficient to enable us to meet our debt payment obligations and to fund other liquidity needs.

***Our revenues are dependent on our ability to maintain and expand existing customer relationships and our ability to attract new customers.***

The continued growth of our revenues is dependent in part on our ability to expand the use of our solutions by existing customers and attract new customers. If we are unable to expand our customers’ use of our solutions, sell additional solutions to our customers, maintain our renewal rates for maintenance and subscription agreements and expand our customer base, our revenues may decline or fail to increase at historical growth rates, which could adversely affect our business and operating results. In addition, if we experience customer dissatisfaction with customers in the future, we may find it more difficult to increase use of our solutions within

our existing customer base and it may be more difficult to attract new customers, or we may be required to grant credits or refunds, any of which could negatively impact our operating results and materially harm our business.

***Evolving domestic and international data privacy regulations may restrict our ability, and that of our customers, to solicit, collect, process, disclose and use personal information or may increase the costs of doing so, which could harm our business.***

Federal, state and foreign governments and supervising authorities have enacted, and may in the future enact, laws and regulations concerning the solicitation, collection, processing, disclosure or use of consumers' personal information, including sensitive information such as biometric data. Evolving regulations regarding personal data and personal information, in the European Union and elsewhere, especially relating to classification of IP addresses, machine identification, household data, location data, biometric data, and other information, may limit or inhibit our ability to operate or expand our business. Such laws and regulations require or may in the future require us or our customers to implement privacy and security policies and practices; permit individuals to access, correct or delete personal information stored or maintained by us or our customers; inform individuals of security incidents that affect their personal information; and, in some cases, obtain consent to use personal information for specified purposes. Other proposed legislation could, if enacted, impose additional requirements and prohibit the use of specific technologies, such as those that track individuals' activities on web pages or record when individuals click on a link contained in an email message, or those relating to collection and use of biometric identifiers, and systems reliant on such technologies. Such laws and regulations could restrict our customers' ability to collect and use web browsing data and personal information, or utilize biometrics-derived information, which may reduce our customers' demand for our solutions. The laws in this area are complex and developing rapidly.

In the United States, many state legislatures have adopted legislation that regulates how businesses operate online, including measures relating to privacy, data security and data breaches. Laws in all states require businesses to provide notice to customers whose personally identifiable information has been disclosed as a result of a data breach. The laws are not consistent, and compliance in the event of a widespread data breach is costly. Further, states are constantly adopting new laws or amending existing laws, requiring attention to frequently changing regulatory requirements. For example, California enacted the California Consumer Privacy Act (the "CCPA") on June 28, 2018, which went into effect on January 1, 2020. The CCPA gives California residents expanded rights to access and delete their personal information, opt out of certain personal information sharing and receive detailed information about how their personal information is used by requiring covered companies to provide new disclosures to California consumers (as that term is broadly defined) and provides such consumers new ways to opt-out of certain sales of personal information. The CCPA provides for civil penalties for violations, as well as a private right of action for data breaches that is expected to increase data breach litigation. The CCPA may increase our compliance costs and potential liability. The California Privacy Rights Act (the "CPRA") revised and expanded the CCPA, adding additional data protection obligations on covered businesses, including additional consumer rights processes, limitations on data uses, new audit requirements for higher risk data, and opt outs for certain uses of sensitive data. It also created a new California data protection agency authorized to issue substantive regulations and could result in increased privacy and information security enforcement. The CPRA was in full effect as of January 1, 2023. Similar laws passed in Virginia, Colorado, Connecticut, and Utah took effect in 2023. Additionally, Delaware, Indiana, Iowa, Montana, Oregon, Tennessee and Texas have adopted privacy laws, which take effect from July 1, 2024 through 2026. Additional U.S. states have enacted, or are considering, similar data privacy laws. We cannot fully predict the impact of these state laws, including the California Legislation, on our business or operations, but it may require us to modify our data processing practices and policies and to incur substantial costs and expenses in an effort to comply. We expect that new legislation proposed or enacted in various other states will continue to shape the data privacy environment nationally. Certain state laws may be more stringent or broader in scope, or offer greater individual rights, with respect to confidential, sensitive and personal information than federal, international or other state laws, and such laws may differ from each other, which may complicate compliance efforts.

Changing industry standards and industry self-regulation regarding the collection, use and disclosure of data may have similar effects. Existing and future privacy and data protection laws and increasing sensitivity of consumers to unauthorized disclosures and use of personal information may also negatively affect the public's perception of our customers' sales practices. If our solutions are perceived to cause, or are otherwise unfavorably associated with, insecurity of personal information, whether or not illegal, we or our customers may be subject to public criticism. Public concerns regarding data collection, privacy and security may also cause some consumers to be less likely to visit our customers' websites or otherwise interact with our customers, which could limit the demand for our solutions and inhibit the growth of our business. Any failure on our part to comply with applicable privacy and data protection laws, regulations, policies and standards or any inability to adequately address privacy or security concerns associated with our solutions, even if unfounded, could subject us to liability, damage our reputation, impair our sales and harm our business. Furthermore, the costs to our customers of compliance with, and other burdens imposed by, such laws, regulations, policies and standards may limit adoption of and demand for our solutions.

#### **Risks Related to Investing in Our Common Stock**

***From time-to-time our Board explores and considers strategic alternatives, including financings, strategic alliances, acquisitions, or the possible sale of our company. Our Board may not be able to identify or complete any suitable strategic alternatives, and announcements regarding any such strategic alternatives could have an impact on our operations or stock price.***

From time-to-time our Board explores and considers strategic alternatives, including financings, strategic alliances, acquisitions, or the possible sale of our company. We currently have no agreements or commitments to engage in any specific strategic transactions, and we cannot assure you that any future explorations of various strategic alternatives will result in any specific action or

transaction. If we determine to engage in a strategic transaction, we cannot predict the impact that such strategic transaction might have on our operations or stock price. We do not intend to provide updates or make further comments regarding the evaluation of strategic alternatives, unless otherwise required by law.

***Future sales of our common stock by our insiders may cause our stock price to decline.***

A significant portion of our outstanding shares are held by our current and former directors and executive officers. Resales of a substantial number of shares of our stock by these stockholders, announcements of the proposed resale of substantial amounts of our stock, or the perception that substantial resales may be made by such stockholders could adversely impact the market price of our stock. Some of our directors and executive officers have in the past and may in the future enter into Rule 10b5-1 trading plans pursuant to which they may sell shares of our stock from time to time in the future. Actual or potential sales by these individuals, including those under a pre-arranged Rule 10b5-1 trading plan, regardless of the actual circumstances, could be interpreted by the market as an indication that the insider has lost confidence in our stock and adversely impact the market price of our stock.

We have registered and expect to continue to register shares reserved under our equity plans under a registration statement on Form S-8. All shares issued pursuant to a registration statement on Form S-8 can be freely sold in the public market upon issuance, subject to restrictions on our affiliates under Rule 144 of the Securities Act. If a large number of these shares are sold in the public market, the sales could adversely impact the trading price of our stock.

***A potential proxy contest for the election of directors at our annual meeting could result in potential operational disruption, divert our resources, and could potentially result in adverse consequences under certain of our agreements.***

Our investors may launch a proxy contest to nominate director candidates for election to the Board at our annual meeting of stockholders. A proxy contest would require us to incur significant legal fees and proxy solicitation expenses and could result in potential operational disruption, including that the investor-nominated directors (if elected) may have a business agenda for our company that is different than the strategic and operational plans of the existing Board, which agenda may adversely affect our stockholders. Further, any perceived uncertainties as to our future direction and control could result in the loss of potential business opportunities and may make it more difficult to attract and retain qualified personnel and business partners, any of which could adversely affect our business and operating results and create increased volatility in our stock price.

Further, a change in a majority of the Board may, under certain circumstances, result in a change of control under certain employment agreements we have with our executive management and our 2002 Stock Option Plan, 2010 Stock Option Plan, Amended and Restated 2012 Incentive Plan, Amended and Restated 2020 Incentive Plan, Director Restricted Stock Unit Plan, and any equity based awards issued thereunder. Pursuant to the agreements and awards, certain payments and vesting provisions may be triggered following a change of control, conditioned upon a qualifying termination that occurs within 12 months of any such change of control.

***Our corporate documents and the Delaware General Corporation Law (the "DGCL") contain provisions that could discourage, delay, or prevent a change in control of our company, prevent attempts to replace or remove current management, and reduce the market price of our stock.***

Provisions in our restated certificate of incorporation and third amended and restated bylaws may discourage, delay, or prevent a merger or acquisition involving us that our stockholders may consider favorable. For example, our restated certificate of incorporation authorizes our Board to issue up to one million shares of "blank check" preferred stock. As a result, without further stockholder approval, the Board has the authority to attach special rights, including voting and dividend rights, to this preferred stock. With these rights, preferred stockholders could make it more difficult for a third-party to acquire us. We are also subject to the anti-takeover provisions of the DGCL. Under these provisions, if anyone becomes an "interested stockholder," we may not enter into a "business combination" with that person for three years without special approval, which could discourage a third-party from making a takeover offer and could delay or prevent a change in control of us. An "interested stockholder" is, generally, a stockholder who owns 15% or more of our outstanding voting stock or an affiliate of ours who has owned 15% or more of our outstanding voting stock during the past three years, subject to certain exceptions as described in the DGCL.

***Our restated certificate of incorporation and third amended and restated bylaws provide for indemnification of officers and directors at our expense and limits their liability, which may result in a major cost to us and hurt the interests of our stockholders because corporate resources may be expended for the benefit of officers and/or directors.***

Pursuant to our restated certificate of incorporation and third amended and restated bylaws and as authorized under applicable Delaware law, our directors and officers are not liable for monetary damages for breaches of fiduciary duties, except for liability (i) for any breach of the director's duty of loyalty to the Company or its stockholders; (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; (iii) under Section 174 of the DGCL; or (iv) for any transaction from which the director derived an improper personal benefit.

We have entered into a separate indemnification agreement (the "Indemnification Agreement") with each of our directors. Under the Indemnification Agreement, each director is entitled to be indemnified against all expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by or on behalf of such director in connection with any claims, proceedings or other actions brought against such director as a result of the director's service to us, provided that the director: (i) acted

in good faith; (ii) reasonably believed the action was in our best interest; and (iii) in criminal proceedings, reasonably believed the conduct was not unlawful. Additionally, the Indemnification Agreement entitles each director to contribution of expenses from us in any proceeding in which we are jointly liable with such director, but for which indemnification is not otherwise available. The Indemnification Agreement also entitles each director to advancement of expenses incurred by such director in connection with any claim, proceeding or other action in advance of the final adjudication of any such claim, proceeding or other action, provided the director agrees to reimburse us for all such advances if it shall ultimately be determined that the director is not entitled to indemnification.

The foregoing limitations of liability and provisions for expenses may result in a major cost to us and hurt the interests of our stockholders because corporate resources may be expended for the benefit of officers and/or directors.

***The market price of our common stock has been volatile and your investment in our stock could suffer a decline in value.***

The market price of our common stock has experienced significant price and volume fluctuations. For example, during the three year period ended September 30, 2023, the closing price of our common stock ranged from \$8.45 to \$23.03. In addition, the stock market has from time to time experienced significant price and volume fluctuations that have particularly affected the market prices for the common stock of technology companies and that have often been unrelated to the operating performance of particular companies. These broad market fluctuations may adversely affect the market price of our common stock. You may not be able to resell your shares at or above the price you paid for them due to fluctuations in the market price of our stock caused by changes in our operating performance or prospects and other factors.

Some specific factors, in addition to the other risk factors identified above, that may have a significant effect on the price of our stock, many of which we cannot control, include but are not limited to:

- our announcements or our competitors' announcements of technological innovations;
- quarterly variations in operating results;
- changes in our product pricing policies or those of our competitors;
- claims of infringement of intellectual property rights or other litigation;
- the public's reaction to our press releases, our other public announcements and our filings with the SEC;
- changes in accounting standards, policies, guidance, interpretations or principles;
- changes in our growth rate or our competitors' growth rates;
- developments regarding our patents or proprietary rights or those of our competitors;
- our inability to raise additional capital as needed;
- changes in financial markets or general economic conditions;
- sales of stock by us or members of our management team or Board; and
- changes in stock market analyst recommendations or earnings estimates regarding our stock, other comparable companies or our industry generally.

***Because we do not intend to pay cash dividends, our stockholders will benefit from an investment in our common stock only if our stock price appreciates in value.***

We have never declared or paid a cash dividend on our common stock. We currently intend to retain our future earnings, if any, for use in the operation and expansion of our business and do not expect to pay any cash dividends in the foreseeable future. As a result, the success of an investment in our common stock will depend entirely upon any future appreciation in its value. There is no guarantee that our common stock will appreciate in value or even maintain the price at which it was purchased.

***As a result of our failure to timely file this Annual Report on Form 10-K for year ended September 30, 2023, and our Quarterly Report on Form 10-Q for the quarter ended December 31, 2023, we are currently ineligible to file new short form registration statements on Form S-3 or to have resale registration statements declared effective in a timely manner, which may impair our ability to raise capital on terms favorable to us, in a timely manner or at all.***

Form S-3 permits eligible issuers to conduct registered offerings using a short form registration statement that allows the issuer to incorporate by reference its past and future filings and reports made under the Exchange Act. In addition, Form S-3 enables eligible issuers to conduct primary offerings "off the shelf" under Rule 415 of the Securities Act. The shelf registration process, combined with the ability to forward incorporate information, allows issuers to avoid delays and interruptions in the offering process and to access the capital markets in a more expeditious and efficient manner than raising capital in a standard registered offering pursuant to a Registration Statement on Form S-1. The ability to register securities for resale may also be limited as a result of the loss of Form S-3 eligibility.

As a result of our failure to timely file this Annual Report on Form 10-K for year ended September 30, 2023, and our Quarterly Report on Form 10-Q for the quarter ended December 31, 2023, we are currently ineligible to file new short form registration statements on Form S-3. In addition, if we seek to access the capital markets through a registered offering during the period of time that we are unable to use Form S-3, we may be required to publicly disclose the proposed offering and the material terms thereof before the offering commences, we may experience delays in the offering process due to SEC review of a Form S-1 registration statement and we may incur increased offering and transaction costs and other considerations.

***Our third amended and restated bylaws provide that a state or federal court located within in the State of Delaware will be the sole and exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.***

Our third amended and restated bylaws provide that, unless we consent to an alternative forum, a state or federal court located within the state of Delaware will be the sole and exclusive forum for: (a) any derivative action or proceeding brought on our behalf; (b) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee to us or our stockholders, (c) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, or (d) any action asserting a claim governed by the internal affairs doctrine. Our Bylaws also provide that any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock will be deemed to have notice of and consented to this choice of forum provision. The foregoing choice of forum provision is not intended to apply to any actions brought under the Securities Act or the Exchange Act. Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. As a result, the exclusive forum provision will not apply to suits brought to enforce any duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. However, our Bylaws do not relieve us of our duties to comply with federal securities laws and the rules and regulations thereunder, and our stockholders will not be deemed to have waived our compliance with these laws, rules and regulations.

This choice of forum provision in our Bylaws 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. In addition, stockholders who do bring a claim in the state or federal courts in the State of Delaware could face additional litigation costs in pursuing any such claim, particularly if they do not reside in or near Delaware. Furthermore, the enforceability of similar choice of forum provisions in other companies' governing documents has been challenged in legal proceedings, and it is possible that a court could find these types of provisions to be inapplicable or unenforceable. If a court were to find the choice of forum provision 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 adversely affect our business and financial condition.

***We may not be able to maintain our listing on The Nasdaq Stock Market LLC ("Nasdaq"), or trading on the Nasdaq Capital Market may otherwise be halted or suspended, which may negatively impact the price of our common stock. If our common stock is delisted from Nasdaq, our business, financial condition, results of operations and share price could be adversely affected, and the liquidity of our common stock could be impaired.***

We have in the past and may in the future fail to comply with the Nasdaq listing requirements, including the continued listing requirement to timely file all required periodic financial reports with the SEC. As of the date of the filing of this Form 10-K, we have not yet filed our Form 10-Q for the quarterly period ended December 31, 2023. If our common stock ceases to be listed for trading on Nasdaq for any reason, it may harm our stock price, increase the volatility of our stock price, decrease the level of trading activity and make it more difficult for investors to buy or sell shares of our common stock. Our failure to maintain listing on Nasdaq may constitute an event of default under our outstanding indebtedness, including our convertible notes due 2026, and any future indebtedness, which would accelerate the maturity date of such debt or trigger other obligations. In addition, certain institutional investors that are not permitted to own securities of non-listed companies may be required to sell their shares adversely affecting the market price of our common stock. If we are not listed on Nasdaq, we will be limited in our ability to raise additional capital we may need.

On August 11, 2022, we were notified by Nasdaq that we were not in compliance with Nasdaq Listing Rule 5250(c)(1) (the "Listing Rule"), which requires that a listed company timely file all required periodic financial reports with the SEC as a result of our failure to file our Quarterly Report on Form 10-Q for the period ended June 30, 2022. We submitted a plan to regain compliance on October 12, 2022 and on October 18, 2022, we received an exception of 180 days from the date the filing was due to regain compliance. On October 28, 2022, we filed our Quarterly Report on Form 10-Q for the period ended June 30, 2022 and regained compliance.

On December 16, 2022, we were notified by Nasdaq that we were not in compliance with the Listing Rule as a result of our failure to file our Annual Report on Form 10-K for the fiscal year ended September 30, 2022 (the "FY'22 Form 10-K"). We submitted an initial plan of compliance to Nasdaq on February 9, 2023.

On February 16, 2023, we were notified by Nasdaq that we were not in compliance with the Listing Rule as a result of our failure to file our Quarterly Report on Form 10-Q for the quarterly period ended December 31, 2022 (the "Q1 Form 10-Q") and our then-continuing delinquency to file our FY'22 Form 10-K. On March 1, 2023, we submitted to Nasdaq an update to our previously submitted plan of compliance. On March 15, 2023, we received an exception from Nasdaq allowing us until June 12, 2023 (the



“Compliance Deadline”), or 180 days from the initial due date of the FY’22 Form 10-K, to regain compliance by filing the FY’22 Form 10-K and Q1 Form 10-Q.

On May 12, 2023, we were notified by Nasdaq that we were not in compliance with the Nasdaq requirement that a company shall timely file all required period financial reports with the SEC as a result of our failure to file our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2023 (the “Q2 Form 10-Q”) and our then-continuing delinquency to file our FY’22 Form 10-K and Q1 Form 10-Q. On May 26, 2023, we submitted to Nasdaq another update to our previously submitted plan of compliance.

As our FY’22 Form 10-K and our Q1 Form 10-Q and Q2 Form 10-Q were not filed by the Compliance Deadline, on June 13, 2023, we received a Staff Delisting Determination from the Listing Qualifications Department of The Nasdaq Stock Market, LLC notifying us that the Nasdaq Listing Qualifications Department (the “Staff”) has initiated a process to delist our securities from Nasdaq as a result of us not being in compliance with the Listing Rule. On August 10, 2023, we presented our plan to regain compliance with the Listing Rule to the Nasdaq Hearings Panel (the “Panel”).

Subsequently, on August 14, 2023, we were notified by Nasdaq that we were not in compliance with the Listing Rule as a result of our failure to file our Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2023 (the “Q3 Form 10-Q”).

On August 16, 2023, we received a decision from the Panel granting our request for continued listing on the Nasdaq Capital Market, subject to us demonstrating compliance with the Listing Rule on or before October 13, 2023, and certain other conditions.

We filed the FY’22 Form 10-K on July 31, 2023, the Q1 Form 10-Q on September 6, 2023, and the Q2 Form 10-Q on September 29, 2023. On October 9, 2023, we notified the Panel that we determined it was necessary to seek an extension to file the Q3 Form 10-Q. On October 12, 2023, we were notified that the Panel had granted our request for the extension, providing us until November 3, 2023 to file the Q3 Form 10-Q. We filed the Q3 Form 10-Q on October 26, 2023.

By letter dated November 6, 2023, the Panel notified us that we had regained compliance with the Listing Rule and that the Panel determined to monitor our compliance with the Listing Rule through November 6, 2024, in accordance with Nasdaq Listing Rule 5815(d)(4)(B) (the “Panel Monitor”).

On December 18, 2023, we were notified by Nasdaq that we were not in compliance with the Listing Rule as a result of our failure to file our Annual Report on Form 10-K for the fiscal year ended September 30, 2023 and as we are subject to the Panel Monitor, the Staff promptly issued a delisting determination. We requested a hearing with the Panel and on January 17, 2024, we received a notice from the Panel notifying us that the Panel has granted our request to extend the automatic stay of suspension of our common stock from Nasdaq pending our hearing before the Panel scheduled for March 19, 2024 and a final determination regarding our listing status.

Our common stock will continue to trade on the Nasdaq Capital Market under the symbol “MITK” until the Panel issues its decision following the hearing and through the expiration of any additional extension period granted by the Panel. The Panel has discretion to grant an exception for up to 180 days after the Nasdaq Staff’s initial delisting decision. There can be no assurance that the Panel will grant our request for a stay pending the hearing process or any further extension following the hearing or continued listing. We have developed a detailed plan to present to the Panel in an effort to regain compliance with the Listing Rule and obtain an extended stay. If our common stock ceases to be listed for trading on Nasdaq, we expect that our common stock would be traded on the over-the-counter market.

#### **Risks Related to Regulation and Compliance**

***We have identified material weaknesses in our internal control over financial reporting, and if our remediation of such material weaknesses is not effective, or if we fail to develop and maintain an effective system of disclosure controls and internal control over financial reporting, our ability to produce timely and accurate financial statements or comply with applicable laws and regulations could be impaired.***

In the course of preparing our financial statements for fiscal 2023 and 2022, we identified material weaknesses in our internal control over financial reporting. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis. See [Part II, Item 9A “Controls and Procedures”](#) for additional information about these material weaknesses and our remediation efforts.

If we are unable to further implement and maintain effective internal control over financial reporting or disclosure controls and procedures, our ability to record, process and report financial information accurately, and to prepare financial statements within required time periods could be adversely affected, which could subject us to litigation or investigations requiring management resources and payment of legal and other expenses, negatively affect investor confidence in our financial statements and adversely impact our stock price. If we are unable to assert that our internal control over financial reporting is effective, or if our independent registered public accounting firm is unable to express an unqualified opinion as to the effectiveness of our internal control over financial reporting, investors may lose confidence in the accuracy and completeness of our financial reports, the market price of our common stock could be adversely affected and we could become subject to litigation or investigations by the stock exchange on which

our securities are listed, the SEC or other regulatory authorities, which could require additional financial and management resources. Furthermore, we cannot assure you that the measures we have taken to date, and actions we may take in the future, will be sufficient to remediate the control deficiencies that led to our material weaknesses in our internal control over financial reporting or that they will prevent or avoid potential future material weaknesses. Our current controls and any new controls that we develop may become inadequate because of changes in conditions in our business. Further, weaknesses in our disclosure controls and internal control over financial reporting may be discovered in the future. Any failure to develop or maintain effective controls or any difficulties encountered in their implementation or improvement could harm our operating results or cause us to fail to meet our reporting obligations and may result in a restatement of our financial statements for prior periods.

Any failure to implement and maintain effective internal control over financial reporting could adversely affect the results of periodic management evaluations and annual independent registered public accounting firm attestation reports regarding the effectiveness of our internal control over financial reporting that we are required to include in our periodic reports that are filed with the SEC. Ineffective disclosure controls and procedures and internal control over financial reporting could also cause investors to lose confidence in our reported financial and other information, which would likely have a negative effect on the trading price of our common stock. In addition, if we are unable to continue to meet these requirements, we may not be able to remain listed on Nasdaq.

#### **General Risk Factors**

***If we are unable to retain and recruit qualified personnel, or if any of our key executives or key employees discontinues his or her employment with us, it may have a material adverse effect on our business.***

We are highly dependent on the key members of our management team and other key technical personnel. If we were to lose the services of one or more of our key personnel, or if we fail to attract and retain additional qualified personnel, it could materially and adversely affect our business. Furthermore, recruiting and retaining qualified highly skilled engineers involved in the ongoing development required to refine our technologies and introduce future products is critical to our success. We may be unable to attract, assimilate, and retain qualified personnel on acceptable terms given the competition within the high technology industry. We do not have any employment agreements providing for a specific term of employment with any member of our senior management. We do not maintain “key man” insurance policies on any of our officers or employees. We have granted and plan to grant restricted stock units or other forms of equity awards as a method of attracting and retaining employees, motivating performance and aligning the interests of employees with those of our stockholders. As of September 30, 2023, we had 1,425,042 shares of common stock available for issuance pursuant to future grants of equity awards under our existing equity compensation plans, which may limit our ability to provide equity incentive awards to existing and future employees. If we are unable to adopt, implement and maintain equity compensation arrangements that provide sufficient incentives, we may be unable to retain our existing employees and attract additional qualified candidates. If we are unable to retain our existing employees, including qualified technical personnel, and attract additional qualified candidates, our business and results of operations could be adversely affected.

***Legislation and governmental regulations enacted in the U.S. and other countries that apply to us or to our customers may require us to change our current products and services and/or result in additional expenses, which could adversely affect our business and results of operations.***

Legislation and governmental regulations including changes in legislation and governmental regulations impacting financial institutions, insurance companies, and mobile device companies, affect how our business is conducted. Globally, legislation and governmental regulations also influence our current and prospective customers’ activities, as well as their expectations and needs in relation to our products and services. Compliance with these laws and regulations may be onerous and expensive, and may be inconsistent from jurisdiction to jurisdiction, further increasing the cost of compliance. Any such increase in costs as a result of changes in these laws and regulations or in their interpretation could individually or in the aggregate make our products and services less attractive to our customers, delay the introduction of new products in one or more regions, cause us to change or limit our business practices or affect our financial condition and operating results.

***Future sales of our common stock could cause the market price of our common stock to decline.***

We cannot predict the effect, if any, that market sales of shares of our common stock or the availability of shares of our common stock for sale will have on the market price of our common stock prevailing from time to time. We currently have an effective universal shelf registration statement on file with the SEC, providing for the potential issuance of shares of our common stock and other securities. Sales of substantial amounts of shares of our common stock or other securities in the public market, or the perception that those sales could occur, may cause the market price of our common stock to decline. In addition, any such decline may make it more difficult for you to sell shares of our common stock at prices you may deem acceptable.

***If financial or industry analysts do not publish research or reports about our business, or if they issue negative or misleading evaluations of our stock, our stock price and trading volume could decline.***

The trading market for our common stock will be influenced by the research and reports that industry or financial analysts publish about us or our business. We do not control these analysts or the content and opinions included in their reports. If one or more of the analysts who cover us were to adversely change their recommendation regarding our stock, or provide more favorable relative

recommendations about our competitors, our stock price could decline. If one or more of the analysts who cover us cease coverage of our company or fail to publish reports on us regularly we could lose visibility in the financial markets which in turn could cause our stock price or trading volume to decline.

***Natural disasters or other catastrophic events may disrupt our business.***

Our business operations are subject to interruption by natural disasters and other catastrophic events, such as fire, floods, earthquakes, power loss, telecommunications failure, cyberattack, war or terrorist attack, or epidemic or pandemic. To the extent such events impact our facilities or off-premises infrastructure, we may be unable to continue our operations and may endure system interruptions, reputational harm, delays in our software development, lengthy interruptions in our services, breaches of data security and loss of critical data, all of which could have an adverse effect on our future operating results.

**ITEM 1B. UNRESOLVED STAFF COMMENTS.**

None.

**ITEM 1C. CYBERSECURITY.**

Not applicable for the fiscal year ended on September 30, 2023.

**ITEM 2. PROPERTIES.**

Our principal executive offices are located in approximately 29,000 square feet of office space in San Diego, California and the term of the lease continues through June 30, 2024.

Our other offices are located in Paris, France; Amsterdam, The Netherlands; New York, New York; Barcelona, Spain; and London, United Kingdom, each of which does not contain material lease obligations for us. We believe our existing properties are in good condition and are sufficient and suitable for the conduct of our business.

**ITEM 3. LEGAL PROCEEDINGS.**

For a description of legal proceedings, refer to [Note 10](#) of the accompanying notes to Consolidated Financial Statements included in this Form 10-K, which is incorporated herein by reference.

**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.**

**Common Stock**

Our common stock, \$0.001 par value, is traded on the Nasdaq Capital Market under the ticker symbol "MITK." The closing sales price of our common stock on March 12, 2024 was \$11.86. As of March 12, 2024, there were 226 stockholders of record of our common stock and an undetermined number of beneficial owners.

**Dividends**

We have not paid any cash dividends on our common stock. We currently intend to retain earnings for use in our business and do not anticipate paying cash dividends in the foreseeable future.

**Sales of Equity Securities During the Period**

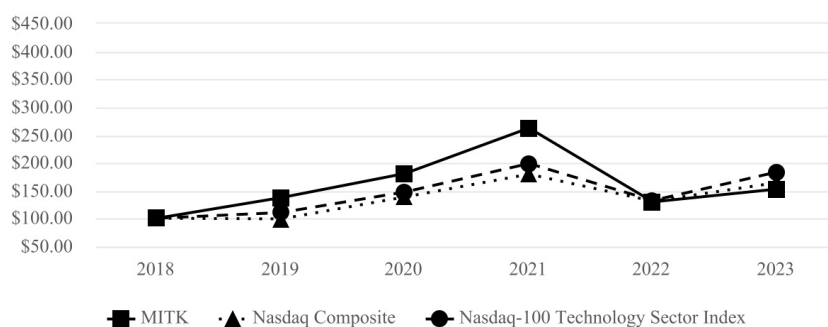
All equity securities that we sold during the period covered by this Form 10-K that were not registered under the Securities Act have been previously reported in our quarterly reports on Form 10-Q or on our current reports on Form 8-K.

**Stock Performance Graph**

The following information shall not be deemed to be "filed" with the SEC nor shall such information be incorporated by reference into any future filing under the Securities Act or the Exchange Act, except to the extent that we specifically incorporate it by reference into such future filing.

The following graph and table compare the cumulative total stockholder return data for our common stock from September 30, 2018 through September 30, 2023 to the cumulative return over such period of (i) a broad market index, the Nasdaq Composite Index and (ii) an industry index, the Nasdaq-100 Technology Sector Index. The graph and table assume that \$100 was invested in our common stock at \$7.05 per share on September 30, 2018, and in each of the referenced indices, and assumes reinvestment of all dividends. The stock price performance on the following graph and table is not necessarily indicative of future stock price performance.

**Comparison of 5 Year Cumulative Total Return  
Among Mitek Systems, Inc., the Nasdaq Composite Index and the Nasdaq-100 Technology Sector Index**



The graph above reflects the following values:

	2018	2019	2020	2021	2022	2023
MITK	\$ 100.00	\$ 136.88	\$ 180.71	\$ 262.41	\$ 129.93	\$ 152.06
Nasdaq Composite	\$ 100.00	\$ 99.42	\$ 138.79	\$ 179.57	\$ 131.43	\$ 164.29
Nasdaq-100 Technology Sector Index	\$ 100.00	\$ 110.31	\$ 147.99	\$ 198.97	\$ 132.32	\$ 183.54

**Unregistered Sales of Securities**

On February 14, 2023, we sold 71,135 shares of our Common Stock to officers and employees of the Company and our subsidiaries pursuant to our Employee Stock Purchase Plan (“ESPP”) in a transaction exempt from registration under the Securities Act in reliance on Regulation S thereunder, Section 4(a)(2) thereof and Rule 506 of Regulation D thereunder. The shares were sold at \$8.39 per share, which was equal to 85% of the fair market value of a share of the Common Stock on the exercise date, totaling \$596,823 in proceeds.

On August 15, 2023, we sold 49,760 shares of our Common Stock to officers and employees of the Company and our subsidiaries pursuant to our ESPP in a transaction exempt from registration under Securities Act in reliance on Regulation S thereunder, Section 4(a)(2) thereof and Rule 506 of Regulation D thereunder. The shares were sold at \$8.288 per share, which was equal to 85% of the fair market value of a share of the Common Stock on the offering date, totaling \$412,411 in proceeds.

**ITEM 6. [RESERVED]**

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and related notes appearing elsewhere in this Annual Report on Form 10-K. This discussion contains predictions, estimates and other forward-looking statements that involve a number of risks and uncertainties, including those discussed under Item 1A—"Risk Factors" or in other parts of this report. These risks could cause our actual results to differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth under "Risk Factors."*

### Overview

Mitek Systems, Inc. ("Mitek," the "Company," "we," "us," and "our") is a leading innovator of mobile image capture and digital identity verification solutions. We are a software development company with expertise in computer vision, artificial intelligence and machine learning. We currently serve more than 7,900 financial services organizations and leading marketplace and financial technology ("fintech") brands around the globe. Customers count on Mitek to deliver trusted and convenient online experiences, detect and reduce fraud, and meet Know Your Customer ("KYC") and Anti-Money Laundering ("AML") regulatory compliance. The Company's solutions are embedded in native mobile apps and web browsers to facilitate digital consumer experiences. Mitek's identity verification and authentication technologies and services make it possible for banks, financial services organizations and the world's leading marketplace and sharing platforms to verify an individual's identity during numerous stages of the customer lifecycle, allowing them to reduce risk and meet regulatory requirements. The Company's advanced mobile deposit system enables secure, fast and convenient deposit services. Thousands of organizations use Mitek solutions to optimize the security of mobile check deposits, new account openings and more.

In May of 2021, Mitek acquired ID R&D, Inc. ("ID R&D" and such acquisition, the "ID R&D Acquisition"), an award-winning provider of AI-based voice and face biometrics and liveness detection. ID R&D delivers innovative, biometric capabilities that raise the bar on usability and performance. The ID R&D Acquisition helps simplify and secure the entire transaction lifecycle for both businesses and consumers, provides businesses and financial institutions with access to one authentication solution to deploy throughout the entire transaction cycle, and can provide consumers with a simple, intuitive approach to fighting fraud.

In March of 2022, Mitek acquired HooYu Ltd. ("HooYu"), a leading KYC technology provider in the United Kingdom. Such technology helps to ensure businesses know the true identity of their customers by linking biometric verification with real-time data aggregation across many different sources, including credit bureaus, international sanctions lists, local law-enforcement, and others.

Mitek markets and sells its products and services worldwide through internal, direct sales teams located in the U.S., Europe, and Latin America as well as through channel partners. Our partner sales strategy includes channel partners who are financial services technology providers and identity verification providers. These partners integrate our products into their solutions to meet the needs of their customers, typically provisioning Mitek services through their respective platforms.

### Fiscal Year 2023 Highlights

- Revenues for the twelve months ended September 30, 2023 were \$172.6 million, an increase of 19% compared to revenues of \$144.8 million for the twelve months ended September 30, 2022.
- Net income was \$8.0 million, or \$0.17 per diluted share, for the twelve months ended September 30, 2023, compared to a net income of \$3.7 million, or \$0.08 per diluted share, for the twelve months ended September 30, 2022.
- Cash provided by operating activities was \$31.6 million for the twelve months ended September 30, 2023, compared to \$21.1 million for the twelve months ended September 30, 2022.
- During fiscal 2023 the total number of financial institutions licensing our technology continued to exceed 7,900.
- We added new patents to our portfolio during fiscal year 2023, bringing our total number of issued patents to 100 as of September 30, 2023. In addition, we had 20 patent applications outstanding as of September 30, 2023.

### Acquisition of HooYu Ltd

On March 23, 2022, the Company completed the acquisition of HooYu (the "HooYu Acquisition") pursuant to the Purchase Agreement (the "Purchase Agreement") dated March 23, 2022, by and among the Company and certain selling parties identified in the Purchase Agreement. Pursuant to the Purchase Agreement, the Company, among other things, acquired 100% of the outstanding share capital of HooYu, a leading global customer onboarding platform designed to increase the integrity of KYC and maximize the success of customer onboarding. As consideration for the HooYu Acquisition, the Company paid aggregate consideration in the amount of \$129.1 million (the "Closing Consideration"), as such amount may be adjusted for transaction expenses and indebtedness.

## Market Opportunities, Challenges, & Risks

See Item 1: “Business” for details regarding additional market opportunities, challenges and risks.

## Results of Operations

### Comparison of the Twelve Months Ended September 30, 2023 and 2022

The following table summarizes certain aspects of our results of operations for the twelve months ended September 30, 2023 compared to the twelve months ended September 30, 2022 (*in thousands, except percentages*):

	Twelve Months Ended September 30,					
			Percentage of Total Revenue		Increase (Decrease)	
			2023	2022	\$	%
	2023	2022	2023	2022		
Revenue						
Software and hardware	\$ 88,374	\$ 72,928	51 %	50 %	15,446	21 %
Services and other	84,178	71,876	49 %	50 %	12,302	17 %
Total revenue	\$ 172,552	\$ 144,804	100 %	100 %	27,748	19 %
Cost of revenue	22,951	20,008	13 %	14 %	2,943	15 %
Selling and marketing	40,551	38,841	24 %	27 %	1,710	4 %
Research and development	28,988	30,192	17 %	21 %	(1,204)	(4)%
General and administrative	43,338	26,591	25 %	18 %	16,747	63 %
Amortization and acquisition-related costs	19,046	15,172	11 %	10 %	3,874	26 %
Restructuring costs	2,114	1,800	1 %	1 %	314	17 %
Interest expense	9,063	8,232	5 %	6 %	831	10 %
Other income (expense), net	3,840	(366)	2 %	— %	4,206	1,149 %
Income tax benefit (provision)	(2,314)	92	(1)%	— %	(2,406)	(2,615)%
Net income	8,027	3,694	5 %	3 %	4,333	117 %

#### Revenue

Total revenue increased \$27.7 million, or 19%, to \$172.6 million in 2023 compared to \$144.8 million in 2022. Software and hardware revenue increased \$15.4 million, or 21%, to \$88.4 million in 2023 compared to \$72.9 million in 2022. This increase is primarily due to an increase in sales of our Mobile Deposit® and IDLive® software products of \$17.3 million. The increase in sales of our Mobile Deposit® product is primarily the result of an existing customer having entered into a significant multiyear Mobile Deposit® contract and the license revenue associated with the full contract term being recognized in the first quarter of fiscal 2023. The increase was partially offset by a decrease in revenue from our CheckReader™ and legacy identify verification software and hardware products of \$1.8 million. Services and other revenue increased \$12.3 million, or 17%, to \$84.2 million in 2023 compared to \$71.9 million in 2022. This increase is primarily due to strong growth in SaaS revenue as a result of the HooYu Acquisition, and to a lesser extent an increase in maintenance revenue associated with Mobile Deposit® software sales and transactional revenue in 2023 compared to 2022.

#### Cost of Revenue

Cost of revenue includes personnel costs related to billable services and software support, direct costs associated with our hardware products, hosting costs, and the costs of royalties for third party products embedded in our products. Cost of revenue increased \$2.9 million, or 15%, to \$23.0 million in 2023 compared to \$20.0 million in 2022. As a percentage of revenue, cost of revenue decreased to 13% in 2023 from 14% in 2022. The increase in cost of revenue is primarily due to an increase in variable personnel, hosting, and royalty costs associated with the HooYu Acquisition.

#### Selling and Marketing Expenses

Selling and marketing expenses include payroll, employee benefits, stock-based compensation, and other headcount-related costs associated with sales, marketing, and product management personnel. Selling and marketing expenses also include non-billable costs of professional services personnel, advertising expenses, product promotion costs, trade shows, and other brand awareness programs. Selling and marketing expenses increased \$1.7 million, or 4%, to \$40.6 million in 2023 compared to \$38.8 million in 2022. As a percentage of revenue, selling and marketing expenses decreased to 24% in 2023 from 27% in 2022. The increase in selling and marketing expense is primarily due to higher product promotion and other costs of \$1.2 million, higher travel and related expenses of

\$0.4 million, and higher personnel-related costs of \$0.1 million in 2023 compared to 2022.

#### *Research and Development Expenses*

Research and development expenses include payroll, employee benefits, stock-based compensation, third-party contractor expenses, and other headcount-related costs associated with software engineering and mobile image capture science. Research and development expenses decreased \$1.2 million, or less than 1%, to \$29.0 million in 2023 compared to \$30.2 million in 2022. As a percentage of revenue, research and development expenses decreased to 17% in 2023 from 21% in 2022. The decrease in research and development expenses is primarily due to lower personnel-related costs of \$2.2 million, partially offset by higher costs associated with third-party contractors of \$0.6 million and higher travel and related expenses of \$0.4 million in 2023 compared to 2022.

#### *General and Administrative Expenses*

General and administrative expenses include payroll, employee benefits, stock-based compensation, and other headcount-related costs associated with finance, legal, administration and information technology functions, as well as third-party legal, accounting, and other administrative costs. General and administrative expenses increased \$16.7 million, or 63%, to \$43.3 million in 2023 compared to \$26.6 million in 2022. As a percentage of revenue, general and administrative expenses increased to 25% in 2023 from 18% in 2022. The increase in general and administrative expenses is primarily due to higher third-party and professional fees of \$7.3 million, audit and accounting fees of \$5.9 million, software and IT costs of \$1.8 million, legal costs of \$0.8 million, executive transition costs of \$0.7 million, and allowance for uncollectible receivables of \$0.4 million in 2023 compared to 2022. The overall increase in general and administrative expenses was partially offset by decreased personnel-related costs of \$0.2 million in 2023 compared to 2022.

#### *Amortization and Acquisition-Related Costs*

Amortization and acquisition-related costs include amortization of intangible assets, adjustments recorded due to changes in the fair value of contingent consideration, and other costs associated with acquisitions. Amortization and acquisition-related costs increased \$3.8 million, or 26%, to \$19.0 million in 2023 compared to \$15.2 million in 2022. As a percentage of revenue, amortization and acquisition-related costs were consistent at 11% in 2023 and 2022. The increase in amortization and acquisition-related costs is primarily due to amortization of intangibles associated with the HooYu Acquisition of \$5.3 million and an increase in the fair value of the contingent consideration liability associated with the ID R&D Acquisition of \$3.4 million in 2023 compared to 2022. These increases were partially offset by a decrease in expenses associated with the HooYu Acquisition of \$3.0 million and a decrease in amortization expense of intangibles related to previous acquisitions that were fully amortized of \$1.9 million in 2023 compared to 2022.

#### *Restructuring Costs*

Restructuring costs consist of employee severance obligations and other related costs. In order to streamline the organization and focus resources going forward, we undertook strategic restructurings in November and June of 2022, which included reductions in our workforce. Restructuring costs incurred in were \$2.1 million and \$1.8 million in 2023 and 2022, respectively.

#### *Interest Expense*

Interest expense includes the amortization of debt discount and issuance costs and coupon and special interest accrued on our 0.75% convertible senior notes due 2026 (the "2026 Notes"). Interest expense was \$9.1 million in 2023 and consisted of \$7.6 million of amortization of debt discount and issuance costs and \$1.6 million of interest incurred. Interest expense was \$8.2 million in 2022 and consisted of \$7.0 million of amortization of debt discount and issuance costs and \$1.2 million of interest incurred.

#### *Other Income (Expense), Net*

Other income (expense), net includes interest income net of amortization and net realized gains or losses on our marketable securities portfolio, and foreign currency transactional gains or losses. Other income (expense), net increased \$4.2 million, to net income of \$3.8 million in 2023 compared to net expense of \$0.4 million in 2022, primarily due to higher interest income net of amortization of \$2.5 million, a favorable outcome in the Instacart Lawsuit (as defined below) of \$1.4 million, and higher realized gains on the sale of marketable securities of \$0.3 million in 2023 compared to 2022.

#### *Income Tax Benefit (Provision)*

The income tax provision for 2023 was \$2.3 million which yielded an effective tax rate of 22% compared to an income tax benefit of \$0.1 million which yielded an effective tax rate of negative 3% in 2022. The income tax provision for 2023 is primarily due to our positive net income for the year. Our effective tax rate for fiscal year 2023 was higher than the U.S. federal statutory rate of 21% due to the impact of non deductible expenses and of foreign and state taxes on our tax provision.



## Results of Operations

### Comparison of the Twelve Months Ended September 30, 2022 and 2021

The following table summarizes certain aspects of our results of operations for the twelve months ended September 30, 2022 compared to the twelve months ended September 30, 2021 (in thousands, except percentages):

	Twelve Months Ended September 30,					
			Percentage of Total Revenue		Increase (Decrease)	
	2022	2021	2022	2021	\$	%
Revenue						
Software and hardware	\$ 72,928	\$ 60,069	50 %	50 %	12,859	21 %
Services and other	71,876	59,728	50 %	50 %	12,148	20 %
Total revenue	\$ 144,804	\$ 119,797	100 %	100 %	25,007	21 %
Cost of revenue	20,008	14,540	14 %	12 %	5,468	38 %
Selling and marketing	38,841	32,497	27 %	27 %	6,344	20 %
Research and development	30,192	28,042	21 %	23 %	2,150	8 %
General and administrative	26,591	22,490	18 %	19 %	4,101	18 %
Amortization and acquisition-related costs	15,172	8,951	10 %	7 %	6,221	70 %
Restructuring costs	1,800	—	1 %	— %	1,800	100 %
Interest expense	8,232	5,129	6 %	4 %	3,103	60 %
Other income (expense), net	(366)	654	— %	1 %	(1,020)	(156)%
Income tax benefit (provision)	92	(824)	— %	(1)%	916	(111)%
Net income	3,694	7,978	3 %	7 %	(4,284)	(54)%

#### Revenue

Total revenue increased \$25.0 million, or 21%, to \$144.8 million in 2022 compared to \$119.8 million in 2021. Software and hardware revenue increased \$12.9 million, or 21%, to \$72.9 million in 2022 compared to \$60.1 million in 2021. This increase is primarily due to an increase in sales of our Mobile Deposit®, CheckReader™, and IDLive® software products. The increase was partially offset by a decrease in revenue from our ID\_CLOUD™ software and hardware products. Services and other revenue increased \$12.1 million, or 20%, to \$71.9 million in 2022 compared to \$59.7 million in 2021. This increase is primarily due to strong growth in Mobile Verify® transactional SaaS revenue and SaaS revenue as a result of the HooYu Acquisition, as well as an increase in maintenance revenue associated with Mobile Deposit® software sales and hosted mobile deposit transactional revenue in 2022 compared to 2021.

#### Cost of Revenue

Cost of revenue includes personnel costs related to billable services and software support, direct costs associated with our hardware products, and hosting costs. Cost of revenue increased \$5.5 million, or 38%, to \$20.0 million in 2022 compared to \$14.5 million in 2021. The increase in cost of revenue is primarily due to an increase in variable personnel, hosting, and royalty costs associated with a higher volume of Mobile Verify® transactions processed during 2022 compared to 2021 and the HooYu Acquisition. The increase was partially offset by decreased costs of our identity verification hardware products due to lower hardware revenues.

#### Selling and Marketing Expenses

Selling and marketing expenses include payroll, employee benefits, stock-based compensation, and other headcount-related costs associated with sales and marketing personnel. Selling and marketing expenses also include non-billable costs of professional services personnel, advertising expenses, product promotion costs, trade shows, and other brand awareness programs. Selling and marketing expenses increased \$6.3 million, or 20%, to \$38.8 million in 2022 compared to \$32.5 million in 2021. As a percentage of revenue, selling and marketing expenses were consistent at 27% in 2022 and in 2021. The increase in selling and marketing expense is primarily due to higher personnel-related costs resulting from our increased headcount of \$4.0 million, higher product promotion costs of \$1.7 million, and higher travel and related expenses of \$0.6 million in 2022 compared to 2021.

#### *Research and Development Expenses*

Research and development expenses include payroll, employee benefits, stock-based compensation, third-party contractor expenses, and other headcount-related costs associated with software engineering and mobile image capture science. Research and development expenses increased \$2.2 million, or 8%, to \$30.2 million in 2022 compared to \$28.0 million in 2021. As a percentage of revenue, research and development expenses decreased to 21% in 2022 from 23% in 2021. The increase in research and development expenses is primarily due to higher personnel-related costs resulting from our increased headcount of \$3.6 million and higher travel and related expenses of \$0.2 million, partially offset by lower third-party contractor and other expenses of \$1.6 million in 2022 compared to 2021.

#### *General and Administrative Expenses*

General and administrative expenses include payroll, employee benefits, stock-based compensation, and other headcount-related costs associated with finance, legal, administration and information technology functions, as well as third-party legal, accounting, and other administrative costs. General and administrative expenses increased \$4.1 million, or 18%, to \$26.6 million in 2022 compared to \$22.5 million in 2021. As a percentage of revenue, general and administrative expenses decreased to 18% in 2022 from 19% in 2021. The increase in general and administrative expenses is primarily due to higher third-party and professional fees of \$2.1 million, higher personnel-related costs resulting from our increased headcount of \$1.4 million, higher litigation expenses of \$0.5 million, and higher travel and related expenses of \$0.3 million in 2022 compared to 2021.

#### *Amortization and Acquisition-Related Costs*

Amortization and acquisition-related costs include amortization of intangible assets, expenses recorded due to changes in the fair value of contingent consideration, and other costs associated with acquisitions. Amortization and acquisition-related costs increased \$6.2 million, or 70%, to \$15.2 million in 2022 compared to \$9.0 million in 2021. As a percentage of revenue, amortization and acquisition-related costs increased to 11% in 2022 from 7% in 2021. The increase in amortization and acquisition-related costs is primarily due to amortization of intangibles associated with the HooYu Acquisition and the ID R&D Acquisition of \$7.1 million and expenses associated with the HooYu Acquisition of \$2.9 million in 2022 compared to 2021. These increases were partially offset by a decrease in the fair value of the contingent consideration liability associated with the ID R&D Acquisition of \$2.4 million compared to an increase in 2021, a decrease in amortization expense of intangibles related to previous acquisitions that were fully amortized of \$1.0 million, and a decrease in acquisition-related expense from the ID R&D Acquisition of \$0.3 million in 2022 compared to 2021.

#### *Restructuring Costs*

Restructuring costs consist of employee severance obligations and other related costs. In order to streamline the organization and focus resources going forward, we undertook a strategic restructuring in June 2022, which included a reduction in our workforce. Restructuring costs incurred in 2022 were \$1.8 million. There were no restructuring costs in 2021.

#### *Interest Expense*

Interest expense includes the amortization of debt discount and issuance costs and coupon interest incurred associated with our 2026 Notes. Interest expense was \$8.2 million in 2022 and consisted of \$7.0 million of amortization of debt discount and issuance costs and \$1.2 million of coupon interest incurred. Interest expense was \$5.1 million in 2021 and consisted of \$4.4 million of amortization of debt discount and issuance costs and \$0.8 million of coupon interest incurred.

#### *Other Income (Expense), Net*

Other income (expense), net includes interest income net of amortization and net realized gains or losses on our marketable securities portfolio, foreign currency transactional gains or losses, and the change in fair value of our convertible senior notes hedge and embedded conversion derivative. Other income (expense), net decreased \$1.0 million, to net expense of \$0.4 million in 2022 compared to net income of \$0.7 million in 2021, primarily due to higher foreign currency exchange transaction losses, higher realized losses on the sale of marketable securities, partially offset by higher interest income net of amortization in 2022 compared to 2021.

#### *Income Tax Benefit (Provision)*

The income tax benefit for 2022 was \$0.1 million which yielded an effective tax rate of negative 3% compared to an income tax provision of \$0.8 million which yielded an effective tax rate of 9% in 2021. Our effective tax rate for fiscal year 2022 was lower than the U.S. federal statutory rate of 21% due to excess tax benefits resulting from the exercise of stock options and vesting of restricted stock awards, the impact of foreign and state taxes, the impact of certain permanent items on its tax provision, and the impact of federal and state research and development credits on our tax provision.

## Liquidity and Capital Resources

Cash generated from operations has historically been our primary source of liquidity to fund operations and investments to grow our business. Our current sources of liquidity include available cash balances and proceeds from the issuance of the 2026 Notes. On September 30, 2023, we had \$134.9 million in cash and cash equivalents and investments compared to \$101.0 million on September 30, 2022, an increase of \$33.9 million, or 34%. The increase in cash and cash equivalents and investments is primarily due to cash flows from operations of \$31.6 million and net proceeds from the issuance of our common stock, par value \$0.001 per share (“Common Stock”) under the Mitek Systems, Inc. Amended and Restated 2020 Incentive Plan (the “2020 Plan”) of \$1.7 million.

In summary, our cash flows from continuing operations were as follows (*dollars in thousands*):

	Twelve Months Ended September 30,		
	2023	2022	2021
Cash provided by operating activities	\$ 31,586	\$ 21,119	\$ 37,341
Cash (used) provided by investing activities	(6,784)	1,700	(170,488)
Cash (used) provided by financing activities	1,701	(21,143)	143,680

### Cash Flows from Operating Activities

Cash flows related to operating activities are dependent on net income, non-cash adjustments to net income and changes in working capital. Net cash provided by operating activities during fiscal 2023 was \$31.6 million and resulted primarily from net income of \$8.0 million, net non-cash charges of \$32.6 million, and unfavorable changes in operating assets and liabilities of \$9.0 million. The increase in cash provided by operating activities during fiscal 2023 compared to fiscal 2022 was primarily due to an increase in cash from collection of receivables of \$23.3 million year over year due to improvements in our collections process, and an increase in other liabilities of \$1.7 million. These increases were partially offset by a decrease in deferred revenue in fiscal 2023.

Net cash provided by operating activities during fiscal 2022 was \$21.1 million and resulted primarily from net income of \$3.7 million, net non-cash charges of \$26.7 million, and unfavorable changes in operating assets and liabilities of \$9.3 million. Net cash provided by operating activities during fiscal 2021 was \$37.3 million and resulted primarily from net income of \$8.0 million, net non-cash charges of \$27.3 million, and favorable changes in operating assets and liabilities of \$2.1 million. The decrease in cash provided by operating activities during fiscal 2022 compared to fiscal 2021 was primarily due to an increase in accounts receivable of \$18.2 million, partially offset by a decrease in accrued payroll and related taxes of \$1.4 million and increases in restructuring expenses of \$1.0 million and the amortization of investment premiums and other of \$0.4 million.

### Cash Flows from Investing Activities

Net cash used in investing activities was \$6.8 million during fiscal 2023, which consisted primarily of net cash paid in connection with the HooYu Acquisition of \$0.3 million and capital expenditures of \$1.0 million, and net purchases of investments of \$5.5 million. The decrease in cash used in investing activities during fiscal 2023 compared to fiscal 2022 was primarily due to a decrease in net sales and maturities of investments of \$131.0 million partially offset by a decrease in cash paid for acquisitions, net of cash acquired of \$122.4 million, related to the HooYu Acquisition.

Net cash provided by investing activities was \$1.7 million during fiscal 2022, which consisted primarily of net cash paid in connection with the HooYu Acquisition of \$122.7 million and capital expenditures of \$1.1 million, offset by net sales and maturities of investments of \$125.5 million. Net cash used in investing activities was \$170.5 million during fiscal 2021, which consisted primarily of net purchases of investments of \$156.6 million, net cash paid in connection with the ID R&D Acquisition of \$12.5 million, and capital expenditures of \$1.4 million. The decrease in cash used in investing activities during fiscal 2022 compared to fiscal 2021 was primarily due to an increase in net sales and maturities of investments of \$282.1 million partially offset by an increase in cash paid for acquisitions, net of cash acquired of \$110.1 million.

### Cash Flows from Financing Activities

Net cash provided by financing activities was \$1.7 million during fiscal 2023, which primarily consisted of net proceeds from the issuance of Common Stock under the 2020 Plan of \$1.7 million. The increase in cash provided by financing activities during fiscal 2023 compared to fiscal 2022 was primarily due to the expiration of the share repurchase program in June 2022 of \$15.2 million and the payment of acquisition-related consideration of \$7.7 million in fiscal 2022.

Net cash used in financing activities was \$21.1 million during fiscal 2022, which consisted of \$15.2 million in repurchases and retirements of our Common Stock and \$7.7 million in payments of acquisition-related contingent consideration, partially offset by net proceeds from the issuance of Common Stock under the 2020 Plan of \$1.7 million. Net cash provided by financing activities was \$143.7 million during fiscal 2021, which consisted of net proceeds from the issuance of the 2026 Notes of \$149.7 million, proceeds from the issuance of equity plan Common Stock of \$4.0 million and net proceeds from other borrowings of \$0.2 million, partially offset by net cash used for the call spreads on the sales and purchases of warrants and convertible senior notes hedge issued in connection with the 2026 Notes of \$9.3 million, payment of acquisition-related contingent consideration of \$0.8 million, and repurchases and retirements of Common Stock of \$0.2 million. The increase in cash used in financing activities during fiscal 2022 compared to fiscal 2021 was primarily due to the net proceeds from the issuance of the 2026 Notes in fiscal 2021 of \$149.7 million and repurchases and retirements of our Common Stock of \$15.2 million during fiscal 2022.

#### *0.75% Convertible Senior Notes due 2026*

In February 2021, the Company issued \$155.3 million aggregate principal amount of the 2026 Notes (including the Additional Notes, as defined below). The 2026 Notes are senior unsecured obligations of the Company. The 2026 Notes were issued pursuant to an Indenture, dated February 5, 2021 (the "Indenture"), between the Company and UMB Bank, National Association, as trustee. The Indenture includes customary covenants and sets forth certain events of default after which the 2026 Notes may be declared immediately due and payable and sets forth certain types of bankruptcy or insolvency events of default involving the Company after which the 2026 Notes become automatically due and payable. The Company granted the initial purchasers of the 2026 Notes (collectively, the "Initial Purchasers") a 13-day option to purchase up to an additional \$20.25 million aggregate principal amount of the 2026 Notes (the "Additional Notes"), which was exercised in full. The 2026 Notes were purchased in a transaction that was completed on February 5, 2021. As of January 13, 2023 ("Date of Noncompliance"), the Company was not in compliance with certain of the covenants in the Indenture as a result of the Company not timely filing its Form 10-K for the fiscal year ended September 30, 2022 ("Form 10-K") and the Form 10-Q for the quarter ended December 31, 2022 ("Q1 Form 10-Q") with the SEC. As a result of not being in compliance, the 2026 Notes began to accrue additional special interest of 0.25% of the outstanding principal of the 2026 Notes for the 90 days after the Date of Noncompliance and 0.50% of the outstanding principal of the 2026 Notes for the 91st through 180th day after the Date of Noncompliance. The Company subsequently did not timely file its Form 10-Q for the quarter ended March 31, 2023 ("Q2 Form 10-Q") and its Form 10-Q for the quarter ended June 30, 2023 ("Q3 Form 10-Q"). The Company then filed its Form 10-K with the SEC on July 31, 2023, its Q1 Form 10-Q with the SEC on September 6, 2023, and its Q2 Form 10-Q with the SEC on September 29, 2023. As a result, the Company was no longer required to accrue additional special interest. As of February 15, 2024, the Company was not in compliance with certain covenants in the Indenture as a result of not timely filing its Form 10-Q for the quarter ended December 31, 2023 with the SEC.

The net proceeds from this offering were approximately \$149.7 million, after deducting the Initial Purchasers' discounts and commissions and the Company's estimated offering expenses related to the offering. The 2026 Notes will mature on February 1, 2026, unless earlier redeemed, repurchased or converted. The 2026 Notes bear interest from February 5, 2021 at a rate of 0.750% per year payable semiannually in arrears on February 1 and August 1 of each year, beginning on August 1, 2021. The 2026 Notes will be convertible at the option of the holders at any time prior to the close of business on the business day immediately preceding August 1, 2025, only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending on June 30, 2021, if the last reported sale price per share of the Company's Common Stock exceeds 130% of the conversion price for each of at least 20 trading days during the 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter; (2) during five consecutive business days immediately after any five consecutive trading day period (such five consecutive trading day period, the "measurement period") in which the trading price 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 per share of the Common Stock on such trading day and the conversion rate on such trading day; and (3) upon the occurrence of certain corporate events or distributions on the Common Stock. On or after August 1, 2025, until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert all or any portion of the 2026 Notes, in multiples of \$1,000 principal amount, at the option of the holder regardless of the foregoing circumstances. Upon conversion, the Company may satisfy its conversion obligation by paying and/or delivering, as the case may be, cash and, if applicable at the Company's election, shares of Common Stock, based on the applicable conversion rate(s); provided that the Company will be required to settle conversions solely in cash unless and until the Company (i) receives stockholder approval to increase the number of authorized shares of the Common Stock and (ii) reserves such amount of shares of the Common Stock for future issuance as required pursuant to the indenture that will govern the 2026 Notes. The conversion rate for the 2026 Notes will initially be 47.9731 shares of the Common Stock per \$1,000 principal amount of 2026 Notes, which is equivalent to an initial conversion price of approximately \$20.85 per share of the Common Stock. The initial conversion price of the 2026 Notes represents a premium of approximately 37.5% to the \$15.16 per share last reported sale price of the Common Stock on February 2, 2021. The conversion rate is subject to adjustment under certain circumstances in accordance with the terms of the Indenture. The impact of the convertible feature will be dilutive to our earnings per share when our average stock price for the period is greater than the conversion price.

In connection with the issuance of the 2026 Notes, we entered into transactions for convertible notes hedge (the "Notes Hedge") and warrants (the "Warrant Transactions"). The Notes Hedge was entered into with Bank of America, N.A., Jefferies

International Limited and Goldman Sachs & Co. LLC, and provided the Company with the option to acquire, on a net settlement basis, approximately 7.4 million shares of Common Stock at a strike price of \$20.85, which is equal to the number of shares of Common Stock that notionally underlie and corresponds to the conversion price of the 2026 Notes. The cost of the Notes Hedge was \$33.2 million. The Notes Hedge will expire on February 1, 2026, equal to the maturity date of the 2026 Notes. The Notes Hedge is expected to reduce the potential equity dilution upon conversion of the 2026 Notes if the daily volume-weighted average price per share of our Common Stock exceeds the strike price of the Notes Hedge.

In addition, the Warrant Transactions provided us with the ability to acquire up to 7.4 million shares of our Common Stock. The Warrant Transactions will expire ratably during the 80 trading days commencing on and including May 1, 2026 and may be settled in net shares of Common Stock or net cash at the Company's election. We received \$23.9 million in cash proceeds from the Warrant Transactions. As a result of the Warrant Transactions, the Company is required to recognize incremental dilution of earnings per share to the extent the average share price is over \$26.53 for any fiscal quarter.

As of March 19, 2024, the 2026 Notes were not convertible, therefore, we had not purchased any shares under the Notes Hedge and the Warrant Transactions had not been exercised and remain outstanding. See Note 9. "Convertible Senior Notes" of the notes to the consolidated financial statements included in this Form 10-K for more information relating to the Notes Hedge and Warrant Transactions.

#### *Share Repurchase Program*

On June 15, 2021, the Board authorized and approved a share repurchase program for up to \$15 million of the currently outstanding shares of our Common Stock. The share repurchase program was completed during the second quarter of fiscal 2022 and as such the Company made no purchase during the twelve months ended September 30, 2023. The Company made purchases of \$14.8 million, or approximately 886,204 shares, during twelve months ended September 30, 2022 at an average price of \$16.73 per share and subsequently retired the shares. The share repurchase program expired on June 30, 2022 and as such no purchases were made after this date. The timing, price and volume of repurchases were based on market conditions, relevant securities laws and other factors. The repurchases were made from time to time, through solicited or unsolicited transactions in the open market, in privately negotiated transactions or pursuant to a share repurchase trading plan.

#### *Lease Obligations*

Our principal executive offices, as well as our research and development facility, are located in approximately 29,000 square feet of office space in San Diego, California and the term of the lease continues through June 30, 2024. The average annual base rent under this lease is approximately \$1.2 million per year. In connection with this lease, we received tenant improvement allowances totaling approximately \$1.0 million. These lease incentives are being amortized as a reduction of rent expense over the term of the lease.

Our other offices are located in Paris, France; Amsterdam, The Netherlands; New York, New York; Barcelona, Spain; and London, United Kingdom. Other than the lease for our office space in San Diego, California, we do not believe that the leases for our offices are material lease obligations.

#### *Other Liquidity Matters*

On September 30, 2023, we had investments of \$76.0 million, designated as available-for-sale debt securities, which consisted of U.S. Treasury notes, asset-backed securities, foreign government and agency securities, and corporate issuances, carried at fair value as determined by quoted market prices for identical or similar assets, with unrealized gains and losses, net of tax, and reported as a separate component of stockholders' equity. All securities for which maturity or sale is expected within one year are classified as "current" on the consolidated balance sheets. All other securities are classified as "long-term" on the consolidated balance sheets. At September 30, 2023, we had \$74.7 million of our available-for-sale securities classified as current and \$1.3 million of our available-for-sale securities classified as long-term. At September 30, 2022, we had \$58.3 million of our available-for-sale securities classified as current and \$10.6 million of our available-for-sale securities classified as long-term.

We had working capital of \$138.5 million at September 30, 2023 compared to \$89.4 million at September 30, 2022. We do not have any other material cash requirements other than those related to leases as described in Note 10. "Commitments and Contingencies" of the notes to the consolidated financial statements included in this Form 10-K. Based on our current operating plan, we believe the current cash and cash equivalent balance and cash expected to be generated from operations will be adequate to satisfy our working capital needs for at least the next twelve months from the date these consolidated financial statements are filed.

#### **Critical Accounting Estimates**

Our discussion and analysis of our financial conditions and results of operations are based on our consolidated financial statements and accompanying notes, which have been prepared in accordance with accounting principles generally accepted in the U.S. The preparation of the financial statements requires us to make estimates and judgements that affect the reported amounts of assets, liabilities, revenues, and expenses and the related disclosure of contingent assets and liabilities. We review our estimates on an

on-going basis. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results may differ from these estimates under different assumptions or conditions. We believe the following critical accounting estimates affect the more significant judgments and estimates used in the preparation of our consolidated financial statements.

#### ***Revenue Recognition***

We enter into contractual arrangements with integrators, resellers, and directly with our customers that may include licensing of our software products, product support and maintenance services, SaaS services, consulting services, or various combinations thereof, including the sale of such products or services separately. Our accounting policies regarding the recognition of revenue for these contractual arrangements are fully described in Note 2 of the accompanying notes to our consolidated financial statements included in this Form 10-K.

Our SaaS offerings give customers the option to be charged upon their incurred usage in arrears (“Pay as You Go”) or to commit to a minimum spend over their contracted period, with the ability to purchase unlimited additional transactions above the minimum during the contract term. For contracts which include a minimum commitment, we are standing ready to provide as many transactions as desired by the customer during the contract term and revenue is recognized on a ratable basis over the contract period including an estimate of usage above the minimum commitment. Usage above minimum commitment is estimated by looking at historical usage, expected volume, and other factors to project out for the remainder of the contract term. The estimated usage-based revenues are constrained to the amount we expect to be entitled to receive in exchange for providing access to our platform.

We include any fixed charges within our contracts as part of the total transaction price. To the extent that variable consideration is not constrained, we include an estimate of the variable amount, as appropriate, within the total transaction price and update our assumptions over the duration of the contract. We may constrain the estimated transaction price in the event of a high degree of uncertainty as to the final consideration amount owed because of an extended length of time over which the fees may be adjusted. The transaction price, including any discounts, is allocated between separate goods and services in a multi-element arrangement based on their relative standalone selling prices. For items that are not sold separately, we estimate the standalone selling prices using available information such as market conditions and internally approved pricing guidelines. Significant judgment may be required to determine standalone selling prices for each performance obligation and whether it depicts the amount we expect to receive in exchange for the related good or service.

#### ***Fair Value of Equity Instruments***

The valuation of certain items, including compensation expense related to equity awards granted, involves significant estimates based on underlying assumptions made by management. The valuation of stock options is based upon a Black-Scholes valuation model, which involves estimates of stock volatility, expected life of the instruments and other assumptions. The valuation of performance options, Senior Executive Long Term Incentive Restricted Stock Units, and similar awards are based upon the Monte-Carlo simulation, which involves estimates of our stock price, expected volatility, and the probability of reaching the performance targets.

#### ***Accounting for Income Taxes***

We estimate income taxes based on the various jurisdictions where we conduct business. Significant judgment is required in determining our worldwide income tax provision. Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. These differences result in deferred tax assets and liabilities, which are reflected in our balance sheets. We then assess the likelihood that deferred tax assets will be realized. A valuation allowance is recorded when it is more likely than not that some of the deferred tax assets will not be realized. When a valuation allowance is established or increased, we record a corresponding tax expense in our statements of operations. We review the need for a valuation allowance each interim period to reflect uncertainties about whether we will be able to utilize deferred tax assets before they expire. In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. We will continue to assess the need for a valuation allowance on the deferred tax asset by evaluating both positive and negative evidence that may exist. Any adjustment to the net deferred tax asset valuation allowance would be recorded in the income statement for the period that the adjustment is determined to be required.

We recognize and measure benefits for uncertain tax positions using a two-step approach. The first step is to evaluate the tax position taken or expected to be taken in a tax return by determining if the weight of available evidence indicates that it is more likely than not that the tax position will be sustained upon audit, including resolution of any related appeals or litigation processes. For tax positions that are more likely than not of being sustained upon audit, the second step is to measure the tax benefit as the largest amount that has more than a 50% chance of being realized upon settlement. Significant judgment is required to evaluate uncertain tax positions. We evaluate uncertain tax positions on a quarterly basis. The evaluations are based upon a number of factors, including

changes in facts or circumstances, changes in tax law, correspondence with tax authorities during the course of audits, and effective settlement of audit issues.

**ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.**

*Interest Rates*

The primary objective of our investment activities is to preserve principal while at the same time maximizing after-tax yields without significantly increasing risk. To achieve this objective, we maintain our investment portfolio of cash equivalents and marketable securities in a variety of securities, including corporate debt securities, commercial paper, certificates of deposit, and asset-backed securities. We have not used derivative financial instruments in our investment portfolio, and none of our investments are held for trading or speculative purposes. Short-term and long-term debt securities are generally classified as available-for-sale and consequently are recorded on the consolidated balance sheets at fair value with unrealized gains or losses reported as a separate component of accumulated other comprehensive loss, net of estimated tax. As of September 30, 2023, our marketable securities had remaining maturities between approximately one and 13 months and a fair market value of \$76.0 million, representing 19% of our total assets.

The fair value of our cash equivalents and debt securities is subject to change as a result of changes in market interest rates and investment risk related to the issuers' credit worthiness. We do not utilize financial contracts to manage our investment portfolio's exposure to changes in market interest rates. A hypothetical 100 basis point increase or decrease in market interest rates would not have a material impact on the fair value of our cash equivalents and debt securities due to the relatively short maturities of these investments. While changes in market interest rates may affect the fair value of our investment portfolio, any gains or losses will not be recognized in our results of operations until and unless the investment is sold or if the reduction in fair value was determined to be an other-than-temporary impairment.

*Foreign Currency Risk*

We have operations in the United Kingdom, France, the Netherlands, and Spain that are exposed to fluctuations in the foreign currency exchange rate between the U.S. dollar, the Euro, the Ruble, and the British pound sterling. The functional currency of our French, Dutch, and Spanish operations is the Euro and the functional currency of our United Kingdom operations is the British pound sterling. Our results of operations and cash flows are subject to fluctuations due to changes in foreign currency exchange rates, particularly changes in the Euro. Translation adjustments resulting from translating the functional currency financial statements into U.S. dollar equivalents are reported separately in the consolidated statements of operations and other comprehensive income (loss).

*Inflation*

We do not believe that inflation had a material effect on our business, financial condition or results of operations in the last three fiscal years. 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.**

Our financial statements and supplementary data required by this item are set forth at the pages indicated in Part IV, Item 15(a)(1) and (a)(2), respectively, of this Form 10-K.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.**

On May 23, 2022, Mayer Hoffman McCann P.C. notified the Company of its decision to resign as the Company's independent registered public accounting firm effective on the earlier of (i) the date the Company engages a new independent registered public accounting firm or (ii) the filing of the Company's Quarterly Report on Form 10-Q for the period ended June 30, 2022 or (iii) August 16, 2022. There were no disagreements with Mayer Hoffman McCann P.C. at the time of non-reengagement.

Effective July 18, 2022, the Company engaged BDO USA, LLP (n/k/a BDO USA, P.C.) ("BDO") to be its independent registered public accounting firm. There are no and have not been any disagreements between the Company and BDO on any matter of accounting principles, practices or financial statement disclosure.

## ITEM 9A. CONTROLS AND PROCEDURES.

### Management's Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures, as such term is defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), that are designed to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required financial disclosures.

Under the supervision of and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of our disclosure controls and procedures as of the end of the period covered by this Form 10-K pursuant to Exchange Act Rules 13a-15(e) and 15d-15(e). In making this assessment used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control – Integrated Framework (2013)*. We recognize that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were not effective as of September 30, 2023, due to the previously reported material weaknesses at September 30, 2022, that continued to exist.

Notwithstanding the identified material weaknesses, management believes the consolidated financial statements included in this Annual Report on Form 10-K present fairly, in all material respects, the Company's financial position, results of operations and cash flows as of and for the periods presented, in accordance with generally accepted accounting principles in the United States of America ("U.S. GAAP").

### Management's Report on Internal Control over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act). The Company's internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the Company's financial statements for external reporting purposes in accordance with U.S. GAAP. A company's internal control over financial reporting includes those policies and procedures that:

- Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions of the Company;
- Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. GAAP, and that receipts and expenditures of the Company are being made only in accordance with authorization of management and the directors of the Company; and,
- Provide reasonable assurance regarding prevention or timely detection of unauthorized 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 all 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. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis.

Under the supervision and with the participation of our management, including the Company's principal executive officer and principal financial officer, the Company evaluated the effectiveness of its internal control over financial reporting as of September 30, 2023 using the framework in *Internal Control – Integrated Framework (2013)*, issued by the Committee of Sponsoring Organizations of the Treadway Commission (commonly referred to as the "COSO" framework). Based on that evaluation, management concluded that the Company's internal control over financial reporting was not effective as of September 30, 2023 due to the previously reported material weaknesses listed below that continue to exist at September 30, 2023.

As previously reported, the Company identified material weaknesses related to the following:

- Management did not design and maintain effective controls related to the precision of the Company's review over the initial valuation and subsequent remeasurement of the contingent consideration liability recognized as part of the consideration transferred in the ID R&D Acquisition.
- Management did not have sufficient internal technical resources, or adequate oversight of the Company's third-party tax advisor, to appropriately identify, evaluate, and review certain inputs and assumptions that affect the US, foreign, and consolidated tax accounts.



- Management did not maintain effective controls related to the financial statement close process to ensure the completeness and accuracy of certain amounts and disclosures, specifically related to balance sheet account reconciliations and the Company's review and preparation of the consolidation and financial statements.
- Management did not design or maintain effective controls over the review of the accounting for business combinations, including accounting for transaction costs and deferred taxes.
- Management did not design and maintain effective controls to ensure proper revenue recognition, specifically related to the accounting review of customer contracts.
- Management did not perform sufficient risk assessment procedures in order to design and implement effective controls, including consideration of improper segregation of duties, for substantially all of the Company's financial statement areas.
- Management did not design or maintain effective information technology general controls over logical access and program change management for certain key information systems used in the financial reporting process.
- Management did not design or maintain controls to verify the completeness and accuracy of information used by control owners in the operation of controls across substantially all of the Company's financial statement areas.
- Management did not maintain sufficient evidence of the operation of certain management review controls and activity level controls across substantially all of the Company's financial statement areas.
- Management did not perform timely and ongoing evaluations to ascertain whether components of internal control are present and functioning.

The effectiveness of our internal control over financial reporting as of September 30, 2023, has been audited by BDO USA, P.C., an independent registered public accounting firm, and their attestation is included herein.

#### **Remediation Plan for Existing Material Weaknesses in Internal Control over Financial Reporting**

In order to address and resolve the material weaknesses, management, with oversight from the Company's Audit Committee, has developed a detailed plan for remediation, which includes:

- Evaluating skill set gaps and hiring additional accounting, financial reporting, and compliance personnel (including internal and external resources), as needed, with relevant public company accounting and financial reporting experience to develop and implement additional policies, procedures, and controls;
- Providing ongoing training for key personnel responsible for internal control over financial reporting;
- Enhancing or designing and implementing a comprehensive and continuous risk assessment process that identifies and assesses risks of material misstatement across the entity and helps ensure that related internal controls are properly designed and in place to respond to those risks in the Company's financial statements and financial reporting;
- Enhancing or designing and implementing controls over the completeness and accuracy of information used in financial reporting; and,
- Enhancing or designing and implementing process-level controls and effective general information technology controls relevant to all of the Company's financial reporting processes.

The Company is committed to remediating the material weaknesses and is making progress in that effort. The actions the Company is taking are subject to ongoing evaluation. When fully implemented and operational, the Company believes the measures described above will remediate the underlying causes of the control deficiencies that gave rise to the material weaknesses and strengthen the Company's internal control over financial reporting. These remediation efforts were in process during the fiscal year ending September 30, 2023. The Company will not be able to fully remediate these material weaknesses until these steps have been completed and have been operating effectively for a sufficient period of time. The Company may also identify additional measures that may be required to remediate the material weaknesses in the Company's internal control over financial reporting, necessitating further action.

#### **Changes in Internal Control over Financial Reporting**

The Company has worked towards implementing processes and procedures to remediate the material weaknesses noted above. There have been no changes in the Company's internal control over financial reporting during the year ended September 30, 2023 other than the remediation plan disclosed above that have materially affected, or that are reasonably likely to materially affect, its internal control over financial reporting.

#### **ITEM 9B. OTHER INFORMATION.**

##### **Third Amended and Restated Bylaws**

On March 17, 2024, the Board approved an amendment and restatement of our second amended and restated bylaws (the “Third Amended and Restated Bylaws”) to (1) clarify the voting standard for matters voted upon by our stockholders, (2) address the universal proxy rules promulgated by the SEC, as set forth in Rule 14a-19 of the Exchange Act, (3) enhance disclosure requirements and procedural mechanics in connection with director nominations and business proposals by stockholders, (4) enhance the adjournment requirements to reflect changes in the Delaware General Corporation Law, (5) revise the advance notice provisions to update the definition of “acting in concert,” (6) clarify the requirement that we make a stockholder list available during a meeting of stockholders, and (7) make various other conforming, technical and non-substantive changes.

The foregoing summary does not purport to be complete and is qualified in its entirety by reference to the full text of the Third Amended and Restated Bylaws, a copy of which is filed as Exhibit 3.3 to this Annual Report on Form 10-K and incorporated herein by reference.

#### **2024 Cash Incentive Plan**

On March 17, 2024, the Board, based upon the recommendation of the Compensation Committee of the Board, approved the Company’s annual incentive program for the fiscal year ending September 30, 2024 (the “2024 Plan”). Pursuant to the terms of the 2024 Plan, certain full time permanent employees of the Company, including the Company’s executive team, will be eligible to receive cash bonuses based upon the achievement of certain corporate and individual performance goals during the 2024 fiscal year. These bonuses are designed to attract, motivate, retain and reward the Company’s employees and executive team.

Under the 2024 Plan, achievement is tied to two financial metrics, revenue and non-GAAP operating income calculated with respect to the Company’s overall company-wide revenue and to revenue generated by key business areas (deposits, identity, and ID R&D). Participants are assigned to either the company-wide category or to a combination of a primary business area and the company-wide revenue for purposes of the 2024 Plan. For participants who are director-level and above, 70% of the target incentive is based upon achievement of the revenue components of the 2024 Plan (with either (i) 100% of such target based upon overall company-wide revenue; or (ii) 55 percentage points of such target based upon the assigned specific business area revenue and 15 percentage points of such target based upon the overall company-wide revenue) and the remaining 30% of such target based upon achievement of the non-GAAP operating income component of the 2024 Plan, subject to additional limitations, as set forth in the 2024 Plan. For all other participants, 60% of the target incentive is based upon achievement of the revenue components of the 2024 Plan (with either (i) 100% of such target based upon overall company-wide revenue; or (ii) 50 percentage points of such target based upon the assigned specific business area revenue and 10 percentage points of such target based upon the overall company-wide revenue), 20% of the target incentive is based upon the achievement of the non-GAAP operating income component of the 2024 Plan and the remaining 20% of the target incentive is based upon the achievement of individual objectives, as determined at the sole discretion of the Company, subject to additional limitations, as set forth in the 2024 Plan. For the CEO and direct reports to the CEO, individual achievement against the financial metrics of the 2024 Plan is subject to modification by the Board at their sole discretion by up to 10% of the participants’ target incentive amount based upon individual contribution. For purposes of the 2024 Plan, revenue excludes acquisition-related revenue not included in the original plan targets and is adjusted for acquisition-related write-downs of revenue or deferred revenue.

Under the 2024 Plan, our Chief Executive Officer has a bonus target equal to 120% of his annualized salary; our Chief Financial Officer has a bonus target equal to 65% of his annualized salary; our Chief Legal Officer has a bonus target equal to 60% of his annualized salary and our General Managers have bonus targets equal to 50% of their annualized salaries. The maximum bonus payable to participants is 200% of their respective bonus targets. A named executive officer must be a permanent full-time employee to qualify for participation in the 2024 Plan.

The foregoing description is intended only as a summary of the material terms of the 2024 Plan and is qualified in its entirety by reference to the text of the 2024 Plan, a copy of which is attached as Exhibit 10.25 to this Form 10-K and is incorporated herein by reference.

#### **Differences Between Current Report on Form 8-K and Annual Report on Form 10-K**

During the preparation of this Annual Report on Form 10-K for the year ended September 30, 2023, the Company incorrectly recognized revenue on certain of its multiyear term licenses. As a result, certain of the GAAP financial results for the twelve months ended September 30, 2023 included in the Company’s press release issued on December 7, 2023 and furnished in connection with our Current Report on Form 8-K filed with the SEC on December 7, 2023, differ from the financial results disclosed in this Annual Report on Form 10-K as follows (in thousands, except per share data and percentages):

Twelve Months Ended September 30, 2023

	As Furnished		Total Adjustments		As Adjusted
Total revenue	\$ 171.9	\$	0.7	\$	172.6
Net income	\$ 7.8	\$	0.2	\$	8.0
Non-GAAP net income	\$ 43.8	\$	0.6	\$	44.4
Cash flow from operations	\$ 31.4	\$	0.2	\$	31.6

**ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS.**

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE.

Board of Directors

The following table sets forth the names, ages as of March 19, 2024, and certain other information for each member of our board of directors (the “Board”):

Name	Age	Position
Scipio “Max” Carnecchia	61	Chief Executive Officer and Director
Scott Carter	54	Chair of the Board and Director
Rahul Gupta	64	Director
James C. “Jim” Hale	72	Director
Susan J. Repo	57	Director
Kimberly S. Stevenson	61	Director
Donna C. Wells	62	Director

*Scipio “Max” Carnecchia.* Mr. Carnecchia has served as the Chief Executive Officer and as a director of Mitek since November 2018. From October 2017 until July 2018, Mr. Carnecchia served as the Chief Executive Officer and board member of Illuminate Education, Inc., the market-leading software as a services education platform. Prior to Illuminate, Mr. Carnecchia was the President and Chief Executive Officer of Accelrys, Inc., and has also served on the Accelrys board from 2009 until its acquisition in 2014 by Dassault Systemes. After the acquisition, Mr. Carnecchia continued to serve as Chief Executive Officer of that business, which was renamed BIOVIA. Mr. Carnecchia previously served as President and Interim Chief Executive Officer of Interwoven, Inc., a content management software company, which was acquired by Autonomy Corporation plc in January 2009. Prior to joining Interwoven; Mr. Carnecchia served as Vice President of Global Sales of Xoriant Corporation, a software product development company, from April 2000 to January 2001, and as Vice President of Sales and Services of SmartDB Corporation, a provider of data integration toolkits for systems integrators and IT organizations, from September 1996 to February 2000. Mr. Carnecchia has demonstrated significant leadership skills in his Chief Executive Officer roles at Accelrys, Interwoven, BIOVIA and Illuminate Education, Inc. and as Vice President of Xoriant and SmartDB, and brings more than two decades of high technology experience to his position on the Board. During the past five years, Mr. Carnecchia has served as a member of the boards of directors of: Guidance Software, Inc., Agilysys, Inc., Accelrys, Inc., and DHI, Inc. Mr. Carnecchia holds a Bachelor of Engineering in Electrical Engineering from Stevens Institute of Technology. Mr. Carnecchia’s extensive knowledge of the industry in which we operate, as well as his unique role in the day-to-day operations of the Company as our Chief Executive Officer allows him to bring to the Board a broad understanding of the operational and strategic issues facing the Company.

*Scott Carter.* Scott Carter has served as a director since March 2022, as the Executive Chair from January 2023 through December 1, 2023, and as a special advisor to our CEO and Board of Directors sharing his industry knowledge and assisting with product and market strategy since December 2020. From September 2014 to July 2018 he served as the Chief Executive Officer and previously Chief Operating Officer of ID Analytics, now LexisNexis, a provider of risk management solutions offering credit risk, consumer protection, risk identification, fraud detection, payment, and theft protection services. From May 2019 until December 2020, Mr. Carter served as the Chief Operating Officer and Advisor of Brain Corp, an artificial intelligence company which creates transformative core technology for the robotics industry. Mr. Carter previously served as our Chief Marketing Officer from July 2013 until September 2014. From January 2005 to June 2013, Mr. Carter served as Senior Vice President with Experian Decision Analytics, a consumer credit reporting company which sells decision analytic and marketing assistance to businesses. Mr. Carter is a member of the boards of directors of: Guardinex, Inc., and LendingUSA. Mr. Carter has also advised various private equity firms on prospective acquisitions of SaaS, FinTech and data and AI enabled companies. Mr. Carter also served as the Chairman of the Board of Ubiq Security, Inc. from July of 2018 through June of 2019. Mr. Carter earned a Bachelor of Arts from the University of Delaware and a Masters in Business Administration from the University of Delaware, Lerner College of Business. In addition he has completed further executive education at the Kellogg School at Northwestern University and holds a Directorship Certification from NACD. Mr. Carter is a seasoned executive with a diverse range of experiences as a technology business leader, advisor and board member. Having held C-level positions for leading solution providers and previously in client-side industry roles, Mr. Carter has a uniquely 360-degree view and has a consistent track record of accelerating growth for organizations, utilizing client and market insight to inform strategy, corporate development product, technology, sales and marketing activities.

*Rahul Gupta.* Rahul Gupta has served as a director since March 2022. From January 2017 to March 2019, Mr. Gupta served as CEO of RevSpring, a high-growth technology services organization that provides intelligent financial engagement and payment solutions to 2,000 leading healthcare providers. Mr. Gupta also previously served as Group President, Billing and Payments at Fiserv, from November 2014 to December 2016, and as Group President, Digital Payments, at Fiserv from December 2006 to November 2014. Mr. Gupta is a current board member at Fleetcor (FLT), Amount, Exact Payments, SavvyMoney, and Capital Good Fund and a former board member after successful exits at Cardtronics (CATM), Zego/PayLease, and nContracts. Additionally, he is an advisor at NYCA.

a venture capital fund, the following private equity funds: Platform Partners, and StoicLane, as well as several fintech companies. He is an Ambassador for the University of Southern California (“USC”), a member of USC Provost Associates, and a mentor to multiple startup teams at the Viterbi School of Engineering. Mr. Gupta graduated Magna Cum Laude with a Masters of Business Administration from Indiana University and holds a Bachelor of Arts in Commerce from Delhi University as well as a CPA certification from India. Mr. Gupta is well qualified to serve on our Board of Directors due to his over 35 years of experience in the financial services and fintech industries having served in a variety of capacities at the board and executive levels.

*James C. Hale.* Mr. Hale has served as a director since November 2014. Prior to joining the Board, Mr. Hale served on our advisory board from September 2012 until November 2014. Mr. Hale has launched and grown multiple businesses that leveraged his vision of the evolving financial services marketplace, knowledge of emerging financial technologies, and global network at top financial service companies built over several decades in commercial and investment banking. Since 2011, Mr. Hale has been advising growth companies as a consultant at Columbus Strategic Advisors, LLC, a firm he co-founded. In 1998, Mr. Hale co-founded and served as Senior Managing Member and Chief Executive Officer of Financial Technology Ventures, now FTV Capital, an investment firm specializing in venture capital and private growth equity investments in financial technology companies worldwide, where he is currently a Partner Emeritus. From 1982 to 1998, Mr. Hale was with BancAmerica Securities (formerly Montgomery Securities) where he was the Senior Managing Partner and Head of the Financial Services Group, a practice that he founded. From 2015, Mr. Hale has served as a director and risk committee chairman of ACI Worldwide (Nasdaq: ACIW), a global software company, and as a director of Visual Edge Technology, a national provider of office technology solutions. From 2014, Mr. Hale has served as a director and audit committee chairman of Bank of Marin Bancorp (Nasdaq: BMRC), an independent commercial and retail bank in Northern California. Mr. Hale was a director of ExLServices Holdings, Inc. (Nasdaq: EXLS), a business process outsourcing company, from 2001 to 2009 and a director and board chairman of Official Payments (Nasdaq: OPAY), a global electronic payments software company, from 2010 to 2014. In addition, Mr. Hale was a director of the State Bank of India (California), a California state chartered bank, and Public Radio International, a media company, among other private company boards. He holds a Bachelor of Science in Finance and Accounting from the University of California, Berkeley, an MBA from Harvard Business School, and is a Certified Public Accountant (inactive). Mr. Hale is well qualified to serve on our Board of Directors due to his 35 years of management experience in the banking, payments, financial services and technology industries, and expertise and experience as a corporate director and board chairman of other public and private companies.

*Susan J. Repo.* Ms. Repo has served as a director since June 2021. Since February 2021 she has served as Chief Financial Officer of ICEYE, a Finnish micro satellite manufacturer. From 2013 to 2018, Ms. Repo held various positions at Tesla, an electric vehicle manufacturer, most recently serving as Corporate Treasurer and Vice President Finance. From 2019 to 2020, Ms. Repo served as the Chief Operating Officer of MariaDB Corporation, an open source storage company. In 2019, Ms. Repo served as the Chief Executive Officer and Chief Operating Officer of DriveOn, an automotive fintech company, and in 2018, Ms. Repo served as the Chief Financial Officer of Topia, a talent mobility platform. From 2007 to 2013, she served as Senior Director of International Tax at Juniper Networks, Inc., a multinational corporation that develops and markets networking products, including routers, switches, network management software, network security products, and software-defined networking technology. Ms. Repo currently serves on the board of directors of: GM Financial Bank, a member of the General Motors subsidiaries, Matterport, Inc., and Call2Recycle, Inc., the largest battery stewardship and recycling organization in North America, where she chairs the audit & technology committee. Ms. Repo holds a Bachelor of Science in Business Administration and Finance from the University of Southern California and a JD from the Chicago-Kent College of Law, at the Illinois Institute of Technology University and a Masters of Law from Stanford Law School. The Board believes her diverse experiences in the technology industry make her well qualified to serve on the Board.

*Kimberly S. Stevenson.* Ms. Stevenson served as our lead independent director from January 2023 until December 2023 and as a director since November 2020. In August 2021 Ms. Stevenson retired from NetApp, Inc. a publicly traded provider of cloud data services, where she served as senior vice president and general manager of the Foundational Data Services Business Unit. Prior to NetApp, Ms. Stevenson served as senior vice president and general manager of data center products and solutions for Lenovo, a multinational technology company, from March 2017 to October 2018. From September 2009 to February 2017, she served as a corporate vice president at Intel Corporation, holding various positions including chief operating officer for the client and internet of things businesses and systems architecture group from September 2016 to February 2017, chief information officer from February 2012 to August 2016, and general manager, IT operations and services, from September 2009 to January 2012. Prior to joining Intel, Ms. Stevenson spent seven years at the former Electronic Data Systems, now DXC Technology, with responsibility for global development and delivery of enterprise services. She also spent more than 17 years at IBM in various finance and operational roles. Ms. Stevenson currently serves as a director of Verisk Analytics, Inc., and Ambiq Micro Solutions. She previously held board positions with Quarterhill, Inc., Skyworks Solutions, Inc., Boston Private Financial Holdings and Riverbed Technology, all publicly traded companies at the time. She also served as a director of Cloudera, a private enterprise software company, and the National Center for Women and Information Technology, a non-profit organization. Ms. Stevenson holds a Bachelor of Science in Accounting and Business Management from Northeastern University and an MBA from Cornell.

*Donna C. Wells.* Ms. Wells has served as a director since November 2019. Prior to joining our Board, she served on our advisory board from September 2017 until November 2019. Ms. Wells is a serial entrepreneur, an experienced board director, and an innovator in the financial services, FinTech and cloud software industries. She is currently CEO of Valencia Ventures, a private company that provides strategic consulting and corporate governance services. From 2010-2017, Ms. Wells served as Board Director, President and

CEO of Mindflash Technologies, Inc., an innovative venture-backed enterprise software startup that built a corporate training platform for businesses. In that capacity, she led the company from SaaS product launch to market leadership and to recognition as a Top 50 Small US Company to Work for by Fortune. Prior to her role at Mindflash, Ms. Wells was CMO at Mint Software, Inc. from 2007-2009. There, she led the growth strategy for this breakthrough, mobile personal finance software company from product launch to the company's acquisition by Intuit. Prior to Mint, Ms. Wells had a 20-year career in strategic marketing with The American Express Company and The Charles Schwab Corporation and led marketing for two Fortune 500 companies, Intuit and the Expedia Group. She currently serves as a Board Member at Walker & Dunlop, a leading CRE Finance company, one of the largest global business travel management companies worldwide, and the FinTech "Unicorn" Betterment. She was previously a director at Boston Private Financial Holdings, Inc, a bank holding company, from 2014 to 2018 and Apex Technology Acquisition Corporation, a special purpose acquisition company, from 2019 to 2021. In September 2019, Ms. Wells was appointed by the Center for Entrepreneurial Studies at the Stanford University Graduate School of Business as a Lecturer in Management. In September 2021, she was named Board Director of the Year by the Women in Information Technology organization. She holds an MBA from Stanford University and a Bachelor of Science in Economics from The Wharton School at the University of Pennsylvania. The Board believes Ms. Wells is well qualified to serve as a director due to her wealth of experience in the FinTech and cloud software industries.

None of our directors have any family relationships with any of our other directors or executive officers. There currently are no legal proceedings, and during the past 10 years there have been no legal proceedings, that are material to the evaluation of the ability or integrity of any of our directors.

#### Director Qualifications

	Carneccchia	Carter	Gupta	Hale	Repo	Stevenson	Wells
<b>Corporate Governance Experience</b> as a director of another publicly listed company.	X		X	X	X	X	X
<b>Strategic Planning Experience</b> as a senior executive or board member in the development of annual corporate strategic plans, including capital allocation, and mergers, acquisitions, or divestiture decision-making.	X	X	X	X	X		X
<b>Executive Leadership Experience</b> as a CEO/President or senior executive in a complex business.	X	X	X	X	X	X	X
<b>Industry Experience</b> in enterprise software, financial services, identity verification, or fraud prevention.	X	X	X	X		X	X
<b>Finance/ Accounting/ Audit Experience</b> in preparing, auditing, analyzing, or evaluating financial statements for a complex business.	X		X	X	X	X	X
<b>Capital Markets Experience</b> in debt and equity markets, corporate finance, investor and analyst relations.	X			X	X		
<b>Human Capital Management and Executive Compensation Experience</b> in human resource strategy and planning, leadership management, development, and incentive plans, diversity, equity, and inclusion.	X	X	X		X	X	
<b>Technology Experience</b> as a senior executive in a software company responsible for strategy, product leadership, software development, corporate IT, or cybersecurity.	X	X	X	X	X	X	X
<b>Product/ Marketing/ Sales Experience</b> as a CPO, CMO or senior Revenue/Growth/ Customer executive in a complex business.	X	X	X			X	X
<b>International Experience</b> as a senior executive in a complex business with material operations outside the United States.	X	X			X		

### Director Independence

The Board is responsible for establishing corporate policies and for the overall performance of the Company, although it is not involved in day-to-day operations. As required under Nasdaq listing standards, a majority of the members of a listed company's board of directors must qualify as "independent," as affirmatively determined by the company's board of directors. The Board consults with our legal counsel to ensure that the Board's determinations regarding the independence of our directors are consistent with all relevant securities and other laws and regulations regarding the definition of "independent," including those set forth in applicable Nasdaq listing standards, as in effect from time to time. Consistent with these considerations, after review of all relevant transactions or relationships between each director (or former director, as applicable), or any of his or her family members, and the Company, our senior management and our independent auditors, the Board has determined that all of our directors other than Mr. Carnecchia (who is employed as an executive officer of the Company) are independent, in each case as defined in Nasdaq Listing Rule 5605(a)(2). In addition, the Board has determined that the members of the Audit Committee meet the additional independence criteria required for audit committee membership.

### Meetings of the Board

The Board meets on a regular basis throughout the year to review significant developments affecting the Company and to act upon matters requiring its approval. The Board also holds special meetings as required from time to time when important matters arise requiring Board action between scheduled meetings. During the 2023 fiscal year, the Board met eight times and acted by unanimous written consent six times. No director attended fewer than 75% of the aggregate number of meetings held by the Board during the 2023 fiscal year.

### Executive Sessions

As required under applicable Nasdaq listing standards, our independent directors periodically meet in executive session at which only they are present.

### Director Attendance at Annual Meetings

Although we do not have a formal policy regarding attendance by members of the Board at our annual meeting of stockholders, we encourage all of our directors to attend. For our 2023 annual meeting of stockholders, all of our directors attended the annual meeting (either in person or via telephone).

### Information Regarding Board Committees

The Board has established standing Audit, Compensation, and Nominating and Corporate Governance Committees to devote attention to specific subjects and to assist it in the discharge of its responsibilities. The three committees operate under written charters adopted by the Board, each of which is available on our Internet website at [www.miteksystems.com](http://www.miteksystems.com) under "Investors." The following table sets forth the number of meetings held and actions taken by written consent during the 2023 fiscal year for each of the committees of the Board and membership for each of the committees of the Board. No member of the Board attended fewer than 75% of the aggregate number of board and committee meetings on which such board member served during the 2023 fiscal

	Audit Committee	Nominating and Corporate Governance Committee	Compensation Committee
<b>Employee Director:</b>			
Scipio "Max" Carnecchia	—	—	—
<b>Non-Employee Directors:</b>			
Scott Carter <sup>(2)</sup>	—	—	—
James C. Hale	X	—	X
Bruce E. Hansen	—	X	—
Rahul Gupta	X	—	X
Susan J. Repo	X <sup>(1)</sup>	X	—
Kimberly S. Stevenson	X	—	X <sup>(1)</sup>
Donna C. Wells	—	X <sup>(1)</sup>	—
Total meetings in the 2023 fiscal year.	33	4	9

(1) Committee chairperson.

(2) Mr. Carter served as Executive Chair from January 24, 2023 through December 1, 2023. Prior to his appointment as Executive Chair, Mr. Carter served as a member of the Compensation and Audit Committees.

#### **Audit Committee**

We have a separately designated standing Audit Committee established in accordance with Section 3(a)(58)(a) of the Exchange Act. The Audit Committee is responsible for overseeing our accounting and financial reporting processes and the audits of our financial statements, monitoring the integrity of our financial reporting process and systems of internal controls regarding finance, accounting and legal compliance, and reviewing the independence and performance of our independent registered public accountants. The current members of the Audit Committee are Messrs. Hale and Gupta and Ms. Repo and Stevenson. The Board has determined that Ms. Repo is an “audit committee financial expert” in accordance with applicable SEC rules. Each of the members of the Audit Committee is an “independent” director within the meaning of the applicable Nasdaq listing standards, as well as applicable SEC rules and regulations.

#### **Compensation Committee**

The Compensation Committee reviews executive compensation, establishes executive compensation levels, recommends employee compensation programs, administers our incentive plans, and monitors the Company’s compliance with applicable SEC rules and Nasdaq listing standards. The current members of the Compensation Committee are Messrs. Gupta and Hale and Ms. Stevenson, each of whom is an “independent” director within the meaning of the applicable Nasdaq listing standards, as well as applicable SEC rules and regulations.

#### **Nominating and Corporate Governance Committee**

The Nominating and Corporate Governance Committee is responsible for reviewing and making recommendations to the Board regarding the composition and structure of the Board, establishing criteria for Board membership and corporate policies relating to the recruitment of Board members, and establishing, implementing and monitoring policies and processes regarding principles of corporate governance. The current members of the Nominating and Corporate Governance Committee are Ms. Repo and Wells, each of whom is an “independent” director within the meaning of the applicable Nasdaq listing standards, as well as applicable SEC rules and regulations.

#### **Board Leadership Structure**

Currently, the leadership structure of the Board is such that our Chair and Chief Executive Officer positions are separate with Mr. Carter, a member of the Board since March 2022, serving as the Chair and Mr. Carneccia serving as our Chief Executive Officer. The Board believes that the current structure, providing for the separation of the role of the Chair and the Chief Executive Officer is appropriate at this time because it allocates the oversight of the business among the directors and the executive officers so that our Chief Executive Officer who reports to our directors, can focus on the day-to-day business operations, and our Chair, can provide leadership and direction to the Board and work with our Chief Executive Officer and other members of the Company’s executive team to provide, among other things, strategic expertise with respect to the Company’s strategy for future growth, and other directors can oversee the activities of the Chief Executive Officer, other executive officers and the business as a whole. While the Board believes the current structure is appropriate at this time and provides the most effective leadership for the Company, the Board retains the flexibility to determine on a case-by-case basis whether the positions of Chief Executive Officer and Chair should be combined or separated and whether an independent director should serve as Chair. This flexibility permits the Board to organize its functions and conduct its business in a manner it deems most effective and in the best interest of the Company and its stockholders in then prevailing circumstances.

#### **Board’s Role in Risk Oversight**

The Board is responsible for oversight of risks facing the Company, while our management is responsible for day-to-day management of risk. The Board, as a whole, directly administers its risk oversight function. In addition, the risk oversight function is also administered through the standing committees of the Board, which oversee risks inherent in their respective areas of responsibility, reporting to the Board regularly and involving the Board in their performance of risk oversight, as necessary. For example, the Audit Committee oversees our financial exposure and financial reporting related risks and the Compensation Committee oversees risks related to our compensation programs and practices. The Board, as a whole, directly oversees our strategic and business risk, including, among other items, product development risk and cybersecurity risk, through regular interactions with our management and, from time-to-time, input from independent advisors. We believe the Board’s leadership structure supports its role in risk oversight, with our Chief Executive Officer, Chief Financial Officer and Chief Legal Officer responsible for assessing and managing risks facing the Company day-to-day and the members of our Board providing oversight of such risk management.



## Stockholder Communications to the Board

Stockholders may contact an individual director, the Board as a group or a specified committee or group of directors, including the non-employee directors as a group, at the following address: Mitek Systems, Inc., 600 B Street, Suite 100, San Diego, California 92101, Attn: Board of Directors. Additionally, stockholders may contact the Board by sending an email addressed to the Board to [ir@miteksystems.com](mailto:ir@miteksystems.com). Additional information and contact details may be found on our website at: [www.miteksystems.com](http://www.miteksystems.com). We will receive and process communications before forwarding them to the addressee. Directors generally will not be forwarded stockholder communications that are primarily commercial in nature, relate to improper or irrelevant topics or request general information about the Company.

Members of our Board, our executive management and our investor relations teams regularly interact with our stockholders to discuss a variety of topics including, but not limited to, operations of the business, industry developments, competition, management compensation, legal topics and risks to the company. The Company interacts with our stockholders via telephone calls and in-person meetings at investor conferences, in non-deal road shows, and meetings at the Company's headquarters. During our 2023 fiscal year, we estimate that we interacted with investors representing over 37% of the institutional ownership.

## Executive Officers

The following table sets forth the names, ages and certain other information as of this Annual Report for each of our current executive officers. Mr. Carnecchia's background is discussed under the section "Board of Directors":

Name	Age	Position
Scipio "Max" Carnecchia	61	Chief Executive Officer and Director
David Lyle	60	Chief Financial Officer
Jason L. Gray	53	Chief Legal Officer, Chief Compliance Officer and Corporate Secretary
Michael E. Diamond	58	Senior Vice President, General Manager—Digital Banking
Christopher Briggs	55	Senior Vice President, Identity Product Marketing

*David Lyle.* Mr. Lyle has served as our Chief Financial Officer since January 2024. Prior to joining Mitek, Mr. Lyle was most recently the Chief Financial Officer of Surgalign Holdings, Inc. operating as Surgalign Spine Technologies, Inc. (formerly NASDAQ: SRGA), from March 2022 to October 2023. Prior to joining Surgalign, he was Chief Financial Officer of Airgain, Inc. (NASDAQ: AIRG), from 2020 to 2022. Before joining Airgain, during 2019 Mr. Lyle was the Chief Financial Officer of Sunniva, Inc. (formerly CSE: SNN, OTCQB: SNNVF) and before Sunniva, he was Chief Financial Officer at Maxwell Technologies, Inc. (formerly NASDAQ: MXWL) from 2015 to 2019 until its acquisition by Tesla in 2019. Mr. Lyle also served as the Chief Financial Officer of Entropic Communications, Inc. (formerly NASDAQ: ENTR), from 2007 to 2015, which was acquired in 2015 by MaxLinear. Prior to joining Entropic, he served as the Chief Financial Officer of RF Magic, acquired by Entropic in 2007, Zyray Wireless, acquired by Broadcom in 2004, and Mobilian, acquired by Intel in 2003. Early in his career he served in corporate finance positions at large global companies, including Intel (NASDAQ: INTC) and Broadcom (NASDAQ: BRCM). Mr. Lyle holds a Bachelor of Science in business administration from the University of Southern California, a Master of International Management from the Thunderbird School of Global Management, and a Master of Business Administration from Arizona State University.

*Jason L. Gray.* Mr. Gray has served as our Chief Legal Officer, Chief Compliance Officer and Corporate Secretary since January 2023 and previously served as our Chief Legal Officer, Chief Compliance Officer, and Corporate Secretary from November 2018 to March 2022 and as our Chief Administrative Officer, General Counsel, and Corporate Secretary from March 2016 to November 2018. Prior to joining Mitek, in July 2014 Mr. Gray founded and ran Gradient Legal, Inc. a provider of outsourced general counsel services to small and mid-market technology companies and advisory services to private equity and venture capital funds. From May 2013 through July 2014, Mr. Gray was a Senior Vice President and General Counsel for Accelerys, Inc., a publicly traded software company that was sold to Dassault Systems in 2014. From November 2002 until May 2013, Mr. Gray was the Senior Vice President of Strategic Development and General Counsel for Mitchell International. From 1999 through November 2002, Mr. Gray was a Vice President and General Counsel for Netratings, Inc. From 1997 through 1999 Mr. Gray was an attorney with Wilson, Sonsini, Goodrich & Rosati. Mr. Gray currently serves on the board of directors of OneLegacy. Mr. Gray received his J. D. from the University of Michigan Law School in 1995 and bachelor degrees in Economics and German from Andrews University in 1992.

*Michael E. Diamond.* Mr. Diamond has served as our Senior Vice President, General Manager—Digital Banking since January 2016 and previously served as our Chief Revenue Officer from September 2013 to January 2016 and as our Senior Vice President, Sales and Business Development from June 2012 through September 2013. Prior to joining Mitek, from March 2008 to June 2012, Mr. Diamond served as Senior Vice President, Business Development, at Obopay Corporation, a global mobile payments company. From July 2004 to March 2008, he served as a Business Unit Executive at IBM Corporation. From January 2001 to July 2004, Mr. Diamond served as Vice President, Business and Corporate Development, at Alphablox Corporation, a provider of software for web-based enterprise analytics, and was directly involved in shaping and driving Alphablox's acquisition by IBM.

Corporation. From November 1999 to January 2001, Mr. Diamond served in various roles, including Senior Vice President Business Development/General Manager, Latin America and Japan, at S1 Corporation, an online financial services technology provider. From March 1996 to November 1999, Mr. Diamond served in various management roles, including as Director, Channel Sales, at Edify Corporation, a provider of interactive voice response and online financial services software. Mr. Diamond earned a B.B.A. with an emphasis in international business from St. Norbert College.

*Christopher Briggs.* Mr. Briggs has served as our Senior Vice President, Identity Product Management since April 2022. Prior to joining Mitek, from April 2021 to April 2022, Mr. Briggs served as Chief Product Officer at Airside, an identity verification company focused on the travel industry. From July 2015 to October 2020, Mr. Briggs served in a number of roles including Head of Product, Chief Marketing Officer, and Vice President of Strategy at Equifax, a global data, analytics and technology company. From January 2007 to May 2015, Mr. Briggs served as Senior Director and subsequently Vice President of Product Management at Experian, a multinational data analytics and consumer credit reporting company. Mr. Briggs has been a professor at Seneca College since May 2021, teaching product management and marketing courses. Mr. Briggs has been a Thought Leader on the Forbes Technology Council since May 2023. Mr. Briggs earned his bachelor's degree in Policy Studies and Spanish from Rice University and a Master of Business Administration from the University of Virginia.

None of our executive officers have any family relationships with any of our other executive officers or directors. Mr. Lyle served as the Chief Financial Officer of Surgalign Holdings, Inc., operating as Surgalign Spine Technologies, Inc. (formerly NASDAQ: SRGA), from March 2022 to December 2023 and on June 19, 2023, Surgalign commenced voluntary proceedings under chapter 11 of the United States Bankruptcy Code. There currently are no legal proceedings, and during the past 10 years there have been no legal proceedings, that are material to the evaluation of the ability or integrity of any of our executive officers.

#### **Code of Business Conduct**

We have adopted a Code of Business Conduct (the "Code of Business Conduct") that applies to all of our executive officers and employees, and directors. Our Code of Business Conduct is posted on the Investor Relations section of our website under the heading Corporate Governance which can be found at: <https://investors.miteksystems.com>.

Any amendments or waiver of our Code of Business Conduct pertaining to a Board member or one of our executive officers will be disclosed on our website at the above-referenced address.

#### **Delinquent Section 16(a) Reports**

During the fiscal year ended September 30, 2023, the Company filed a late Form 4 on January 20, 2023 on behalf of Scott Carter for a transaction on January 24, 2023.

### **ITEM 11. EXECUTIVE COMPENSATION.**

#### **Compensation Philosophy and Objectives**

Our compensation philosophy is built upon the principles of pay for performance, shared ownership and alignment with the long-term interests of our stockholders. We believe that every aspect of our compensation programs, including the mix of short-term and long-term cash and equity incentive awards, should enhance our ability to maximize stockholder value over time. Our specific objectives consistent with that philosophy are to:

- align our executive officers' compensation with our business objectives and the interests of our stockholders;
- foster a goal-oriented, highly motivated management team whose participants have a clear understanding of our business objectives and shared corporate values; and
- enable us to attract, motivate and retain the executive talent needed to enhance stockholder value in a competitive environment.

To meet these objectives the Compensation Committee has designed a compensation program that combines "fixed" forms of compensation including base salaries and certain other benefits with "at-risk" forms of compensation including performance-based annual incentives and long-term equity incentive awards. At-risk forms of compensation are based upon the achievement of corporate and individual goals established by the Compensation Committee and/or achievement of specified target stock prices. While our objectives guide the development of our compensation programs, we may alter our programs and practices according to our evolving needs within the constraints of any agreements in place with individual employees.

#### **Consideration of 2023 Stockholder Advisory Vote**

At our 2023 annual meeting of stockholders, our stockholders cast an advisory vote on the Company's executive compensation decisions and policies, as disclosed in the proxy statement issued by the Company in August 2023, pursuant to Item 402 of Regulation S-K (commonly known as the "say-on-pay vote"). Our stockholders approved the compensation of our executive officers, with

approximately 62% of shares cast voting in favor of the say-on-pay proposal. Due to delays, our 2023 Annual Stockholder meeting was not held until after the end of our 2023 fiscal year. Consequently, we were not able to evaluate the say-on-pay vote results with respect to our 2023 compensation practices. Following the say-on-pay vote, our lead independent director who also serves as the Chair of our Compensation Committee met with multiple stockholders who provided their feedback on the Company's compensation practices. Based on such input, the Compensation Committee decided to retain the general approach to our executive compensation program for fiscal 2024 but made several changes based on stockholder feedback. These changes in our cash incentive program for fiscal 2024 included (i) changing the operating margin target metric to operating income; (ii) clarifying that revenue and operating income targets will exclude the impact of in-year acquisitions; and (iii) providing the Board with discretion to modify payouts to executives by up to ten percent in their discretion based upon individual performance. As always, we are mindful of the support our stockholders expressed for our philosophy of linking compensation to our financial, operational and strategic goals, as well as stockholder returns and these changes were designed to align with that philosophy.

### **Named Executive Officers**

As required by SEC rules, this section discusses compensation decisions with respect to (i) all individuals serving as the Company's principal executive officer; (ii) all individuals serving as the Company's principal financial officer; (iii) the three most highly compensated executive officers other than the Company's principal executive officer and principal financial officer who were serving as executive officers at the end of the 2023 fiscal year, and (iv) up to two additional individuals for whom disclosure would have been provided pursuant to the preceding clause (iii) but for the fact that the individual was not serving as an executive officer of the Company at the end of the 2023 fiscal year. We refer to these executive officers collectively in this Executive Compensation section and the related compensation tables as the "named executive officers" ("NEOs"). For the fiscal year ended September 30, 2023, the NEOs were:

- Scipio Maximus Carnecchia, our Chief Executive Officer ("CEO");
- Frank Teruel, our former Chief Financial Officer ("CFO");<sup>(1)</sup>
- Fuad Ahmad, our former Interim Chief Financial Officer;<sup>(2)</sup>
- Scott Carter, our former Executive Chair of the Board (and current non-Executive Chair of the Board);<sup>(3)</sup>
- Michael E. Diamond, our Senior Vice President, General Manager—Digital Banking;
- Christopher Briggs, our Senior Vice President, Identity Product Marketing;

<sup>(1)</sup> Mr. Teruel resigned as our CFO effective as of January 31, 2023.

<sup>(2)</sup> Mr. Ahmad stepped down from his position as Interim CFO as of January 2, 2024, and will remain with the Company to ensure a successful transition to David Lyle, the Company's new CFO.

<sup>(3)</sup> Mr. Carter stepped down from his position as Executive Chair on December 1, 2023. He continues to serve as the Chair of the Board of Directors.

### **Process for Establishing Compensation**

#### *Role of the Compensation Committee and Executive Officers*

The current members of the Compensation Committee are Ms. Stevenson and Messrs. Gupta and Hale. Ms. Stevenson serves as chairperson of the Compensation Committee. Each of these individuals qualifies as (i) an "independent director" under the requirements of Nasdaq listing rules, and (ii) a "non-employee director" under Rule 16b-3 of the Exchange Act. The Compensation Committee is responsible for monitoring the performance and compensation of our named executive officers, reviewing compensation plans and administering our incentive plans.

The Compensation Committee operates under a written charter and is responsible for annually recommending, reviewing and approving (or recommending for the Board to approve) the amount and form of compensation of our CEO and our other executive officers. In so doing, the Compensation Committee considers recommendations from our CEO in determining executive compensation. Specifically, our CEO recommends base salary increases, annual cash incentive opportunities, and equity award levels for executives other than himself and advises the Compensation Committee regarding the compensation program's ability to attract, retain and motivate executive talent. The Compensation Committee has, and exercises, the ability to materially increase or decrease the compensation amounts recommended by our CEO. Our CEO is also involved in our executive compensation process by providing input on the performance criteria applicable to other executives. Our Compensation Committee regularly meets in executive session, with our CEO not in attendance, where decisions are made regarding his compensation.

The Compensation Committee also considers the input of our compensation consultant. For the 2023 fiscal year, the Compensation Committee selected the consulting firm Frederic W. Cook & Company, Inc. ("F.W. Cook" or the "Compensation Consultant") as our Compensation Consultant (see below under the heading "Role of the Compensation Consultant" for additional information on our Compensation Consultant). The Compensation Committee has again selected the consulting firm of F.W. Cook as our compensation consultant for fiscal year 2024. Although the Compensation Committee considers the input of our CEO and Compensation Consultant,

it is not bound by such recommendations. The Compensation Committee's determinations with respect to the compensation of the CEO and other NEOs are submitted to the Board for final approval.

#### *Role of the Compensation Consultant*

The Compensation Committee has assessed the independence of the Compensation Consultant and determined that no conflict of interest exists under the rules established by the SEC. The Compensation Committee reviews the independence of its advisors annually.

In designing compensation programs and determining compensation levels for our named executive officers for the 2023 fiscal year, the Compensation Committee retained the services of the Compensation Consultant to formulate a report and make recommendations regarding our compensation programs and executive compensation levels. The Chairman of the Compensation Committee worked directly with the Compensation Consultant to determine the scope of the work needed to advise the Compensation Committee in its decision-making processes. The Compensation Consultant provided the Compensation Committee with benchmark comparative data for our named executive officers with respect to base salaries, target and actual total cash compensation levels, long-term incentive values, and total direct compensation.

In making compensation decisions for the 2023 fiscal year, the Compensation Committee compared each element of total direct compensation against a peer group of 14 publicly traded, technology companies with an emphasis on application software companies or well as internet services and infrastructure companies with which the Compensation Committee believes we compete for executive talent. We collectively refer to this group as the "Compensation Peer Group." The pay data for this group was analyzed by the Compensation Consultant using each company's recent public filings. This Compensation Peer Group was used, when available, for our named executive officers. We generally select Compensation Peer Group companies with broadly similar revenues and 12-month trailing market capitalizations. For the fiscal year 2023, the specific criteria utilized were: (i) annual revenues between \$81 million and \$307 million; (ii) market capitalizations between \$124 million to \$1.14 billion; (iii) headquartered in major metropolitan areas (reflecting similar cost of living as the Company); and (iv) with broadly similar equity valuation relative to revenues. The following is a list of the 14 companies comprising our Compensation Peer Group for the 2023 fiscal year:

A10 Networks, Inc.	Brightcove, Inc.	OneSpan, Inc.
Agilysys, Inc.	ChannelAdvisor Corp.	Upland Software, Inc.
American Software, Inc.	eGain Corporation	Veritone, Inc.
Asure Software, Inc.	Model N, Inc.	Viant Technology, Inc.
Benefitfocus	ON24, Inc.	

Changes from the prior year Compensation Peer Group include the addition of A10 Holdings, and the elimination of Limelight and Zix due to acquisitions.

#### *Components of Executive Compensation*

The Company's executive compensation program consists of the following elements:

- base salary;
- annual cash incentives;
- equity-based incentives;
- other benefits; and
- severance and change of control plans.

#### *Base Salary*

We provide a base salary to our named executive officers to compensate them for services rendered on a day-to-day basis during the fiscal year. Base salaries will typically reflect the experience, skills, knowledge and responsibilities of each named executive officer in keeping with competitive market practice.

The initial base salaries of our executive officers are established through arm's length negotiation at the time the individual executive officer is hired, taking into account his or her qualifications, experience and prior salary level. Thereafter, salary reviews are typically performed annually in conjunction with performance reviews. As necessary or appropriate, the Compensation Committee reviews and recommends adjustments to the base salaries of our executive officers to the Board.

The Compensation Committee typically targets named executive officers' salaries at the median level of salaries of executives with similar roles at comparable companies, however other factors may lead to salaries that are higher or lower than the median. The

Compensation Committee believes that the median for base salaries is generally the minimum cash compensation level that would allow us to attract and retain talented executives.

For fiscal year 2023, Messrs. Carnecchia, Diamond and Briggs received increases of approximately 5.6%, 11.4% and 13.6%, respectively, of their respective base salaries consistent with market trends and practices. The following table summarizes the base salaries of our named executive officers for the fiscal years ended September 30, 2022 and September 30, 2023:

Named Executive Officer	2022 Base Salary	Increase for 2023	2023 Base Salary
Scipio Maximus Carnecchia	\$ 450,000	5.6%	\$ 475,000
Frank Teruel	\$ 360,000	—%	\$ 360,000 (1)
Fuad Ahmad	N/A	N/A	N/A (2)
Scott Carter	N/A	N/A	\$ 780,000 (3)
Michael E. Diamond	\$ 314,150	11.4%	\$ 350,000
Christopher Briggs	\$ 286,000	13.6%	\$ 325,000

- (1) Reflects the annualized base salary of Mr. Teruel. Mr. Teruel resigned effective January 31, 2023, and accordingly, the cash salary actually paid to him for services during our fiscal year ended September 30, 2023 was less than the annualized base salary reflected herein.
- (2) Mr. Ahmad, who served as our Interim Chief Financial Officer, was paid an hourly rate as an outside consultant and was not eligible to receive any bonus, cash incentive or equity grants. Actual fees paid for Mr. Ahmad's services for the period of January 12, 2023 through September 30, 2023 were \$1,156,383.
- (3) Reflects the annualized base salary of Mr. Carter. Mr. Carter served as Executive Chair of the Board from January 2023 through December 1, 2023 and accordingly, the cash salary actually paid to him for services during our fiscal year ended September 30, 2023 was less than the annualized base salary reflected herein.

#### *Annual Cash Incentive*

Our annual cash incentive plan is one of the key components of the "at-risk" compensation we offer to our executives. We utilize our annual cash incentive plan to reward performance achievements with a time horizon of one year or less. Our plan is intended to motivate and reward our executives for their contributions toward meeting longer-term corporate financial and strategic goals aligned with the interests of our stockholders.

In developing our annual cash incentive plan, the Compensation Committee sets targets which it believes reflect the business opportunity within our industry and are consistent with achieving our short and long-term goals. The target achievement levels are based on the Board-approved operating plan, which reflects the Company's target performance for the upcoming fiscal year and are calibrated such that they are challenging enough to require strong and consistent efforts by the executives in order to be achieved.

In March 2023, based upon the recommendation of the Compensation Committee, the Board approved the Company's executive annual incentive program for the fiscal year ended September 30, 2023 (the "2023 Annual Incentive Plan"). Pursuant to the terms of the 2023 Annual Incentive Plan, the Company's executives were eligible to receive cash incentives based upon the achievement of certain corporate goals during the 2023 fiscal year.

The Compensation Committee reviewed each executive's target as a percentage of their base salary. As part of this review, the target for our CEO was set at 120% of his annualized salary and the targets for our Senior Vice President, General Manager—Digital Banking and Senior Vice President, Identity Product Marketing remained at 50% of their respective annualized salaries. For participants who are director-level and above, 80% of the target incentive is based upon achievement of the revenue component of the 2023 Plan (with either (i) the full 80% based upon the primary business area or (ii) 65% and 15% based upon the primary and secondary business areas, respectively) and the remaining 20% is based upon achievement of the non-GAAP operating income margin component of the 2023 Plan, subject to additional limitations, as set forth in the 2023 Plan. The maximum incentive payable to each executive under the 2022 Cash Incentive Plan was 200% of their respective targets.

Following the end of the 2023 fiscal year, the Compensation Committee assessed the Company's performance against the corporate performance components and determined that the Company had achieved 112% of its Deposits revenue plan, 79% of its Identity revenue plan, and 82% of its non-GAAP operating margin plan. The Compensation Committee awarded the following annual incentive amounts which were paid in the fourth calendar quarter of 2023:

Named Executive Officer	2023 Cash Incentive Target (as a percentage of base salary)	2023 Cash Incentive Target (base * target %) (1)	2023 Actual Cash Incentive
Scipio Maximus Carnecchia	120 %	\$ 570,000	\$ 449,531
Frank Teruel (2)	N/A	N/A	N/A
Fuad Ahmad (3)	N/A	N/A	N/A
Scott Carter (4)	N/A	N/A	N/A
Michael E. Diamond	50 %	\$ 175,000	\$ 195,300
Christopher Briggs	50 %	\$ 162,500	\$ 128,213

(1) Reflects the annualized incentive target of the named executive officer.

(2) Mr. Teruel resigned as our CFO effective as of January 31, 2023 and therefore was not eligible to receive a payment under the 2023 Cash Incentive Plan.

(3) Mr. Ahmad, an outside consultant, served as an interim CFO paid on an hourly basis and thus was not eligible to participate, nor included, in the 2023 Cash Incentive Plan.

(4) Mr. Carter's compensation for serving as the Executive Chairman of the Board was set in the form of a base salary and an equity grant and Mr. Carter was not eligible for nor included in the 2023 Cash Incentive Plan.

#### Equity-Based Incentives

Our long-term equity incentives are another key component of our "at-risk" compensation and are intended to reward longer-term performance and further align the interests of our executive officers with those of our stockholders. We believe that long-term performance is achieved through an ownership culture that rewards performance by our executive officers through the use of equity incentives.

The Company's current equity-based incentive practice is to grant a combination of time-based RSUs and performance-based RSUs ("PSUs") to its executives with 50% of the grant value designated as RSUs and 50% of the grant value designated as PSUs. Equity incentives are granted to our executive officers under the Mitek Systems, Inc. Amended and Restated 2020 Incentive Plan (the "2020 Plan"). RSUs granted under the 2020 Plan may be issued in consideration of the recipient's past or future services performed for the Company. RSUs generally vest over a period of four years from the date of grant and PSU's generally vest in equal annual installments over a period of three years from the date of grant (each such year, a "Performance Period") if the Company meets annual performance criteria for the applicable Performance Period. The annual performance criteria for each annual Performance Period is tied to whether the percentage increase in the value of our common stock meets or exceeds the percentage increase in the value of the Russell 2000 Index during such Performance Period. In order to make a determination as to whether the annual performance criteria is met, the Company reviews a hypothetical investment in both our common stock and the Russell 2000 Index with a purchase price equal to the average closing price of each for the 20-trading days immediately preceding the start of the applicable Performance Period. At the end of the applicable Performance Period, the value of the hypothetical investment is determined by assuming the sale of each based on the average closing price of each from the immediately preceding 20-trading days. The percentage change is determined by comparing the increase in value to the starting investment. Additionally, a portion of the PSUs may vest during a later Performance Period if the cumulative percentage increase in value of our common stock measured over the current and all previous Performance Periods exceeds the cumulative percentage increase in value of the Russell 2000 Index.

Typically, the size and form of the initial equity awards for our executive officers are established through arm's length negotiation at the time the individual executive officer is hired. In order to create a meaningful opportunity for reward predicated on the creation of long-term stockholder value, the Compensation Committee considers, among other things, the prospective role and responsibility, the competitive market for similar positions, and the amount of equity-based compensation which may have been forfeited by the executive officer at his or her former employer. Thereafter, the Compensation Committee reviews the equity holdings of our executive officers annually and recommends to the Board the grant of equity awards.

The following table sets forth the number of equity awards granted to our named executive officers during the fiscal year ended September 30, 2023:

Named Executive Officer	Restricted Stock Units(1)	Performance-based Restricted Stock Units(2)
Scipio Maximus Carnecchia	97,752	130,333
Frank Teruel	14,663	19,550
Fuad Ahmad (3)	—	—
Scott Carter (4)	101,523	—
Michael E. Diamond	24,438	32,584
Christopher Briggs	24,438	32,584

- (1) The RSUs will vest over a period of four years with 25% of the shares subject to the award vesting on the first anniversary of the date of grant and thereafter in equal annual installments, subject to the holder's continued service to the Company through each vesting date.
- (2) The PSUs will vest in equal annual installments over a period of three years from the date of grant should certain performance metrics be achieved during the applicable Performance Period, subject to the holder's continued service to the Company through each vesting date.
- (3) Mr. Ahmad, an outside consultant, served as our interim Chief Financial Officer. As a consultant he was paid on an hourly basis and was not eligible for, and did not receive, any equity grants.
- (4) The RSUs granted to Mr. Carter in connection with his role as Executive Chairman will vest over a period of two years with 50% of the shares subject to the award vesting on the first and second anniversaries, respectively, subject to Mr. Carter's continued service to the Company through each vesting date.

#### *Other Benefits*

We maintain a 401(k) plan that allows participating employees to contribute a percentage of their salary on a pre-tax basis pursuant to a cash or deferred arrangement under Section 401(k) of the Internal Revenue Service Code and subject to annual limits. The Company made matching contributions to the plan for the previous six years ending December 31<sup>st</sup>. The Company made matching contributions to the plan for the calendar year ended December 31, 2023.

In addition, we provide health, dental, vision and life and long-term disability insurance benefits to all full-time employees, including our named executive officers. We believe these benefits are competitive with the benefits of companies with which we compete for employees.

#### *Severance and Change of Control Plans*

The Compensation Committee provides our executives with severance and change of control protection when it determines that such protection is necessary to attract or retain an executive. Under the terms of their respective executive severance and change of control plans, each named executive officer is entitled to receive certain severance payments and benefits in the event that he is terminated without cause or resigns for good reason and/or is terminated in connection with a change of control of the Company, subject in all cases to certain conditions. The severance payments and benefits that are payable under these plans are further described below in the section entitled "Potential Payments Upon Termination or Change of Control."

#### *Executive Compensation for the 2024 Fiscal Year*

##### *Components of Executive Compensation*

**Base Salary.** Based on input from the Compensation Consultant relative to competitive market levels, the Compensation Committee recommended and the Board approved increases in the base salaries for some of our named executive officers for the 2024 fiscal year. Messrs. Diamond and Briggs received increases of 7.1% and 3.1%, respectively. The base salaries of Messrs. Ahmad and Carter remained unchanged from their 2023 levels as this component of compensation was deemed appropriate. The following table summarizes the base salaries of our named executive officers for the fiscal years ending September 30, 2023 and 2024:

Named Executive Officer	2023 Base Salary	Increase for 2024	2024 Base Salary(1)
Scipio Maximus Carnecchia	\$ 475,000	—%	\$ 475,000
David Lyle	N/A	N/A	\$ 425,000 (2)
Fuad Ahmad	N/A (3)	N/A	N/A (3)
Scott Carter	\$ 780,000 (4)	N/A	780,000 (4)
Michael E. Diamond	\$ 350,000	7.1%	\$ 375,000
Christopher Briggs	\$ 325,000	3.1%	\$ 335,000

(1) These base salaries were effective beginning January 1, 2024.

(2) Mr. Lyle's employment with the Company began in January 2024. The cash salary actually paid to him for services during our fiscal year ending September 30, 2024 will be less than the annualized salary reflected herein.

(3) Mr. Ahmad, an outside consultant, served as our Interim CFO from January 12, 2023, through January 2, 2024. Amounts for 2024 will be based upon agreed contract terms previously disclosed. The actual consulting fees paid for Mr. Ahmad's services during fiscal 2023 was \$1,156,383.

(4) Mr. Carter served as Executive Chair of the Board from January 24, 2023 through December 1, 2023 and accordingly, the cash salary actually paid to him in fiscal 2023 was less than, and in fiscal 2024 will be less than, the annualized base salary reflected herein.

**Annual Cash Incentive.** In March 2024, the Board, based upon the recommendation of the Compensation Committee, approved the Company's executive cash incentive program for the fiscal year ending September 30, 2024 (the "2024 Cash Incentive Plan"). Pursuant to the terms of the 2024 Cash Incentive Plan, the Company's executive officers will be eligible to receive cash incentives based upon the achievement of certain corporate and individual performance goals during the 2024 fiscal year. These incentives are designed to attract, motivate, retain and reward the Company's executives. Under the 2024 Cash Incentive Plan, our Chief Executive Officer has a bonus target equal to 120% of his annualized salary; our Chief Financial Officer has a bonus target equal to 65% of his annualized salary; and our Senior Vice President, General Manager—Digital Banking and Senior Vice President, Identity Product Marketing have bonus targets equal to 50% of their annualized salaries. Under the 2024 Cash Incentive Plan, achievement is tied to two financial metrics, revenue and non-GAAP operating income calculated with respect to the Company's key business areas, deposits, core identity and ID R&D, Inc., a direct wholly owned subsidiary of the Company ("ID R&D"). Participants in the plan are assigned both a primary business area target and/or a total company target for purposes of the revenue component of the 2024 Cash Incentive Plan. For participants who are director-level and above, 70% of the target incentive is based upon achievement of the revenue component(s) of the 2024 Cash Incentive Plan and the remaining 30% is based upon achievement of the non-GAAP operating income component of the 2024 Cash Incentive Plan (in both instances excluding the impact of any in-year acquisitions). The maximum incentive payable to each executive under the 2024 Cash Incentive Plan is 200% of their respective targets. Under the 2024 Cash Incentive Plan, the Board maintains the sole discretion with respect to the Chief Executive Officer and his direct reports to modify individual achievement by up to 10% of a participant's target incentive amount based upon individual performance and contribution.

**Equity-Based Incentives.** The Board, based upon the recommendation of the Compensation Committee, approved the following grants of time-based RSUs and PSUs for the fiscal year ending September 30, 2024:

Named Executive Officer	Restricted Stock Units(1)	Performance-based Restricted Stock Units(2)
Scipio Maximus Carnecchia(3)	88,106	117,181
David Lyle(4)	58,185	77,386
Michael E. Diamond(3)	35,243	46,873
Christopher Briggs(3)	28,635	38,085

(1) The time-based RSUs will vest in equal installments over a period of four years from the date of grant.

(2) The PSUs vest in equal annual installments over a period of three years from the date of grant should certain performance metrics be achieved. The performance-based RSUs will vest an additional 33% based on over-achievement of the aforementioned performance metrics.

(3) This grant was approved by the Board on December 1, 2023.

(4) This grant was approved by the Board on January 2, 2024.



### ***Tax Considerations***

*Section 162(m) of the Code.* Section 162(m) of the Code generally places a \$1,000,000 limit on the amount of compensation a publicly held company can deduct in any tax year on compensation paid to “covered employees.” The Compensation Committee considers tax deductibility as one of many factors in determining executive compensation. However, the Compensation Committee retains discretion to award compensation that it determines to be consistent with the goals of our executive compensation program even if such compensation is not tax deductible by the Company.

### ***Risks Related to Compensation Policies and Practices***

The Compensation Committee has considered whether the Company’s overall compensation program for its employees creates incentives for employees to take excessive or unreasonable risks that could materially harm the Company. We believe that several features of our compensation policies for management employees appropriately mitigate such risks, including a mix of long and short-term compensation incentives that we believe are properly weighted and the uniformity of compensation policies across the Company, which the Compensation Committee regards as setting an appropriate level of risk taking for the Company. We also believe the Company’s internal legal and financial controls appropriately mitigate the probability and potential impact of an individual employee committing the Company to a harmful long-term business transaction in exchange for short-term compensation benefits.

### ***Hedging and Pledging Prohibition***

As part of our insider trading policy, our executives and directors (including their respective spouses, persons living in their households, minor children and entities over which such persons exercise control) are prohibited from short selling and buying or selling puts, calls or other derivative securities on our securities, and from engaging in hedging, forward sale and other similar derivative transactions of our securities. In addition, our executives and directors are prohibited from holding our securities in a margin account or pledging our securities as collateral for loans.

### ***Clawback Policy***

Effective October 2, 2023, our Board adopted a clawback policy pursuant to the listing standards approved by Nasdaq implementing Rule 10D-1 under the Exchange Act. The clawback policy is administered by our Compensation Committee and applies to our current and former executive officers as defined in Rule 10D-1 (each an “Affected Officer”). Under the clawback policy, if we are required to prepare an accounting restatement to correct our material noncompliance with any financial reporting requirement under securities laws, including restatements that correct an error in previously issued financial statements that is material to the previously issued financial statements or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period (collectively, a “Restatement”), we are obligated to recover erroneously awarded incentive-based compensation received from us by any Affected Officers. Incentive-based compensation includes any compensation that is granted, earned or vested based in whole or in part on the attainment of a financial reporting measure. Erroneously awarded incentive-based compensation is the amount of incentive-based compensation received that exceeds the amount of incentive-based compensation that otherwise would have been received had it been determined based on an applicable Restatement.

## Summary Compensation Table

The following table sets forth certain information regarding the compensation earned by each of our NEOs during the fiscal years ended September 30, 2023, 2022 and 2021:

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)(1)	Option Awards (\$)(1)	Non-Equity Incentive Plan Compensation (\$)(2)	All Other Compensation (\$)(3)	Total Compensation (\$)
Scipio Maximus Carnecchia	2023	468,750	—	2,295,513	—	449,531	863	3,214,657
<i>Chief Executive Officer</i>	2022	450,000	—	4,701,320	—	459,000	720	5,611,040
	2021	450,000	—	2,283,961	—	724,500	2,580	3,461,041
Frank Teruel	2023	120,000 (4)	—	344,329	—	—	310	464,639
<i>Former Chief Financial Officer</i>	2022	360,000	—	193,946	—	183,600	1,470	739,016
	2021	73,636	60,915 (5)	1,200,012	—	—	231	1,334,794
Fuad Ahmad	2023	1,156,383 (6)	—	—	—	—	—	1,156,383
<i>Former Interim Chief Financial Officer</i>								
Scott Carter	2023	536,250	—	1,000,002	—	—	16,247 (7)	1,552,499
<i>Former Executive Chair</i>								
Michael E. Diamond	2023	341,037	—	573,886	—	195,326	863	1,111,112
<i>Senior Vice President, General Manager—Digital Banking</i>	2022	311,862	—	822,742	—	169,641	1,590	1,305,835
	2021	302,750	—	399,698	—	173,316	1,080	876,844
Christopher Briggs	2023	324,880	—	573,886	—	128,156	1,613	1,028,535
<i>Senior Vice President, Identity Product Marketing</i>								

- (1) The amounts shown under the “Stock Awards” column and the “Option Awards” column represent the aggregate grant date fair value of RSUs (including certain Senior Executive Performance RSUs) and option awards, respectively, granted to each NEO in the year indicated, computed in accordance with FASB ASC Topic 718, *Compensation—Stock Compensation*. A discussion of the assumptions used in calculating the grant date fair value is set forth in Note 7 of the accompanying notes to the consolidated financial statements included in this Form 10-K. As of November 2023, the performance period for our Senior Executive Performance RSUs ended and the Company’s stock performance during the performance period resulted in partial vesting of the Senior Executive Performance RSUs.
- (2) The amounts shown under the Non-Equity Incentive Plan Compensation column represent actual annual cash bonuses earned pursuant to the Company’s cash incentive plans that were in effect for the applicable year.
- (3) Represents group term life insurance and long-term disability premiums and wellness benefits paid on behalf of our NEOs in the fiscal years ended September 30, 2023, 2022, and 2021, unless otherwise noted.
- (4) Represents fees paid for Mr. Ahmad’s services as Interim Chief Financial Officer from January 12, 2023, through September 30, 2023.
- (5) Represents the portion of Mr. Teruel’s base salary earned during the portion of the 2023 fiscal year prior to his resignation from the Company effective as of January 31, 2023.
- (6) Represents a discretionary bonus of \$60,915 with respect to Mr. Teruel’s service to the Company during the 2021 fiscal year. Mr. Teruel joined the Company during the 2021 fiscal year, and thus was not a participant in the Company’s executive cash incentive program for the fiscal year ended September 30, 2021 (the “2021 Cash Incentive Plan”), but was awarded this discretionary bonus by the Board, based on recommendations of the Compensation Committee, consistent with the targets and criteria set forth in the 2021 Cash Incentive Plan, pro-rated to reflect the portion of the year during which Mr. Teruel served in his position.
- (7) Includes \$15,694 for Mr. Carter’s services as a member of the Board.

## Grants of Plan-Based Awards

The following table sets forth information regarding grants of plan-based awards to each of our NEOs during the fiscal year ended September 30, 2023:

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards(1)			Estimated Future Payouts Under Equity Incentive Plan Awards(2)(3)			All Other Stock Awards: Number of Shares of Stock or Units (3)	Grant Date Fair Value of Stock and Option Awards (4)
		Threshold (\$)	Target (\$)	Maximum (\$)	Threshold (#)	Target (#)	Maximum (#)		
Scipio Maximus Carnecchia	11/30/2022 3/15/2023	102,600	570,000	1,140,000	48,876	97,752	130,333	\$ 97,752	\$ 2,295,513
Frank Teruel(5)	11/30/2022	—	—	—	7,332	14,663	19,550	\$ 14,663	\$ 344,329
Fuad Ahmad(6)	—	—	—	—	—	—	—	\$ —	\$ —
Scott Carter	1/24/2023	—	—	—	—	—	—	\$ 101,523	\$ 1,000,002
Michael E. Diamond	11/30/2022 3/15/2023	31,500	175,000	350,000	12,219	24,438	32,584	\$ 24,438	\$ 573,886
Christopher Briggs	11/30/2022 3/15/2023	29,250	162,500	325,000	12,219	24,438	32,584	\$ 24,438	\$ 573,886

- (1) These NEOs, with the exception of Messrs. Carter and Ahmad, were participants in the 2023 Cash Incentive Plan and were eligible to receive cash bonuses based upon the achievement of certain corporate performance goals as described below.
- (2) This column sets forth the number of shares of common stock underlying the RSUs and PSUs that were granted to the NEOs. If the NEOs do not satisfy the performance-based vesting conditions with respect to such PSU awards, such awards will not vest and the NEOs will not receive any shares of Common Stock with respect to such awards. Once the performance-based vesting condition is achieved and the time-based vesting periods are complete, the full amount of the RSUs and PSUs will become vested and payable to the NEOs. See section titled “Equity-Based Incentives” and footnote (3) below for further information.
- (3) RSUs and PSUs were granted to Messrs. Carnecchia, Teruel, Diamond, and Briggs on November 30, 2022. 50% of the grant value was designated as RSUs and 50% of the grant value designated as PSUs. RSUs were also granted to Mr. Carter upon commencement of his employment with the Company on January 24, 2023. RSUs and PSUs granted to Mr. Teruel were valued at \$150,000 and \$199,995, respectively. Mr. Teruel resigned as our CFO effective as of January 31, 2023 and none of these RSUs or PSUs vested. The RSUs will vest 25% of the shares over four years on each one-year anniversary of the respective date of grant. The PSUs will vest in equal annual installments over a period of three years from the respective date of grant should certain performance metrics be achieved during the applicable Performance Period. The performance metrics with respect to the vesting of the PSUs are tied to the percentage increase in the value of our common stock as compared to the percentage increase in the value of the Russell 2000 Index during the applicable Performance Period. In order to make a determination as to whether the annual performance criteria is met, the Company reviews a hypothetical investment in both our common stock and the Russell 2000 Index with a purchase price equal to the average closing price of each for the 20-trading days immediately preceding the start of the applicable Performance Period. At the end of the applicable Performance Period, the value of the hypothetical investments is determined by assuming the sale of each based on the average closing price of each from the immediately preceding 20-trading days. The percentage change is determined by comparing the increase in value to the starting investment. To the extent that our common stock performance is less than equal to, but at least 85% of, the performance of the Russell 2000 Index, a pro-rata portion of the shares will be vested. To the extent that our common stock performance is greater than 100% of the performance of the Russell 2000 Index, a pro-rata portion of additional shares will vest. Additionally, a portion of the PSUs may vest during a later Performance Period if the cumulative percentage increase in value of our common stock measured over the current and all previous Performance Periods exceeds the cumulative percentage increase in value of the Russell 2000 Index.
- (4) The amounts disclosed in the “Grant Date Fair Value of Stock and Option Awards” column are equal to the aggregate grant date fair value of each RSU and PSU award computed in accordance with ASC Topic 718. A discussion of the assumptions used in calculating the grant date fair value is set forth in Note 7 of the accompanying notes to the consolidated financial statements included in this Form 10-K.
- (5) Mr. Teruel resigned as our CFO effective as of January 31, 2023 and therefore was not eligible to receive a bonus under the 2023 Cash Incentive Plan.
- (6) As an outside consultant serving as our Interim Chief Financial Officer, Mr. Ahmad was not eligible to participate in the 2023 Cash Incentive Plan or Equity Plan.

## **Narrative Discussion of Summary Compensation Table and Grants of Plan-Based Awards Table**

For a narrative discussion of the Summary Compensation Table and the Grants of Plan-Based Awards table, see the footnotes to the tables. In addition, below is a description of the material compensation-related terms of all employment arrangements in effect during the fiscal year ended September 30, 2023 with our NEOs, including annual base salaries during the fiscal year ended September 30, 2023 as well as their current annual base salaries. For a description of the payments and benefits that would be provided to our named executive officers in connection with a termination of their employment or a change of control, see the section below entitled “Potential Payments Upon Termination or Change of Control.”

### ***Scipio "Max" Carneccchia***

In November 2018, we entered into an executive employment agreement with Scipio Maximus Carneccchia, our CEO. Mr. Carneccchia’s annual base salary for our 2023 fiscal year was \$475,000 and his current annual base salary is \$475,000. He is eligible to participate in the Company’s annual cash incentive plan, 401(k) plan and health, disability, insurance and other plans made available generally to our other salaried employees. Mr. Carneccchia is also entitled to receive certain severance payments and benefits in the event that his employment is terminated by us without cause or by him for good reason in connection with a change of control, as discussed below under the section entitled “Potential Payments Upon Termination or Change of Control.”

### ***Frank Teruel***

In June 2021, we entered into a letter agreement with Frank Teruel, our former CFO. Mr. Teruel’s annual base salary during our 2023 fiscal year was \$360,000 and his annual base salary when he resigned in January 2023 was \$360,000. He was eligible to participate in the Company’s annual cash incentive plan, 401(k) plan and health, disability, insurance and other plans made available generally to our other salaried employees. Mr. Teruel was also entitled to receive certain severance payments and benefits in the event that his employment was terminated by us without cause or by him for good reason in connection with a change of control, as discussed below under the section entitled “Potential Payments Upon Termination or Change of Control.”

### ***Fuad Ahmad***

As Mr. Ahmad is a contractor and not an employee of the Company he does not have an executive employment agreement.

### ***Scott Carter***

In January 2023, we entered into an employment relationship with Scott Carter (currently Chair of the Board and previously Executive Chair of the Board) which provided compensation for serving in the role of Executive Chair of the Board. Mr. Carter’s annual base salary during the 2023 fiscal year and at the time he resigned as Executive Chair effective December 1, 2023 was \$780,000. He was not eligible to participate in the Company’s annual cash incentive plan, but was eligible to participate in the 401(k) plan and health, disability, insurance and other plans made available generally to our other salaried employees. Mr. Carter was also entitled to receive certain severance payments and benefits in the event that his employment was terminated by us without cause or by him for good reason in connection with a change of control, as discussed below under the section entitled “Potential Payments Upon Termination or Change of Control.”

### ***Michael E. Diamond***

In June 2012, we entered into a letter agreement with Michael E. Diamond, our Senior Vice President, General Manager—Digital Banking. Mr. Diamond’s annual base salary during our 2023 fiscal year was \$350,000 and his current annual base salary is \$375,000. He is eligible to participate in the Company’s annual cash incentive plan, 401(k) plan and health, disability, insurance and other plans made available generally to our other salaried employees. Mr. Diamond is also entitled to receive certain severance payments and benefits in the event that his employment is terminated by us without cause or by him for good reason in connection with a change of control, as discussed below under the section entitled “Potential Payments Upon Termination or Change of Control.”

### ***Christopher Briggs***

In April 2022, we entered into a letter agreement with Christopher Briggs, our Senior Vice President, Identity Product Marketing. Mr. Briggs’ annual base salary during our 2023 fiscal year was \$325,000 and his current annual base salary is \$335,000. He is eligible to participate in the Company’s annual cash incentive plan, 401(k) plan and health, disability, insurance and other plans made available generally to our other salaried employees. Mr. Briggs is also entitled to receive certain severance payments and benefits in the event that his employment is terminated by us without cause or by him for good reason in connection with a change of control, as discussed below under the section entitled “Potential Payments Upon Termination or Change of Control.”

## Outstanding Equity Awards at Fiscal Year-End

The following table sets forth the outstanding equity awards held by our NEOs as of September 30, 2023:

Name and Principal Position	Option Awards						Stock Awards	
	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards Number of Securities Underlying Unexercised Unearned Options	Option Exercise Price (\$)	Option Expiration Date(1)	Number of Shares or Units of Stock Not Yet Vested	Market Value of Shares or Units of Stock That Have Not Vested (2)	
Scipio Maximus	90,393	(3)	—	9.50	11/6/2028	—	—	
Carnecchia	77,855	(4)	3,385	9.50	11/6/2028	—	—	
	—	(5)	—	800,000	9.50	11/6/2028	—	
	—	—	—	—	—	11,843	(6) 126,957	
	—	—	—	—	—	27,503	(7) 294,832	
	—	—	—	—	—	42,230	(8) 452,706	
	—	—	—	—	—	56,308	(9) 603,622	
	—	—	—	—	—	88,497	(10) 948,688	
	—	—	—	—	—	78,664	(11) 843,278	
	—	—	—	—	—	97,752	(12) 1,047,901	
	—	—	—	—	—	130,333	(13) 1,397,170	
Frank Teruel	—	—	—	—	—	—	(14) —	
Fuad Ahmad	—	—	—	—	—	—	(14) —	
Scott Carter	—	—	—	—	—	101,253	(15) 1,088,327	
Michael E. Diamond	8,216	(19)	—	8.60	11/15/2027	—	—	
	60,626	(3)	—	9.50	11/6/2028	—	—	
	—	—	—	—	—	9,283	(16) 99,514	
	—	—	—	—	—	7,391	(8) 79,232	
	—	—	—	—	—	9,855	(9) 105,646	
	—	—	—	—	—	15,487	(10) 166,021	
	—	—	—	—	—	13,766	(11) 147,572	
	—	—	—	—	—	24,438	(12) 261,975	
	—	—	—	—	—	32,584	(13) 349,300	
Christopher Briggs	—	—	—	—	—	22,107	(17) 236,987	
	—	—	—	—	—	34,386	(18) 368,618	
	—	—	—	—	—	24,438	(12) 261,975	
	—	—	—	—	—	32,584	(13) 349,300	

- (1) The option awards expire 10 years from the date of grant, and may be subject to earlier expiration in connection with a termination of employment.
- (2) The closing price of our common stock on the Nasdaq Capital Market as of September 29, 2023 was \$10.72 per share.
- (3) The shares subject to the option award vested over a period of four years from November 6, 2018, the date of grant, with 25% of the shares subject to the award having vested on the first anniversary of the date of grant and the remaining shares subject to such option vesting in equal monthly installments thereafter, and were fully vested as of November 6, 2022.
- (4) The shares subject to the option award vested over a period of five years from November 6, 2018, the date of grant, with 25% of the shares subject to the award having vested on the first anniversary of the date of grant and the remaining shares subject to such option vesting in equal monthly installments thereafter, and were fully vested as of November 6, 2023.
- (5) The shares subject to the performance equity award vested upon the closing market price of the Company's common stock achieving certain predetermined levels and Mr. Carneccia's serving as the CEO of the Company for at least three years.
- (6) The shares subject to the RSU award vest over a period of five years from November 6, 2018, the date of grant, with 25% of the shares subject to the award vesting on the second anniversary of the date of grant and thereafter in equal annual installments, and were fully vested as of November 6, 2023.
- (7) The shares subject to the PSU award vest over a period of four years from March 20, 2020, the date of grant, with 33.33% of the shares subject to the award vesting on the first anniversary of the date of grant and thereafter in equal annual installments on the second and third anniversaries of the date of grant. The shares are also subject to an additional one-year vesting period and will be fully vested on March 20, 2024, subject to the achievement of the annual performance criteria.
- (8) The shares subject to the RSU award vest over a period of four years from November 27, 2020, the date of grant, with 25% of the shares subject to the award vesting on the first anniversary of the date of grant and thereafter in equal installments, and will be fully vested on November 27, 2024.
- (9) The shares subject to the PSU award vested over a period of three years from November 27, 2020, the date of grant, with 33.33% of the shares subject to the award vesting on the first anniversary of the date of grant and thereafter in equal annual installments, and were fully vested as of November 27, 2023.
- (10) The shares subject to the RSU award vest over a period of four years from November 26, 2021, the date of grant, with 25% of the shares subject to the award vesting on the first anniversary of the date of grant and thereafter in equal annual installments, and will be fully vested on November 26, 2025.
- (11) The shares subject to the PSU award vest over a period of three years from November 26, 2021, the date of grant, with 33.33% of the shares subject to the award vesting on the first anniversary of the date of grant and thereafter in equal annual installments, and will be fully vested on November 26, 2024, subject to the achievement of the annual performance criteria.
- (12) The shares subject to the RSU award vest over a period of four years from November 30, 2022, the date of grant, with 25% of the shares subject to the award vesting on the first anniversary of the date of grant and thereafter in equal installments, and will be fully vested on November 30, 2026.
- (13) The shares subject to the PSU award vest over a period of three years from November 30, 2022, the date of grant, with 33.33% of the shares subject to the award vesting on the first anniversary of the date of grant and thereafter in equal annual installments, and will be fully vested on November 30, 2025, subject to the achievement of the annual performance criteria.
- (14) Mr. Ahmad and Mr. Teruel had no equity awards outstanding at September 30, 2023.
- (15) The shares subject to the RSU award vest over a period of two years from January 24, 2023, the date of grant, with 50% of the shares subject to the award vesting on the first and second anniversaries of the date of grant and will be fully vested on January 24, 2025.
- (16) The shares subject to the RSU award vested as follows: 37.5% on the one-year anniversary of the date of grant of March 20, 2020, 12.5% on November 14, 2021, and 25% on each of November 14, 2022 and 2023.
- (17) The shares subject to the RSU award vest over a period of four years from May 16, 2022, the date of grant, with 25% of the shares subject to the award vesting on the first anniversary of the date of grant and thereafter in equal annual installments, and will be fully vested on May 16, 2026.
- (18) The shares subject to the PSU award vest over a period of three years from May 16, 2022, the date of grant, with 33.33% of the shares subject to the award vesting on the first anniversary of the date of grant and thereafter in equal annual installments, and will be fully vested on May 16, 2025, subject to the achievement of the annual performance criteria.
- (19) The shares subject to the option award vested over a period of four years from November 15, 2017, the date of grant, with 25% of the shares subject to the award vesting on the first anniversary of the date of grant and thereafter in equal monthly installments, and were fully vested on November 15, 2021.

## Option Exercises and Stock Vested

The following table sets forth information regarding exercise of option awards and vesting of shares underlying RSUs for our NEOs for the fiscal year ended September 30, 2023:

Name and Principal Position	Option Awards		Stock Awards	
	Number of Shares Acquired on Exercise	Value Realized on Exercise(1)	Number of Shares Acquired on Vesting(2)	Value Realized on Vesting(3)
Scipio Maximus Carnecchia	—	—	74,298	809,469
Scott Carter	—	—	—	—
Fuad Ahmad	—	—	—	—
Michael E. Diamond	—	—	26,034	291,107
Christopher Briggs	—	—	12,281	111,021
Frank Teruel	—	—	1,217	13,034

- (1) The value realized equals the number of shares acquired on exercise multiplied by the difference between the per share closing price of the Company's common stock on the date of exercise and the per share exercise price of the option.
- (2) Amounts include shares automatically sold upon vesting with proceeds remitted to the Company for payment of payroll tax obligations.
- (3) The value realized equals the number of shares vested multiplied by the per share closing price of the Company's common stock on the date of vesting.

## Pension Benefits, Nonqualified Defined Contribution and Other Nonqualified Deferred Compensation

No pension benefits were paid to any of our NEOs during the fiscal year ended September 30, 2023. We do not currently sponsor any non-qualified defined contribution plans or non-qualified deferred compensation plans.

## Potential Payments Upon Termination or Change of Control

### Scipio Maximus Carnecchia

On November 6, 2018, we entered into an Executive Employment Agreement with Scipio Maximus Carnecchia (the "Carnecchia Employment Agreement").

Under the terms of the Carnecchia Employment Agreement, if Mr. Carnecchia's employment with the Company is terminated by the Company without "cause" or by Mr. Carnecchia for "good reason" (each as defined in the Carnecchia Employment Agreement), in each case, other than in connection with a Change of Control, then as long as Mr. Carnecchia signs a release of any claims against the Company, he will be entitled to the following severance benefits: (i) a lump-sum cash amount equal to his earned but unpaid salary as of his termination date; (ii) a lump-sum cash amount equal to 100% of his base salary as of his termination date; (iii) a lump-sum cash amount equal to the value of twelve (12) months of COBRA continuation coverage; (iv) all equity awards granted to him will be treated as set forth in the applicable award agreements and plan documents to which such equity awards are subject; and (v) a lump-sum pro-rated amount of his target bonus as of his termination date.

Pursuant to the Carnecchia Employment Agreement, if Mr. Carnecchia's employment with the Company is terminated without "cause" or for "good reason" at any time two months prior to or within 24 months after a Change of Control, then as long as Mr. Carnecchia signs a release of any claims against the Company, he will be entitled to the following severance benefits: (i) a lump-sum cash amount equal to his earned but unpaid salary as of his termination date; (ii) a lump-sum cash amount equal to 200% of his base salary as of his termination date; (iii) a lump-sum cash amount equal to the value of twenty-four (24) months of COBRA continuation coverage; (iv) (A) all non-performance equity awards granted to him will vest and become immediately exercisable, (B) (1) any time vesting requirement of any performance equity awards shall be deemed to be satisfied and (2) the share price for determining whether the performance vesting requirement of any performance equity awards has been satisfied shall be the per share price payable to the stockholders of the Company in connection with the Change of Control, and (C) any restrictions of any kind imposed by the Company or any Company equity award plan or equity award agreement that relate to any equity securities or equity awards held by Mr. Carnecchia will lapse; and (v) a lump-sum pro-rated amount of his target bonus as of his termination date.

The timing of severance payments and benefits under the Carnecchia Employment Agreement may be deferred to avoid incurring additional taxes and penalties pursuant to Section 409A.

*Frank Teruel*

On May 10, 2021, we entered into an Executive Severance and Change of Control Plan with Frank Teruel, our Chief Financial Officer (the “Teruel Severance Plan”).

Under the terms of the Teruel Severance Plan, if we terminated Mr. Teruel’s employment without Cause (as defined below) or if Mr. Teruel terminated his employment for Good Reason (as defined below), Mr. Teruel would have been entitled to receive: (i) all compensation and benefits accrued, but unpaid, up to the effective date of termination; (ii) a lump-sum cash amount equal to 50% of Mr. Teruel’s annual base salary then in effect; and (iii) a lump-sum cash amount equal to six months of premium payments for continuation coverage under the Company’s health plans for Mr. Teruel and his dependents.

In addition, the Teruel Severance Plan provides that in the event that during the two month period prior to the consummation of a Change of Control (as defined below) or the 12 month period following the consummation of a Change of Control, the Company terminated Mr. Teruel’s employment without Cause or if Mr. Teruel terminated his employment with the Company for Good Reason, Mr. Teruel would have been entitled to receive: (i) all compensation and benefits accrued, but unpaid, up to the effective date of termination; (ii) a lump-sum cash amount equal to 50% of Mr. Teruel’s annual base salary then in effect; (iii) a lump-sum cash amount equal to six months of premium payments for continuation coverage under the Company’s health plans for Mr. Teruel and his dependents; and (iv) accelerated vesting of 100% of all outstanding equity awards then held by Mr. Teruel.

The timing of severance payments and benefits under the Teruel Severance Plan could have been deferred to avoid incurring additional taxes and penalties pursuant to Section 409A. Mr. Teruel resigned as our CFO effective as of January 31, 2023 and this agreement is therefore no longer in effect.

*Fuad Ahmad*

As Mr. Ahmad is a contractor and not an employee of the Company he does not have an executive employment agreement.

*Scott Carter*

On January 24, 2023, we entered into an Executive Severance and Change of Control Plan with Scott Carter (the “Carter Severance Plan”).

Under the terms of the Carter Severance Plan, if we terminate Mr. Carter’s employment without Cause (as defined below) or if Mr. Carter terminates his employment for Good Reason (as defined below), Mr. Carter will be entitled to receive: (i) all compensation and benefits accrued, but unpaid, up to the effective date of termination; (ii) a lump-sum cash amount equal to 50% of Mr. Carter’s annual base salary then in effect (ignoring any reduction that gives rise to a termination for Good Reason); and (iii) a lump-sum cash amount equal to six months of premium payments for continuation coverage under the Company’s health plans for Mr. Carter and his dependents, excluding any flexible spending account.

In addition, the Carter Severance Plan provides that in the event that during the two month period prior to the consummation of a Change of Control (as defined below) or the 12 month period following the consummation of a Change of Control, the Company terminates Mr. Carter’s employment without Cause or if Mr. Carter terminates his employment with the Company for Good Reason, Mr. Carter will be entitled to receive: (i) all compensation and benefits accrued, but unpaid, up to the effective date of termination; (ii) a lump-sum cash amount equal to 50% of Mr. Carter’s annual base salary then in effect (ignoring any reduction that gives rise to a termination for Good Reason); (iii) a lump-sum cash amount equal to six months of premium payments for continuation coverage under the Company’s health plans for Mr. Carter and his dependents, excluding any flexible spending account; and (iv) accelerated vesting of 100% of all outstanding equity awards then held by Mr. Carter.

The timing of severance payments and benefits under the Carter Employment Agreement may be deferred to avoid incurring additional taxes and penalties pursuant to Section 409A. Mr. Carter resigned as Executive Chair effective as of December 1, 2023 and this agreement is no longer in effect.

*Michael E. Diamond*

On August 10, 2017, we entered into an Executive Severance and Change of Control Plan with Michael E. Diamond, our Senior Vice President, General Manager—Digital Banking (the “Diamond Severance Plan”).

Under the terms of the Diamond Severance Plan, if we terminate Mr. Diamond’s employment without Cause (as defined below) or if Mr. Diamond terminates his employment for Good Reason (as defined below), Mr. Diamond will be entitled to receive: (i) all compensation and benefits accrued, but unpaid, up to the effective date of termination; (ii) a lump-sum cash amount equal to 100% of Mr. Diamond’s annual base salary then in effect (ignoring any reduction that gives rise to a termination for Good Reason); and (iii) a lump-sum cash amount equal to 12 months of premium payments for continuation coverage under the Company’s health plans for Mr. Diamond and his dependents, excluding any flexible spending account.

In addition, the Diamond Severance Plan provides that in the event that during the two month period prior to the consummation of a Change of Control (as defined below) or the 12 month period following the consummation of a Change of Control, the Company



terminates Mr. Diamond's employment without Cause or if Mr. Diamond terminates his employment with the Company for Good Reason, Mr. Diamond will be entitled to receive: (i) all compensation and benefits accrued, but unpaid, up to the effective date of termination; (ii) a lump-sum cash amount equal to 100% of Mr. Diamond's annual base salary then in effect (ignoring any reduction that gives rise to a termination for Good Reason); (iii) a lump-sum cash amount equal to 12 months of premium payments for continuation coverage under the Company's health plans for Mr. Diamond and his dependents, excluding any flexible spending account; and (iv) accelerated vesting of 100% of all outstanding equity awards then held by Mr. Diamond.

The timing of severance payments and benefits under the Diamond Severance Plan may be deferred to avoid incurring additional taxes and penalties pursuant to Section 409A. The Diamond Severance Plan also provides for the reduction of any severance payments and benefits to Mr. Diamond to the extent necessary to ensure that he will not receive any "excess parachute payments" under Section 280G.

#### *Christopher Briggs*

On April 25, 2022, we entered into an Executive Severance and Change of Control Plan with Christopher Briggs, our Senior Vice President, Identity Product Marketing (the "Briggs Severance Plan").

Under the terms of the Briggs Severance Plan, if we terminate Mr. Briggs's employment without Cause (as defined below) or if Mr. Briggs terminates his employment for Good Reason (as defined below), Mr. Briggs will be entitled to receive: (i) all compensation and benefits accrued, but unpaid, up to the effective date of termination; (ii) a lump-sum cash amount equal to 50% of Mr. Briggs's annual base salary then in effect (ignoring any reduction that gives rise to a termination for Good Reason); and (iii) a lump-sum cash amount equal to six months of premium payments for continuation coverage under the Company's health plans for Mr. Briggs and his dependents, excluding any flexible spending account.

In addition, the Briggs Severance Plan provides that in the event that during the two month period prior to the consummation of a Change of Control (as defined below) or the 12 month period following the consummation of a Change of Control, the Company terminates Mr. Briggs's employment without Cause or if Mr. Briggs terminates his employment with the Company for Good Reason, Mr. Briggs will be entitled to receive: (i) all compensation and benefits accrued, but unpaid, up to the effective date of termination; (ii) a lump-sum cash amount equal to 50% of Mr. Briggs's annual base salary then in effect (ignoring any reduction that gives rise to a termination for Good Reason); (iii) a lump-sum cash amount equal to six months of premium payments for continuation coverage under the Company's health plans for Mr. Briggs and his dependents, excluding any flexible spending account; and (iv) accelerated vesting of 100% of all outstanding equity awards then held by Mr. Briggs.

The timing of severance payments and benefits under the Briggs Severance Plan may be deferred to avoid incurring additional taxes and penalties pursuant to Section 409A. The Briggs Severance Plan also provides for the reduction of any severance payments and benefits to Mr. Briggs to the extent necessary to ensure that he will not receive any "excess parachute payments" under Section 280G.

For purposes of each of the foregoing severance plans:

- "Cause" generally means: (i) any material failure on the part of the executive to faithfully and professionally carry out his duties, subject to a 10-day cure period; (ii) the executive's dishonesty or other willful misconduct (or in the case of the Carnecchia Employment Agreement, other misconduct), if such dishonesty or other willful misconduct (or in the case of the Carnecchia Employment Agreement, other misconduct), is intended to or likely to materially injure the business of the Company (and in the case of the Carnecchia Employment Agreement, materially injure the reputation of the Company); (iii) the executive's conviction of any felony or of any other crime, in each case, involving moral turpitude; (iv) the executive's insobriety or illegal use of drugs, chemicals or controlled substances in the course of performing his duties and responsibilities or otherwise materially affecting his ability to perform the same; and (v) any wanton or willful dereliction of duties by the executive. In addition to the foregoing, under the Carnecchia Employment Agreement, "Cause" also means the executive's material breach of any written agreement with the Company or any of its affiliates or material violation of the Company's Standards of Business Conduct or any other material written policy of the Company.
- "Good Reason" generally means: (i) the Company's breach of any of the material terms of the severance plan; (ii) the Company's relocating its offices at which the executive is initially principally employed to a location either outside the United States or more than 50 miles from both the executive's residence and the offices of the Company (or in the case of the Carnecchia Employment Agreement, outside of the United States or outside of San Diego County), and that reassignment materially and adversely affects the executive's commute and the executive is required to commute to such location without the executive's written consent; (iii) a material diminution in the executive's duties or responsibilities or conditions of employment (or in the case of the Carnecchia Employment Agreement, title); from those in effect on the effective date of the severance plan; (iv) any reductions which, in the aggregate, are more than 10% of the executive's base salary in effect when any reduction is first imposed without the executive's consent (other than such a reduction or reductions applicable generally to other senior executives of the Company) (or in the case of the Carnecchia Employment Agreement, a reduction of Mr. Carnecchia's base salary or reduction of Mr. Carnecchia's target bonus percentage without his consent); provided, however, that the executive must provide the Company with written notice of the executive's intent to terminate his employment and a description of the event which the executive believes constitutes Good Reason within 60 days after the initial existence of the

event, subject to a 30-day cure period in favor of the Company, and if the default is not cured, the executive must terminate within 90 days of the end of the cure period.

- “Change of Control” generally means the occurrence of any of the following events: (i) any person or group (within the meaning of Section 13(d) or 14(d), as applicable, of the Exchange Act) (a “Person”), becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act) of securities representing 50% or more of the voting power of our then outstanding securities (“Company Voting Securities”); (ii) the consummation of a share exchange or a merger or consolidation of the Company, where the Persons who were the beneficial owners of Company Voting Securities outstanding immediately prior to such transaction do not beneficially own more than 50% of the voting securities of the Company or the Acquiring Company (as defined in the applicable agreement) immediately after such transaction in substantially the same proportions as their ownership of Company Voting Securities immediately prior to such transaction; (iii) a sale or other disposition of all or substantially all of our assets; or (iv) such time as the Continuing Directors (as defined in the applicable agreement Severance Plan) do not constitute at least a majority of the Board (or, if applicable, of the board of directors of a successor to the Company).

The table below estimates the amount of compensation and benefits to be provided to each of our named executive officers in the event of termination of such executive’s employment under certain circumstances. These amounts are estimates of the amounts that would be paid or provided to the executives upon termination of employment or a change of control had the termination occurred on September 30, 2023, the last business day of the fiscal year end. The actual amounts can only be determined at the time of such executive’s separation from the Company.

In the table below, the assumed payouts for the accelerated vesting of stock options were calculated by taking the difference between the exercise price of the unvested in-the-money stock option and \$10.72, which was the per share closing price of our common stock on the Nasdaq Capital Market as of September 29, 2023, and multiplying that by the number of stock options which would become vested if the change of control had occurred on September 30, 2023. The assumed payouts for the accelerated vesting of RSUs were calculated by multiplying \$10.72 by the number of shares of common stock underlying RSUs that would have vested if the change of control had occurred on September 30, 2023. These assumed payouts are determined for SEC disclosure purposes only and are not necessarily indicative of the actual benefit the executive would receive.

Name	Benefit	Involuntary Termination by the Company Without Cause or Resignation for Good Reason	Change of Control Termination Without Cause or Resignation for Good Reason
Scipio Maximus Carnecchia	Base Salary	\$ 475,000 (1)	\$ 950,000 (2)
	Equity Plans	—	5,402,172 (3)
	Health Benefits	33,712 (4)	67,423 (5)
Frank Teruel(6)	Base Salary	—	—
	Equity Plans	—	—
	Health Benefits	—	—
Fuad Ahmad	Base Salary	—	—
	Equity Plans	—	—
	Health Benefits	—	—
Scott Carter(7)	Base Salary	390,000 (8)	390,000 —
	Equity Plans	—	1,088,327 (9)
	Health Benefits	—	—
Michael E. Diamond	Base Salary	350,000 (1)	350,000 (1)
	Equity Plans	—	1,121,934 (11)
	Health Benefits	16,918 (4)	16,918 (4)
Christopher Briggs	Base Salary	167,500 (8)	167,500 (8)
	Equity Plans	—	760,938 (12)
	Health Benefits	6,093 (10)	6,093 (10)

- (1) Amount represents 100% of the executive’s annual base salary in effect September 30, 2023, unless otherwise noted. In addition to the amount above, Mr. Carnecchia would be entitled to a lump-sum prorated amount of the target bonus as of his termination date.

- (2) Amount represents twice the amount of the executive's annual base salary in effect at September 30, 2023. In addition to the amount above, Mr. Carnecchia would be entitled to a lump-sum prorated amount of the target bonus as of his termination date.
- (3) Amount represents accelerated vesting of 500,549 unvested RSUs as of September 30, 2023.
- (4) Amount represents estimated payments for continued coverage under the Company's health plans for up to 12 months, unless otherwise noted.
- (5) Amount represents estimated payments for continued coverage under the Company's health plans for up to 24 months.
- (6) Mr. Teruel resigned from the Company effective January 31, 2023 and as no triggering event occurred in connection with his resignation, this reflects what Mr. Teruel actually received.
- (7) Mr. Carter resigned as Executive Chair effective December 1, 2023 and therefore this scenario cannot occur after this date.
- (8) Amount represents 50% of the executive's annual base salary in effect as of September 30, 2023.
- (9) Amount represents accelerated vesting of 101,523 unvested RSUs as of September 30, 2023.
- (10) Amount represents estimated payments for continued coverage under the Company's health plans for up to six months.
- (11) Amount represents accelerated vesting of 104,658 unvested RSUs as of September 30, 2023.
- (12) Amount represents accelerated vesting of 70,983 unvested RSUs as of September 30, 2023.

#### **Compensation Committee Interlocks and Insider Participation**

During the 2023 fiscal year, James C. Hale, Kimberly S. Stevenson, Rahul Gupta and Scott Carter served on the Compensation Committee. Mr. Carter left the Committee in January 2023 when he was appointed to the role of Executive Chair. None of these directors had at any time been an officer of the Company. During the 2023 fiscal year, no interlocking relationship existed between the Board or the Compensation Committee and the board of directors, compensation committee or human resources committee, as appropriate, of any other entity.

#### **Compensation Committee Report**

The Compensation Committee has reviewed and discussed the Compensation Discussion and Analysis required by Item 402(b) of Regulation S-K of the SEC's rules and regulations with management and, based on such review and discussions, the Compensation Committee recommended to the Board that the Compensation Discussion and Analysis be included in this Annual Report on Form 10-K.

##### *Compensation Committee*

James C. Hale  
Kimberly S. Stevenson  
Rahul Gupta

*The foregoing Compensation Committee Report shall not be deemed to be "soliciting material," deemed "filed" with the SEC or subject to the liabilities of Section 18 of the Exchange Act. Notwithstanding anything to the contrary set forth in any of the Company's previous filings under the Securities Act of 1933, as amended, or the Exchange Act that might incorporate by reference future filings, including this Annual Report on Form 10-K, in whole or in part, the foregoing Compensation Committee Report shall not be incorporated by reference into any such filings.*

#### **PEO Pay Ratio**

Pursuant to Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and applicable SEC rules, we have prepared the ratio of the annual total compensation of our PEO to the median employee's annual total compensation. Our PEO on July 31, 2023, the date on which the median employee was calculated, was Scipio Maximus Carnecchia. Mr. Carnecchia's annualized total compensation for 2023 was \$3,214,657. This amount equals Mr. Carnecchia's compensation as reported in the Summary Compensation Table. The median employee's (excluding the PEO) annual total compensation for 2023 was \$66,911. Based on the foregoing, our estimate of the ratio of the annual total compensation of our PEO to the annual total compensation of our median employee was 48 to 1.

The SEC's rules for identifying the median employee and calculating the pay ratio based on that employee's annual total compensation allow companies to choose from a variety of methodologies, to apply certain exclusions and to make reasonable estimates and assumptions that reflect their employee populations and compensation practices. As a result, our pay ratio may not be comparable to the pay ratio reported by other companies.

Our PEO to median employee ratio is a reasonable estimate calculated in a manner that is consistent with SEC rules based on a combination of compensation data from global payroll and human resources records and using the methodology, assumptions and estimates described below.

In identifying our median employee, we used the annual base salary for each employee included in the Company's payroll and other compensation records. All compensation amounts were annualized for permanent employees who did not work for the entire year, such as new hires and employees on paid or unpaid leaves of absence. We did not apply any cost-of-living adjustments nor did we use any form of statistical sampling. We captured employees as of July 31, 2023, consisting of approximately 596 individuals located worldwide (approximately 439 of which are located internationally). We did not exclude any employees from our determination of the median employee.

During fiscal 2023, we paid our non-US employees in local foreign currency, which included Euros, GBPs, Pesos and Rubles. Amounts were converted into U.S. Dollars based on applicable exchange rates as of July 31, 2023 for purposes of calculating the PEO to median employee ratio.

### Compensation of Non-Employee Directors

For the 2023 fiscal year, our non-employee directors were compensated on a retainer-based model. We also reimburse our non-employee directors for their reasonable expenses incurred in attending Board and committee meetings. Members of the Board who are also employees of the Company receive no compensation for their services as a director. Our non-employee directors are also eligible to participate in the Mitek Systems, Inc. Directors Deferral Plan (the "Deferral Plan") pursuant to which they may make an irrevocable election to defer a portion of their equity pay, subject to rules and minimum and/or maximum deferrals set forth in the Deferral Plan.

The following table sets forth summary information concerning compensation paid or accrued for services rendered to us by members of the Board in their capacities as such, for the fiscal year ended September 30, 2023:

Name(1)	Fees Earned or Paid in Cash (\$)(2)	Stock Awards (3)	All Other Compensation (\$)	Total Compensation (\$)
Scott Carter	\$ 15,694	\$ —	\$ —	\$ 15,694
Rahul Gupta	\$ 50,000	\$ —	\$ —	\$ 50,000
James C. Hale	\$ 50,000	\$ —	\$ —	\$ 50,000
Bruce E. Hansen	\$ 70,403	\$ —	\$ —	\$ 70,403
Susan J. Repo	\$ 62,500	\$ —	\$ —	\$ 62,500
Kimberly S. Stevenson	\$ 67,792	\$ —	\$ —	\$ 67,792
Donna C. Wells	\$ 55,000	\$ —	\$ —	\$ 55,000

- (1) Scipio Maximus Carnecchia, a director, our Chief Executive Officer and named executive officer, is not included in this table as he was an employee of the Company and therefore received no compensation for his service as a director. Mr. Carnecchia's compensation is included in the "Summary Compensation Table" above.
- (2) Except as noted, this amount reflects an annual retainer, which is paid on a quarterly basis, of \$50,000. The amount for (a) Mr. Carter is prorated from October 2022 through January 23, 2023 as Mr. Carter served as Executive Chair of the Company for the remainder of the fiscal year, (b) Mr. Hansen includes an additional \$20,403 for his role as Chairman of the Board for part of fiscal 2023, (c) Ms. Repo contains an additional \$12,500 for her role as chair of the Audit Committee for fiscal 2023, (d) Ms. Stevenson contains an additional \$7,500 for her role as chair of the Compensation Committee, and an additional \$10,292 for her role as Lead Independent Director for part of fiscal year 2023, (e) Ms. Wells contains an additional \$5,000 for her role as chair of the Nomination and Corporate Governance Committee for fiscal 2023.
- (3) The amounts shown under the "Stock Awards" column represent the aggregate grant date fair value of stock options and restricted stock units granted to each non-employee director computed in accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 718, *Compensation—Stock Compensation*. A discussion of the assumptions used in calculating the grant date fair value is set forth in Note 7 of the accompanying notes to our consolidated financial statements included in this Form 10-K. The Company typically grants equity to our independent directors on an annual basis at the conclusion of our annual stockholder meeting. Due to a delay in holding our 2023 Annual Stockholder meeting, no equity grants were made to independent directors during fiscal year 2023.

### Director Stock Ownership Requirements

The Board has stock ownership requirements designed to further link the interests of our Board with that of our stockholders. These requirements provide that each of our independent directors must have equity positions in the Company with a value equal to five times his or her annual retainer amount. Direct and indirect stock ownership, including the vested in-the-money portion of any stock options held by the independent director, are included in determining each director's equity position. Each independent director has five years to achieve the target ownership level. A director who fails to meet the ownership guidelines within the five-year period will not be eligible for new equity awards until the director achieves his or her prescribed ownership level. As of the end of the 2023 fiscal year, all directors who have served on the Board for five years or more were in compliance with this policy.

## ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS.

The following table presents information concerning the beneficial ownership of the shares of our common stock as of February 15, 2024, by:

- each person we know to be the beneficial owner of 5% or more of our outstanding shares of common stock;
- our named executive officers;
- our current directors; and
- all of our current executive officers and directors as a group.

Information with respect to beneficial ownership is based solely on a review of our capital stock transfer records and on publicly available filings made with the SEC by or on behalf of the stockholders listed below. The address for all executive officers and directors is Mitek Systems, Inc., 600 B Street, Suite 100, San Diego, California 92101.

Percentage of beneficial ownership is calculated based on the 46,790,611 shares of common stock outstanding on February 15, 2024. Beneficial ownership is determined in accordance with the rules of the SEC which generally attribute beneficial ownership of securities to persons who possess sole or shared voting or investment power with respect to those securities and includes shares of our common stock issuable pursuant to the exercise of stock options or other securities that are exercisable or convertible into shares of our common stock within 60 days of February 15, 2024. We did not deem these shares outstanding, however, for the purpose of computing the percentage ownership of any other person. Except as indicated by the footnotes below, we believe, based on the information available to us, that the persons and entities named in the table below have sole voting and investment power with respect to all shares of common stock shown as beneficially owned by them, subject to applicable community property laws. The Company is not aware of any arrangements that have resulted, or may at a subsequent date result, in a change of control of the Company.

Name of Beneficial Owner or Identity of Group	Beneficial Ownership of Common Stock	
	Number of Shares	Percent of Class
<b>Greater than 5% Stockholders</b>		
Blue Grotto Capital, LLC	3,436,070 (1)	7.3 %
BlackRock, Inc.	3,735,346 (2)	8.0 %
GO ETF Solutions LLP	2,988,407 (3)	6.4 %
The Vanguard Group	3,379,226 (4)	7.2 %
Legal & General Investment Management Limited	3,045,287 (5)	6.5 %
<b>Named Executive Officers</b>		
Scipio Maximus Carnecchia	1,231,441 (6)	2.6 %
Frank Teruel	13,512 (7)	*
Fuad Ahmad	—	*
Scott Carter	70,275 (8)	*
Michael Diamond	198,711 (9)	*
Christopher Briggs	92,444 (10)	*
<b>Directors</b>		
Rahul Gupta	36,234 (11)	*
James C. Hale	216,557 (12)	*
Susan J. Repo	29,639 (13)	*
Kimberly S. Stevenson	34,864 (14)	*
Donna C. Wells	55,391 (15)	*
Directors and Current Executive Officers as a Group (11 individuals)	2,181,230 (16)	4.5 %

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\* Less than 1%.

- (1) Consists of shares of common stock held by Blue Grotto Capital, LLC, located at 2000 Riveredge Parkway, Suite 500, Atlanta, GA 30328. The ownership information for Blue Grotto Capital, LLC (“Blue Grotto”) is based on information supplied by Blue Grotto in a statement on a Schedule 13G/A filed with the SEC on February 13, 2024. Blue Grotto holds the shares in its capacity as a registered investment advisor on behalf of numerous investment advisory clients, none of which is known to own more than five percent of our shares. Blue Grotto has sole voting power and dispositive power over 3,436,070 shares of common stock.
- (2) Consists of shares of common stock held by BlackRock, Inc. (“BlackRock”), located at 55 East 52nd Street, New York, NY 10055. BlackRock holds the shares in its capacity as a registered investment advisor on behalf of numerous investment advisory clients, none of which is known to own more than five percent of our shares. BlackRock has sole voting power over 3,688,523 shares and sole dispositive power over 3,735,346 shares. This information is based on a Schedule 13G/A filed on January 25, 2024 with the SEC.
- (3) Consists of shares of common stock held by Go UCITS ETC Solutions PLC (“Go ETF Solutions”), located at 2 Grand Canal Square, Dublin 2, Ireland. Go ETF Solutions is organized as an open-ended investment company with variable capital. Go ETF Solutions is structured as an umbrella fund and is comprised of separate sub-funds. Go ETF Solutions LLP and Legal & General Investment Management Limited, each located at One Coleman Street, London, EC2R 5AA (collectively, the “ETF Investment Managers”) are the investment managers for each of the funds. Go ETF Solutions and the Investment Managers hold shared voting power over the 2,988,407 shares of common stock and Go ETF Solutions LLP has sole dispositive power over such shares. This information is based on a Schedule 13G filed on February 11, 2021 with the SEC.
- (4) Consists of shares of common stock held by The Vanguard Group, located at 100 Vanguard Blvd., Malvern, PA 19355. The ownership information for The Vanguard Group, Inc. (“Vanguard”) is based on information supplied by Vanguard in a statement on a Schedule 13G/A filed with the SEC on February 13, 2024. Vanguard holds the shares in its capacity as a registered investment advisor on behalf of numerous investment advisory clients, none of which is known to own more than five percent of our shares. Vanguard has shared voting power over 75,485 shares of common stock, sole dispositive power over 3,264,524 shares owned, and shared dispositive power over 114,702 shares owned.
- (5) Legal & General Investment Management Limited (“Legal & General”) is a discretionary investment manager authorized and regulated by the UK financial conduct authority. Legal & General UCITS ETF Plc (the “L&G Company”) is organized as an open-ended investment company with variable capital structured as an umbrella fund and comprised of separate sub-funds. The L&G Company has segregated liability between its funds and is organized under the laws of Ireland as a public limited company pursuant to the Companies Act (2014) (as amended) (the “Companies Act”). The L&G Company has entered into a management agreement with LGIM Managers (Europe) Limited under which the manager is responsible for the management of the L&G Company’s affairs. LGIM Managers (Europe) Limited is a limited liability company incorporated in Ireland and authorized by the Central Bank of Ireland as a super manco. LGIM Managers (Europe) Limited has appointed Legal & General as the investment manager for each of the funds. Legal & General reported that it had shared voting power and sole power to dispositive power over 3,045,287 shares. Each of L&G Company and LGIM Managers (Europe) Limited reported that it had shared voting power over 3,045,287 shares. The business address of Legal & General is One Coleman Street, London, EC2R 5AA, UK, and the business address of L&G Company and LGIM Managers Europe is 70 Sir John Rogersons Quay, Dublin 2, Ireland. This information is based on a Schedule 13G/A filed on February 13, 2024 with the SEC.
- (6) Comprised of (a) 259,262 shares of common stock held directly and (b) 972,179 shares of common stock issuable pursuant to stock options exercisable within 60 days of February 15, 2024.
- (7) Comprised of 13,512 shares of common stock held directly.
- (8) Comprised of 70,275 shares of common stock held directly.
- (9) Comprised of 198,711 shares of common stock held directly.
- (10) Comprised of (a) 23,602 shares of common stock held directly and (b) 68,842 shares of common stock issuable pursuant to stock options exercisable within 60 days of February 15, 2024.
- (11) Comprised of (a) 12,068 shares of common stock held directly and (b) 24,166 shares of common stock issuable pursuant to stock options exercisable within 60 days of February 15, 2024.
- (12) Comprised of (a) 162,459 shares of common stock held directly, (b) 40,000 shares of common stock issuable pursuant to stock options exercisable within 60 days of February 15, 2024, and (c) 14,098 shares of common stock subject to RSUs that may become issuable within 60 days of February 15, 2024.
- (13) Comprised of (a) 15,541 shares of common stock held directly and (b) 14,098 shares of common stock subject to RSUs that may become issuable within 60 days of February 15, 2024.

- (14) Comprised of (a) 20,766 shares of common stock held directly and (b) 14,098 shares of common stock subject to RSUs that may become issuable within 60 days of February 15, 2024.
- (15) Comprised of (a) 41,293 shares of common stock held directly and (b) 14,098 shares of common stock subject to RSUs that may become issuable within 60 days of February 15, 2024.
- (16) Comprised of shares included under “Named Executive Officers” and “Directors”, other than Messrs. Teruel and Ahmad and includes Messrs. Lyle and Gray and collectively consists of 956,477 shares of common stock held directly, (b) 1,144,195 shares of common stock issuable pursuant to stock options exercisable within 60 days of February 15, 2024, and (c) 80,558 shares of common stock subject to RSUs that may become issuable within 60 days of February 15, 2024.

#### Securities Authorized for Issuance Under Equity Compensation Plans

The following table sets forth certain information regarding our equity compensation plans as of September 30, 2023, with respect to the shares of common stock that may be issued upon the exercise of options under our existing equity compensation plans and arrangements in effect as of September 30, 2023. The information includes the number of shares covered by and the weighted average exercise price of, outstanding options and the number of shares remaining available for future grant, excluding the shares to be issued upon exercise of outstanding options.

	Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted-average exercise price of outstanding options, warrants and rights (b)(1)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c)(2)(3)
Equity compensation plans approved by security holders (4)	4,369,958	\$ 8.54	1,695,918
Equity compensation plans not approved by security holders (5)	317,609		
Total	4,687,567		

- (1) The weighted-average exercise price does not take into account 2,188,296 shares of common stock issuable upon vesting of outstanding RSUs, which have no exercise price.
- (2) Represents (i) 1,425,042 shares of common stock available for future awards under the 2020 Plan as of September 30, 2023 and (ii) 270,876 shares of common stock available for future award under the Employee Stock Purchase Plan (“ESPP”) as of September 30, 2023.
- (3) Under the 2020 Plan: (i) every share issued to a participant pursuant to the exercise of a stock option or SAR shall reduce the share reserve by one share and (ii) every share issued to a participant pursuant to an award other than a stock option or SAR shall reduce the share reserve by 1.25 shares.
- (4) Comprised of awards granted under the 2002 Stock Option Plan, the 2006 Stock Option Plan, the 2010 Stock Option Plan and the Amended and Restated 2012 Incentive Plan (the “Prior Plans”), the 2020 Plan, the Director Plan, and the ESPP. There were no awards granted under the Prior Plans after the approval of the 2020 Plan by the Company’s stockholders on March 4, 2020. Stock options granted under the Current Plans that were outstanding at such date remain in effect until such options are exercised or expire.
- (5) Comprised of the following, each of which was granted as a material inducement to accept employment with the Company and in accordance with Nasdaq Listing Rule 5635(c)(4): (i) restricted stock units for 129,204 shares of the Company’s common stock, which shall vest over a four year period with 25% of the shares subject thereto vesting on each anniversary of the grant date, (ii) restricted stock units for 119,634 shares of the Company’s common stock, which may vest up to 25% of the shares subject thereto on the first anniversary of the grant date, and up to 25% of the shares subject thereto at the end of each of the Company’s next three fiscal years subject to the achievement of the annual performance criteria which is based on the actual revenue achieved by HooYu as compared to the corresponding period for the prior year, (iii) 29,474 shares of the Company’s common stock, which shall vest over a four year period with 25% of the shares subject thereto vesting on each anniversary of the grant date, (iv) 29,474 shares of the Company’s common stock, which shall vest up to 33.33% of the shares subject thereto on each anniversary of the grant date, subject to the achievement of the annual performance criteria which is based on the percentage increase in value of the Company’s common stock as compared to the percentage increase in value of the Russell 2000 Index over the applicable annual performance period, and (v) 9,823 shares of the Company’s common stock, which shall vest up to 33.33% of the shares subject thereto on each anniversary of the grant date if the annual performance

criteria (which is based on the percentage increase in value of the Company's common stock as compared to the percentage increase in value of the Russell 2000 Index) for the applicable performance period has been exceeded.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE.**

**Certain Relationships and Related Party Transactions**

None.

**Procedures for Approving Related Party Transactions**

Under its charter, the Audit Committee is charged with reviewing and approving all potential related party transactions. All such related party transactions are then required to be reported under applicable SEC rules. Other than as may be required by the Audit Committee's charter, we have not adopted additional procedures for review of, or standards for approval of, related party transactions but instead review such transactions on a case-by-case basis.

**Board Independence**

The Board is responsible for establishing corporate policies and for the overall performance of the Company, although it is not involved in day-to-day operations. As required under Nasdaq listing standards, a majority of the members of a listed company's board of directors must qualify as "independent," as affirmatively determined by the company's board of directors. The Board consults with our legal counsel to ensure that the Board's determinations regarding the independence of our directors are consistent with all relevant securities and other laws and regulations regarding the definition of "independent," including those set forth in applicable Nasdaq listing standards, as in effect from time to time. Consistent with these considerations, after review of all relevant transactions or relationships between each director (or former director, as applicable), or any of his or her family members, and the Company, our senior management and our independent auditors, the Board has determined that all of our directors other than Mr. Carnecchia (who is employed as an executive officer of the Company) are independent, in each case as defined in Nasdaq Listing Rule 5605(a)(2). In addition, the Board has determined that the members of the Audit Committee meet the additional independence criteria required for audit committee membership.

**ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES.**

**Independent Registered Public Accounting Firm Fee Information**

The following table sets forth the aggregate fees billed by BDO for the services indicated for the fiscal years ended September 30, 2023 and 2022. All fees described below were approved by the Audit Committee.

	September 30, 2023	September 30, 2022
Audit Fees <sup>(1)</sup>	\$ 5,089,000	\$ 5,541,000
Audit-Related Fees <sup>(2)</sup>	260,000	188,000
Tax Fees	—	—
All Other Fees	—	—
<b>Total Fees</b>	<b>\$ 5,349,000</b>	<b>\$ 5,729,000</b>

- (1) This category represents fees paid to BDO for (i) the audits of our annual financial statements for the fiscal years ended September 30, 2023 and 2022, included in our annual report on Form 10-K; (ii) the quarterly reviews of our unaudited interim period financial statements during fiscal 2023, included in our quarterly reports on Form 10-Q for such periods and the review of our unaudited interim period financial statements for the quarter ended June 30, 2022, included in our quarterly report on Form 10-Q for such period; (iii) the audits of our internal control over financial reporting for the fiscal years ended September 30, 2023 and 2022; and (iv) the services that are normally provided by BDO in connection with statutory and regulatory filings or engagements.
- (2) This category represents fees for assurance and related services that are reasonably related to the performance of the audit or review of our financial statements and are not reported under Audit Fees. This category includes fees related to audit and attest services not required by statute or regulations, due diligence related to mergers, acquisitions and investments and consultations concerning financial accounting and reporting standards.

The following table sets forth the aggregate fees billed by Mayer Hoffman McCann P.C. for the services indicated for the fiscal years ended September 30, 2023 and 2022. All fees described below were approved by the Audit Committee.





	September 30, 2023	September 30, 2022
Audit Fees <sup>(1)</sup>	\$ —	\$ 109,296
Audit-Related Fees <sup>(2)</sup>	160,500	160,500
Total Fees	<u>\$ 160,500</u>	<u>\$ 269,796</u>

- (1) This category represents fees paid to Mayer Hoffman for (i) the review of our unaudited interim period financial statements for the fiscal year ended September 30, 2022, and for the quarterly periods ended December 31, 2021 and March 31, 2022, in each case included in our quarterly reports on Form 10-Q for such periods; (ii) the services that are normally provided by Mayer Hoffman in connection with statutory and regulatory filings or engagements.
- (2) This category represents fees paid to Mayer Hoffman for procedures performed related to the issuance of their consent which is included in our Annual Report on Form 10-K for the periods ending September 30, 2023 and 2022.

#### Auditor Independence

During our fiscal year ended September 30, 2023, there were no other professional services provided by BDO or Mayer Hoffman McCann P.C., other than those described above, that would have required our audit committee to consider their compatibility with maintaining the independence of BDO or Mayer Hoffman McCann P.C. Substantially all of Mayer Hoffman McCann P.C.'s personnel, who work under the control of Mayer Hoffman McCann's shareholders, are employees of wholly-owned subsidiaries of CBIZ, Inc., which provides personnel and various services to Mayer Hoffman McCann P.C. in an alternative practice structure.

#### Audit and Non-Audit Services Pre-Approval Policies

The Audit Committee has established policies and procedures by which it approves in advance any audit and permissible non-audit services to be provided by our independent registered public accounting firm. Under these policies and procedures, prior to the engagement of the independent registered public accounting firm for pre-approved services, requests or applications for the independent registered public accounting firm to provide services must be submitted to the Audit Committee and must include a detailed description of the services to be rendered. Our Chief Financial Officer and the independent registered public accounting firm must ensure that the independent registered public accounting firm is not engaged to perform the proposed services unless those services are within the list of services that have received the Audit Committee's pre-approval, and must cause the Audit Committee to be informed in a timely manner of all services rendered by the independent registered public accounting firm and the related fees.

Each request or application must include:

- a recommendation by our Chief Financial Officer as to whether the Audit Committee should approve the request or application; and
- a joint statement of our Chief Financial Officer and the independent registered public accounting firm as to whether, in their view, the request or application is consistent with the SEC's requirements for auditor independence of the Public Company Accounting Oversight Board (the "PCAOB").

The Audit Committee also will not permit the independent registered public accounting firm to be engaged to provide any services to the extent that the SEC has prohibited the provision of those services by an independent registered public accounting firm, which generally include:

- bookkeeping or other services related to accounting records or financial statements;
- financial information systems design and implementation;
- appraisal or valuation services, fairness opinions or contribution-in-kind reports;
- actuarial services;
- internal audit outsourcing services;
- management functions;
- human resources;
- broker-dealer, investment adviser or investment banking services;
- legal services;
- expert services unrelated to the audit; and
- any service that the PCAOB determines is not permissible.

All fees paid to BDO and Mayer Hoffman McCann P.C. for our fiscal year ended September 30, 2023 and 2022, were pre-approved by our Audit Committee.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.

(a)(1) Financial Statements

The Financial Statements of Mitek Systems, Inc. and Reports of Independent Registered Public Accounting Firm are included in a separate section of this Form 10-K beginning on page F-1.

(a)(2) Financial Statement Schedules

These schedules have been omitted because the required information is included in the financial statements or notes thereto or because they are not applicable or not required.

(a)(3) Exhibits

Exhibit No.	Description	Incorporated by Reference from Document
2.1**	<a href="#"><u>Share Purchase Agreement, dated May 26, 2015, by and among Mitek Systems, Inc., ID Checker NL B.V., ID Checker Holding B.V., Stichting Administratiekantoor OPID, Pierre L.M. deBoer, and Michael Hagen.</u></a>	(1)
2.2**	<a href="#"><u>Share Purchase Agreement, dated October 16, 2017, by and among Mitek Systems, Inc., Mitek Holding B.V., and the shareholders of ICAR Vision Systems, S.L.</u></a>	(2)
2.3**	<a href="#"><u>Share Purchase Agreement, dated May 23, 2018, by and among Mitek Systems, Inc., the shareholders of A2iA Group II, S.A.S. and Andera Partners, S.C.A., as representative of the Sellers.</u></a>	(3)
2.4**+	<a href="#"><u>Agreement and Plan of Merger, dated as of May 28, 2021, by and among Mitek Systems, Inc., Ibis Merger Sub, Inc., ID R&amp;D, Inc. and Alexey Khitrov, solely in his capacity as representative of the equityholders of ID R&amp;D, Inc.</u></a>	(4)
2.5**	<a href="#"><u>Purchase Agreement, dated March 23, 2022, by and among the persons whose names and addresses are set out in Schedule I and Mitek Systems, Inc.</u></a>	(5)
3.1	<a href="#"><u>Restated Certificate of Incorporation of Mitek Systems, Inc., as amended.</u></a>	(6)
3.2	<a href="#"><u>Certificate of Amendment of Restated Certificate of Incorporation of Mitek Systems, Inc.</u></a>	(7)
3.3	<a href="#"><u>Third Amended and Restated Bylaws of Mitek Systems, Inc.</u></a>	*
3.4	<a href="#"><u>Certificate of Designation of Series B Junior Participating Preferred Stock.</u></a>	(8)
4.1	<a href="#"><u>Description of Equity Securities Registered under Section 12 of the Exchange Act.</u></a>	(9)
10.1	<a href="#"><u>Mitek Systems, Inc. 2002 Stock Option Plan and the forms of agreement related thereto.</u></a>	(10)
10.2	<a href="#"><u>Mitek Systems, Inc. 2006 Stock Option Plan and the forms of agreement related thereto.</u></a>	(11)
10.3	<a href="#"><u>Mitek Systems, Inc. 2010 Stock Option Plan and the forms of agreement related thereto.</u></a>	(12)
10.4	<a href="#"><u>Amended and Restated Mitek Systems, Inc. 2012 Incentive Plan and the forms of agreement related thereto.</u></a>	(13)
10.5	<a href="#"><u>Mitek Systems, Inc. Amended and Restated 2020 Incentive Plan and the forms of agreement related thereto.</u></a>	(14)
10.6	<a href="#"><u>Mitek Systems, Inc. Director Restricted Stock Unit Plan, as amended, and the forms of agreement related thereto.</u></a>	(13)

10.7	<a href="#">Mitek Systems, Inc. 401(k) Savings Plan.</a>	(15)
10.8#	<a href="#">Executive Employment Agreement, dated November 6, 2018, between Mitek Systems, Inc. and Scipio “Max” Carnecchia.</a>	(16)
10.10#	<a href="#">Offer Letter, dated June 6, 2012, by and between Mitek Systems, Inc. and Michael Diamond.</a>	(15)
10.13#	<a href="#">Executive Severance and Change of Control Plan, dated August 10, 2017, by and between Mitek Systems, Inc. and Michael Diamond.</a>	(18)
10.14#	<a href="#">Stock Option Agreement, dated as of November 6, 2018, between Scipio “Max” Carnecchia and Mitek Systems, Inc.</a>	(16)
10.15#	<a href="#">Conditional Stock Option Agreement, dated November 6, 2018, by and between Scipio “Max” Carnecchia and Mitek Systems, Inc.</a>	(16)
10.16#	<a href="#">Performance Stock Option Agreement, dated as of November 6, 2018, between Scipio “Max” Carnecchia and Mitek Systems, Inc.</a>	(16)
10.17#	<a href="#">Restricted Stock Unit Award Agreement, dated as of November 6, 2018, between Scipio “Max” Carnecchia and Mitek Systems, Inc.</a>	(16)
10.18#	<a href="#">Conditional Restricted Stock Unit Award Agreement, dated November 6, 2018, between Scipio “Max” Carnecchia and Mitek Systems, Inc.</a>	(16)
10.19#	<a href="#">Form of Executive Severance and Change of Control Plan.</a>	(18)
10.2#	<a href="#">Form of Indemnification Agreement.</a>	(6)
10.21#	<a href="#">Mitek Systems, Inc. Executive Bonus Program Fiscal Year 2020.</a>	(20)
10.22#	<a href="#">Mitek Systems, Inc. Cash Incentive Program Fiscal 2021.</a>	(17)
10.23#	<a href="#">Mitek Systems, Inc. Annual Incentive Program Fiscal 2022.</a>	(19)
10.24#	<a href="#">Mitek Systems, Inc. Annual Incentive Program Fiscal 2023.</a>	(26)
10.25#	<a href="#">Mitek Systems, Inc. Annual Incentive Program Fiscal 2024.</a>	*
10.26#	<a href="#">Mitek Systems, Inc. Employee Stock Purchase Plan</a>	(21)
10.27	<a href="#">Sublease, dated August 12, 2016, by and between Bridgepoint Education, Inc. and Mitek Systems, Inc.</a>	(22)
10.28	<a href="#">Lease, dated October 5, 2017, by and between 600 B Street San Diego Owner, LLC and Mitek Systems, Inc.</a>	(23)
10.29	<a href="#">Indenture, dated as of February 5, 2021, between Mitek Systems, Inc. and UMB Bank, National Association.</a>	(24)
10.30	<a href="#">Offer Letter, dated December 1, 2023, by and between Mitek Systems, Inc. and David Lyle.</a>	*
10.31	<a href="#">Loan and Security Agreement, dated February 13, 2024, by and among Silicon Valley Bank, Mitek Systems, Inc. A2IA Corp and ID R&amp;D, Inc.</a>	(25)
21.1	<a href="#">List of Subsidiaries</a>	*
23.1	<a href="#">Consent of BDO USA, P.C.</a>	*
23.2	<a href="#">Consent of Mayer Hoffman McCann P.C.</a>	*

24.1	<a href="#">Power of Attorney (included on the signature page).</a>	*
31.1	<a href="#">Certification of Chief Executive Officer Pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934.</a>	*
31.2	<a href="#">Certification of Chief Financial Officer Pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934.</a>	*
32.1	<a href="#">Certification Chief Executive Officer and Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>	*
97*	<a href="#">Mitek Systems, Inc. Clawback Policy</a>	*
101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.	*
101.SCH	XBRL Taxonomy Extension Schema Document.	*
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.	*
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.	*
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.	*
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.	*

- \* Filed herewith.
- \*\* Non-material schedules and exhibits to this agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company hereby undertakes to furnish supplemental copies of any of the omitted schedules and exhibits upon request by the SEC.
- + Non-material schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby undertakes to furnish supplemental copies of any of the omitted schedules and exhibits upon request by the SEC.
- # Management contract, compensatory plan arrangement.
- (1) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 17, 2015.
- (2) Incorporated by reference to the Company's Current Report on Form 8-K/A filed with the SEC on October 20, 2017.
- (3) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on May 23, 2018.
- (4) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 1, 2021.
- (5) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 23, 2022.
- (6) Incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2014 filed with the SEC on December 5, 2014.
- (7) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 8, 2022.
- (8) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on October 23, 2018.
- (9) Incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2020 filed with the SEC on December 7, 2020.
- (10) Incorporated by reference to the exhibits to the Company's Registration Statement on Form S-8 filed with the SEC on July 7, 2003.
- (11) Incorporated by reference to the exhibits to the Company's Registration Statement on Form S-8 filed with the SEC on May 3, 2006.
- (12) Incorporated by reference to the exhibits to the Company's Registration Statement on Form S-8 filed with the SEC on March 14, 2011.
- (13) Incorporated by reference to the exhibits to the Company's Registration Statement on Form S-8 filed with the SEC on August 16, 2017.
- (14) Incorporated by reference to the exhibits to the Company's Current Report on Form 8-K filed with the SEC on October 3, 2023.
- (15) Incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2013 filed with the SEC on December 12, 2013.
- (16) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on November 7, 2018.
- (17) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on January 25, 2021.
- (18) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 11, 2017.
- (19) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on November 21, 2016.
- (20) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 15, 2023.
- (21) Incorporated by reference to the Company's Registration Statement on Form S-8 filed with the SEC on March 22, 2018.
- (22) Incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2016 filed with the SEC on December 9, 2016.
- (23) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on October 10, 2017.
- (24) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on February 5, 2021.
- (25) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on February 14, 2024.
- (26) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 15, 2023.

**ITEM 16. FORM 10-K SUMMARY.**

None.

**SIGNATURES**

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

March 19, 2024

MITEK SYSTEMS, INC.

By: /s/ Scipio Maximus Carnecchia  
Scipio Maximus Carnecchia  
Chief Executive Officer  
(Principal Executive Officer)

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby severally constitutes and appoints Scipio Maximus Carnecchia, Fuad Ahmad and Jason Gray his or her true and lawful agent and attorney-in-fact, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments to this report, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorney-in-fact full power and authority to do and perform each and every act and thing requisite or necessary fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

<u>/s/ Scipio Maximus Carnecchia</u> Scipio Maximus Carnecchia	Chief Executive Officer, Director (Principal Executive Officer)	March 19, 2024
<u>/s/ David Lyle</u> David Lyle	Chief Financial Officer (Principal Financial and Accounting Officer)	March 19, 2024
<u>/s/ Scott Carter</u> Scott Carter	Chair of the Board of Directors	March 19, 2024
<u>/s/ Rahul Gupta</u> Rahul Gupta	Director	March 19, 2024
<u>/s/ James C. Hale</u> James C. Hale	Director	March 19, 2024
<u>/s/ Susan J. Repo</u> Susan J. Repo	Director	March 19, 2024
<u>/s/ Kimberly S. Stevenson</u> Kimberly S. Stevenson	Director	March 19, 2024
<u>/s/ Donna Wells</u> Donna Wells	Director	March 19, 2024

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**MITEK SYSTEMS, INC.**

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## Report of Independent Registered Public Accounting Firm

Shareholders and Board of Directors  
Mitek Systems, Inc.  
San Diego, California

### Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Mitek Systems, Inc. (the “Company”) as of September 30, 2023 and 2022, the related consolidated statements of operations and other comprehensive income (loss), stockholders’ equity, and cash flows for each of the two years in the period ended September 30, 2023, 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 September 30, 2023 and 2022, and the results of its operations and its cash flows for each of the two years in the period ended September 30, 2023, in conformity with accounting principles generally accepted in the United States of America.

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 September 30, 2023, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”) and our report dated March 19, 2024 expressed an adverse opinion thereon.

### Basis for Opinion

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated 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 consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

### Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the consolidated financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters 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 matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

#### *Revenue Recognition – Determination of Distinct Performance Obligations*

As described in Note 2 to the consolidated financial statements, the Company recorded total revenues of \$172.6 million for the year ended September 30, 2023. The Company derives revenue from the following sources: (i) software licenses, (ii) SaaS products and services (iii) maintenance associated with the sale of on-premise software licenses, (iv) professional services, and (v) sale of hardware. The Company enters into contracts with its customers, which frequently contain multiple performance obligations. The Company accounts for individual products and services separately if they are distinct, that is, if a product or service is separately identifiable from other items in the contract and if a customer can benefit from it on its own or with other resources that are readily available to the customer.

We identified the determination of distinct performance obligations as a critical audit matter. Significant judgment can be required to determine the performance obligations in a contract and whether they are distinct. Auditing these aspects involved especially challenging auditor judgment, due to the nature and extent of audit effort required to address these matters.

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

- Evaluating management’s accounting policies and practices including management’s judgments and assumptions relating to the evaluation of performance obligations and whether they are distinct or non-distinct.
- Testing a sample of revenue contracts and underlying order documents to evaluate management’s identification of distinct performance obligations in revenue contracts.

/s/ BDO USA, P.C.

We have served as the Company's auditor since 2022.

Troy, Michigan

March 19, 2024

#### **Report of Independent Registered Public Accounting Firm**

Shareholders and Board of Directors

Mitek Systems, Inc.

San Diego, California

#### **Opinion on Internal Control over Financial Reporting**

We have audited Mitek Systems, Inc. and subsidiaries (the “Company’s”) internal control over financial reporting as of September 30, 2023, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (the “COSO criteria”). In our opinion, the Company did not maintain, in all material respects, effective internal control over financial reporting as of September 30, 2022, based on the COSO criteria.

We do not express an opinion or any other form of assurance on management’s statements referring to any corrective actions taken by the Company after the date of management’s assessment.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”), the consolidated balance sheet of the Company as of September 30, 2023, the related consolidated statements of operations and other comprehensive income (loss), stockholders’ equity, and cash flows for each of the two years in the period ended

September 30, 2023, and the related notes (collectively referred to as “the financial statements”) and our report dated March 19, 2024 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 Item 9A, Management’s 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 U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

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

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company’s annual or interim financial statements will not be prevented or detected on a timely basis. Material weaknesses were identified regarding the following:

1. Management did not design and maintain effective controls related to the precision of the Company’s review over the initial valuation and subsequent remeasurement of the contingent consideration liability recognized as part of the consideration transferred in the ID R&D Acquisition.
2. Management did not have sufficient internal technical resources, or adequate oversight of the Company’s third-party tax advisor, to appropriately identify, evaluate, and review certain inputs and assumptions that affect the US, foreign, and consolidated tax accounts.
3. Management did not maintain effective controls related to the financial statement close process to ensure the completeness and accuracy of certain amounts and disclosures, specifically related to balance sheet account reconciliations and the Company’s review and preparation of the consolidation and financial statements.
4. Management did not design or maintain effective controls over the review of the accounting for business combinations, including accounting for transaction costs and deferred taxes. This material weakness resulted in a restatement to the second quarter of fiscal 2022.
5. Management did not design and maintain effective controls to ensure proper revenue recognition, specifically related to the accounting review of customer contracts.
6. Management did not perform sufficient risk assessment procedures in order to design and implement effective controls, including consideration of improper segregation of duties, for substantially all of the Company’s financial statement areas.
7. Management did not design or maintain effective information technology general controls over logical access and program change management for certain key information systems used in the financial reporting process.
8. Management did not design or maintain controls to verify the completeness and accuracy of information used by control owners in the operation of controls across substantially all of the Company’s financial statement areas.
9. Management did not maintain sufficient evidence of the operation of certain management review controls and activity level controls across substantially all of the Company’s financial statement areas.
10. Management did not perform timely and ongoing evaluations to ascertain whether components of internal control are present and functioning.

These material weaknesses were considered in determining the nature, timing, and extent of audit tests applied in our audit of the 2023 financial statements, and this report does not affect our report dated March 19, 2024 on those financial statements.

### **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/ BDO USA, P.C.  
Troy, Michigan  
March 19, 2024

## **Report of Independent Registered Public Accounting Firm**

To the Board of Directors and  
Stockholders of Mitek Systems, Inc.:

### **Opinion on the Financial Statements**

We have audited the accompanying consolidated statements of operations and other comprehensive income (loss), stockholders' equity, and cash flows of Mitek Systems, Inc. (the "Company") for the year ended September 30, 2021, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the results of the Company's operations and its cash flows for the year ended September 30, 2021, in conformity with accounting principles generally accepted in the United States of America.

### **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 audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our 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 the financial statements are free of material misstatement, whether due to error or fraud. Our audit 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 audit 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 audit provides a reasonable basis for our opinion.

### **Critical Audit Matters**

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

#### ***Valuation of Acquired Intangible Assets and Contingent Consideration***

As described in Note 3 to the financial statements, in May 2021, the Company completed the acquisition of ID R&D, Inc. for an aggregate total purchase price of \$42.3 million which included contingent consideration with an estimated fair value of \$15.7 million, payable from the Company upon the achievement of certain milestones. Completed technology and customer relationship intangible assets with an estimated fair value of \$14.0 million and \$2.5 million, respectively, were also acquired. The transaction was accounted for as a business combination.

We identified the valuation of the contingent consideration and acquired intangible assets as a critical audit matter. The principal consideration for this determination was the degree of judgment involved by management in developing the assumptions and the inputs to the valuation models used to measure the fair value of these intangible assets and contingent consideration, as well as the sensitivity of the respective fair values to the underlying significant assumptions. In particular, such assumptions included revenue growth rates, forecasted operating costs, weighted-average cost of capital, and debt free working capital to measure the fair value of the intangible assets. The significant assumptions used to estimate the fair value of the contingent consideration included revenue growth rates, discount for lack of marketability, weighted-average cost of capital, and volatility. Therefore, subjective and complex auditor judgment was necessary in evaluating the reasonableness of the significant assumptions and the application of those assumptions within the valuation models used.

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

- Obtaining an understanding, evaluating the design, and testing the operating effectiveness of internal controls over the Company's process for developing the estimate of fair value for acquired intangible assets and contingent consideration.
- Evaluating the appropriateness of the valuation models used in developing the estimates, including the determination of whether the models used were appropriate, whether the data was appropriately used, and the significant assumptions appropriately applied within each model.
- Testing the completeness and accuracy of the underlying data used to estimate the fair value of the acquired intangible assets and contingent consideration, and evaluating if the data was sufficiently precise.
- Identifying and evaluating the significant assumptions used in developing the fair value estimates, including evaluating whether:
  - The weighted-average cost of capital, debt free working capital, discount for lack of marketability and volatility assumptions were reasonable by comparing the rates to those of guideline public companies.
  - Projected revenues were reasonable by evaluating projections of customer churn, existing customer growth and incremental revenue growth estimates. We also compared projected revenue assumptions and projected operating costs to current industry data, to historical results of the acquired business, and to historical results of the Company.

In addition, we involved valuation professionals with specialized skills and knowledge who assisted in obtaining an understanding of the valuation models used and the application of such models in developing the estimates, and the assessment of the reasonableness of certain assumptions applied in the valuation models.

#### ***Software Revenue Recognition***

As described in Note 2 to the financial statements, the Company recognizes revenue from on premise software license sales, as well as sales from hardware, transactional SaaS products and service, maintenance, and consulting and professional services. Many of the Company's contracts contain multiple performance obligations for which the Company evaluates and accounts for separately if they are distinct. Identification of the performance obligations require specialized accounting knowledge.

We identified the auditing of revenue from contracts with multiple performance obligations as a critical audit matter because the identification of potential nonstandard terms and conditions may impact significant judgments made by management in identifying, evaluating and accounting for performance obligations in contracts with multiple performance obligations, which led to significant auditor judgment and effort in performing procedures to evaluate whether contracts with multiple performance obligations were appropriately identified, evaluated, and accounted for by management.

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

- Obtaining an understanding, evaluating the design, and testing the operating effectiveness of controls over the Company's process to identify distinct performance obligations and evaluate the terms and conditions that may impact the accounting.
- Examining revenue arrangements on a test basis, including evaluating the terms and conditions of the arrangements and testing the identification, evaluation, and accounting of the performance obligation utilizing audit personnel with specialized accounting knowledge in software revenue recognition.
- Evaluating the accuracy and completeness of the underlying data used in management's determination of the relative standalone selling prices.

/s/ Mayer Hoffman McCann P.C.

We served as the Company's auditor from 2007 to 2022.  
San Diego, California  
December 10, 2021

**MITEK SYSTEMS, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(amounts in thousands except share data)

	September 30,	
	2023	2022
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 58,913	\$ 32,059
Short-term investments	74,700	58,268
Accounts receivable, net	32,132	35,922
Contract assets, current portion	18,355	7,037
Prepaid expenses	3,513	1,946
Other current assets	2,396	2,622
Total current assets	190,009	137,854
Long-term investments	1,304	10,633
Property and equipment, net	2,829	3,493
Right-of-use assets	4,140	5,155
Intangible assets, net	64,674	75,756
Goodwill	123,548	115,632
Deferred income tax assets	11,645	10,110
Contract assets, non-current portion	5,579	4,218
Other non-current assets	1,647	1,628
Total assets	\$ 405,375	\$ 364,479
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 7,589	\$ 4,974
Accrued payroll and related taxes	10,554	10,393
Accrued interest payable	305	202
Income tax payables	4,329	206
Deferred revenue, current portion	17,360	21,350
Lease liabilities, current portion	1,902	2,110
Acquisition-related contingent consideration	7,976	5,920
Restructuring accrual	—	901
Other current liabilities	1,482	2,402
Total current liabilities	51,497	48,458
Convertible senior notes	135,516	127,970
Deferred revenue, non-current portion	957	1,775
Lease liabilities, non-current portion	2,867	4,106
Deferred income tax liabilities, non-current portion	6,476	9,578
Other non-current liabilities	2,874	1,613
Total liabilities	200,187	193,500
Commitments and contingencies (Note 10)		
Stockholders' equity:		
Preferred stock, \$0.001 par value, 1,000,000 shares authorized, none issued and outstanding, as of September 30, 2023 and 2022	—	—
Common stock, \$0.001 par value, 120,000,000 shares authorized, 45,591,199 and 44,680,429 issued and outstanding, as of September 30, 2023 and 2022, respectively	46	44
Additional paid-in capital	228,691	216,493
Accumulated other comprehensive loss	(14,237)	(28,219)
Accumulated deficit	(9,312)	(17,339)
Total stockholders' equity	205,188	170,979
Total liabilities and stockholders' equity	\$ 405,375	\$ 364,479

See accompanying notes to consolidated financial statements.

**MITEK SYSTEMS, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS AND OTHER COMPREHENSIVE INCOME (LOSS)**  
(amounts in thousands except per share data)

	For the twelve months ended September 30,		
	2023	2022	2021
Revenue			
Software and hardware	\$ 88,374	\$ 72,928	\$ 60,069
Services and other	84,178	71,876	59,728
Total revenue	<u>172,552</u>	<u>144,804</u>	<u>119,797</u>
Operating costs and expenses			
Cost of revenue—software and hardware (exclusive of depreciation & amortization)	1,413	1,576	2,468
Cost of revenue—services and other (exclusive of depreciation & amortization)	21,538	18,432	12,072
Selling and marketing	40,551	38,841	32,497
Research and development	28,988	30,192	28,042
General and administrative	43,338	26,591	22,490
Amortization and acquisition-related costs	19,046	15,172	8,951
Restructuring costs	2,114	1,800	—
Total operating costs and expenses	<u>156,988</u>	<u>132,604</u>	<u>106,520</u>
Operating income	15,564	12,200	13,277
Interest expense	9,063	8,232	5,129
Other income (expense), net	3,840	(366)	654
Income before income taxes	10,341	3,602	8,802
Income tax benefit (provision)	(2,314)	92	(824)
Net income	<u>\$ 8,027</u>	<u>\$ 3,694</u>	<u>\$ 7,978</u>
Net income per share—basic	\$ 0.18	\$ 0.08	\$ 0.18
Net income per share—diluted	\$ 0.17	\$ 0.08	\$ 0.18
Shares used in calculating net income per share—basic	45,533	44,595	43,509
Shares used in calculating net income per share—diluted	46,461	45,780	45,083
Comprehensive income (loss)			
Net income	\$ 8,027	\$ 3,694	\$ 7,978
Foreign currency translation adjustment	13,093	(27,559)	(455)
Unrealized gain (loss) on investments	889	283	(165)
Other comprehensive income (loss)	13,982	(27,276)	(620)
Comprehensive income (loss)	<u>\$ 22,009</u>	<u>\$ (23,582)</u>	<u>\$ 7,358</u>

See accompanying notes to consolidated financial statements.



**MITEK SYSTEMS, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
**For the twelve months ended September 30, 2023, 2022, and 2021**  
(amounts in thousands)

	Common Stock		Additional Paid-In Capital	Treasury Stock		Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount		Shares	Amount			
Balance, September 30, 2020	41,780	\$ 42	\$ 146,518	—	\$ —	\$ (323)	\$ (13,994)	\$ 132,243
Exercise of stock options	330	—	2,516	—	—	—	—	2,516
Settlement of restricted stock units	1,066	1	(1)	—	—	—	—	—
Issuance of common stock under employee stock purchase plan	129	—	1,519	—	—	—	—	1,519
Acquisition-related shares issued	867	1	13,942	—	—	—	—	13,943
Stock-based compensation expense	—	—	11,532	—	—	—	—	11,532
Sale of convertible senior notes warrants	—	—	23,909	—	—	—	—	23,909
Repurchases and retirements of common stock	(3)	—	—	(8)	(140)	—	(50)	(190)
Components of comprehensive income:								
Net income	—	—	—	—	—	—	7,978	7,978
Currency translation adjustment	—	—	—	—	—	(455)	—	(455)
Change in unrealized gain (loss) on investments	—	—	—	—	—	(165)	—	(165)
Total comprehensive income								7,358
Balance, September 30, 2021	44,169	\$ 44	\$ 199,935	(8)	\$ (140)	\$ (943)	\$ (6,066)	\$ 192,830
Exercise of stock options	35	—	238	—	—	—	—	238
Settlement of restricted stock units	1,075	1	(1)	—	—	—	—	—
Issuance of common stock under employee stock purchase plan	129	—	1,487	—	—	—	—	1,487
Acquisition-related shares issued	203	—	1,836	—	—	—	—	1,836
Stock-based compensation expense	—	—	13,346	—	—	—	—	13,346
Repurchases and retirements of common stock	(931)	(1)	(348)	8	140	—	(14,967)	(15,176)
Components of comprehensive loss:								0
Net income	—	—	—	—	—	—	3,694	3,694
Currency translation adjustment	—	—	—	—	—	(27,559)	—	(27,559)
Change in unrealized gain (loss) on investments	—	—	—	—	—	283	—	283
Total comprehensive loss								(23,582)
Balance, September 30, 2022	44,680	\$ 44	\$ 216,493	—	\$ —	\$ (28,219)	\$ (17,339)	\$ 170,979
Exercise of stock options	100	—	727	—	—	—	—	727
Settlement of restricted stock units	689	2	(2)	—	—	—	—	—

Issuance of common stock under employee stock purchase plan	122	—	1,010	—	—	—	—	1,010
Stock-based compensation expense	—	—	10,463	—	—	—	—	10,463
Components of comprehensive income:								
Net income	—	—	—	—	—	—	8,027	8,027
Currency translation adjustment	—	—	—	—	—	13,093	—	13,093
Change in unrealized gain (loss) on investments	—	—	—	—	—	889	—	889
Total comprehensive income								22,009
Balance, September 30, 2023	<u>45,591</u>	<u>\$ 46</u>	<u>\$ 228,691</u>	<u>—</u>	<u>\$ —</u>	<u>\$ (14,237)</u>	<u>\$ (9,312)</u>	<u>\$ 205,188</u>

See accompanying notes to consolidated financial statements.

**MITEK SYSTEMS, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(amounts in thousands)

	For the twelve months ended September 30,		
	2023	2022	2021
<b>Operating activities:</b>			
Net income	\$ 8,027	\$ 3,694	\$ 7,978
Adjustments to reconcile net income to net cash provided by operating activities:			
Stock-based compensation expense	10,463	13,346	11,532
Amortization of intangible assets	16,992	13,547	7,505
Depreciation and amortization	1,727	1,401	1,439
Amortization of investment premiums & other	(722)	1,684	1,266
Accretion and amortization on debt securities	7,546	7,053	4,372
Net changes in estimated fair value of acquisition-related contingent consideration	2,056	(1,358)	1,080
Deferred taxes	(5,496)	(8,988)	105
Changes in assets and liabilities, net of acquisitions:			
Accounts receivable	4,316	(19,004)	(813)
Contract assets	(12,471)	(3,095)	1,150
Other assets	(1,124)	417	(1,331)
Accounts payable	2,535	2,183	(1,589)
Accrued payroll and related taxes	18	(2,195)	2,687
Income taxes payable	5,577	422	(71)
Deferred revenue	(5,217)	9,950	1,790
Restructuring accrual	(977)	991	—
Other liabilities	(1,664)	1,071	241
Net cash provided by operating activities	<u>31,586</u>	<u>21,119</u>	<u>37,341</u>
<b>Investing activities:</b>			
Purchases of investments	(71,733)	(47,818)	(246,508)
Sales and maturities of investments	66,250	173,316	89,956
Acquisitions, net of cash acquired	(267)	(122,672)	(12,549)
Purchases of property and equipment, net	(1,034)	(1,126)	(1,387)
Net cash provided by (used in) investing activities	<u>(6,784)</u>	<u>1,700</u>	<u>(170,488)</u>
<b>Financing activities:</b>			
Proceeds from the issuance of convertible senior notes	—	—	155,250
Payment for convertible senior notes issuance costs	—	—	(5,513)
Purchase of 2026 convertible senior notes hedge	—	—	(33,192)
Proceeds from issuance of convertible senior notes warrants	—	—	23,909
Proceeds from the issuance of equity plan common stock	1,737	1,725	4,035
Repurchases and retirements of common stock	—	(15,176)	(190)
Payment of acquisition-related contingent consideration	—	(7,656)	(782)
Proceeds from other borrowings	—	—	251
Principal payments on other borrowings	(36)	(36)	(88)
Net cash provided by (used in) financing activities	<u>1,701</u>	<u>(21,143)</u>	<u>143,680</u>
Foreign currency effect on cash and cash equivalents	351	71	(207)
Net increase in cash and cash equivalents	26,854	1,747	10,326
Cash and cash equivalents at beginning of period	32,059	30,312	19,986
Cash and cash equivalents at end of period	<u>\$ 58,913</u>	<u>\$ 32,059</u>	<u>\$ 30,312</u>
<b>Supplemental disclosures of cash flow information:</b>			
Cash paid for interest	\$ 1,413	\$ 1,164	\$ 569
Cash paid for income taxes	\$ 3,836	\$ 750	\$ 741
<b>Supplemental disclosures of non-cash investing and financing activities:</b>			
Reclassification of convertible senior notes hedge and embedded conversion derivative to additional paid-in capital	\$ —	\$ 28,516	\$ —
Acquisition-related shares issued	\$ —	\$ 1,836	\$ —
Unrealized holding gain (loss) on available-for-sale investments	\$ 889	\$ 283	\$ (165)

See accompanying notes to consolidated financial statements.

**MITEK SYSTEMS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**FOR THE TWELVE MONTHS ENDED SEPTEMBER 30, 2023, 2022, AND 2021**

**1. NATURE OF OPERATIONS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Nature of Operations**

Mitek Systems, Inc. (“Mitek,” the “Company,” “we,” “us,” and “our”) is a leading innovator of mobile image capture and digital identity verification solutions. We are a software development company with expertise in computer vision, artificial intelligence and machine learning. We currently serve more than 7,900 financial services organizations and leading marketplace and financial technology (“fintech”) brands around the globe. Customers count on Mitek to deliver trusted and convenient online experiences, detect and reduce fraud, and meet Know Your Customer (“KYC”) and Anti-Money Laundering (“AML”) regulatory compliance. The Company’s solutions are embedded in native mobile apps and web browsers to facilitate digital consumer experiences. Mitek’s identity verification and authentication technologies and services make it possible for banks, financial services organizations and the world’s leading marketplace and sharing platforms to verify an individual’s identity during numerous stages of the customer lifecycle, allowing them to reduce risk and meet regulatory requirements. The Company’s advanced mobile deposit system enables secure, fast and convenient deposit services. Thousands of organizations use Mitek solutions to optimize the security of mobile check deposits, new account openings and more.

In May of 2021, Mitek acquired ID R&D, Inc. (“ID R&D” and such acquisition, the “ID R&D Acquisition”), an award-winning provider of AI-based voice and face biometrics and liveness detection. ID R&D delivers innovative, biometric capabilities that raise the bar on usability and performance. The ID R&D Acquisition helps simplify and secure the entire transaction lifecycle for both businesses and consumers, provides businesses and financial institutions with access to one authentication solution to deploy throughout the entire transaction cycle, and can provide consumers with a simple, intuitive approach to fighting fraud.

In March of 2022, Mitek acquired HooYu Ltd. (“HooYu”), a leading KYC technology provider in the United Kingdom. Such technology helps to ensure businesses know the true identity of their customers by linking biometric verification with real-time data aggregation across many different sources, including credit bureaus, international sanctions lists, local law-enforcement, and others.

Mitek markets and sells its products and services worldwide through internal, direct sales teams located in the U.S., Europe, and Latin America as well as through channel partners. Our partner sales strategy includes channel partners who are financial services technology providers and identity verification providers. These partners integrate our products into their solutions to meet the needs of their customers, typically provisioning Mitek services through their respective platforms.

**Summary of Significant Accounting Policies**

*Basis of Presentation*

The financial statements are prepared under the Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Topic 105-10, *Generally Accepted Accounting Principles*, in accordance with accounting principles generally accepted in the U.S. (“GAAP”).

*Principles of Consolidation*

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

*Foreign Currency*

The Company has foreign subsidiaries that operate and sell products and services in various countries and jurisdictions around the world. As a result, the Company is exposed to foreign currency exchange risks. For those subsidiaries whose functional currency is not the U.S. dollar, assets and liabilities are translated into U.S. dollars equivalents at the exchange rate in effect on the balance sheet date and revenues and expenses are translated into U.S. dollars using the average exchange rate over the period. Resulting currency translation adjustments are recorded in accumulated other comprehensive loss in the consolidated balance sheet. The Company recorded net gains resulting from foreign exchange translation of \$13.1 million for the twelve months ended September 30, 2023. The Company recorded net losses resulting from foreign exchange translation of \$27.6 million and \$0.5 million for the twelve months ended September 30, 2022 and 2021, respectively.

#### *Use of Estimates*

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, expenses, deferred taxes, and related disclosure of contingent assets and liabilities. On an ongoing basis, management reviews its estimates based upon currently available information. Actual results could differ materially from those estimates. These estimates include, but are not limited to, assessing the collectability of accounts receivable, estimation of the value of stock-based compensation awards, fair value of assets and liabilities acquired, impairment of goodwill, useful lives of intangible assets, standalone selling price related to revenue recognition, contingent consideration, and income taxes.

#### *Revenue Recognition*

The Company generates revenue primarily from the delivery of licenses and related services to customers (for both on premise and software as a service (“SaaS”) products), as well as the delivery of hardware and professional services. Consistent with Accounting Standards Codification Topic 606, *Revenue from Contracts with Customers* (“ASC 606”), revenue is recognized when control of these services is transferred to the Company’s customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those services. The Company determined revenue recognition through the following steps:

1. Identification of the contract, or contracts, with a customer
2. Identification of the performance obligations in the contract
3. Determination of the transaction price
4. Allocation of the transaction price to the performance obligations in the contract
5. Recognition of revenue when, or as, performance obligations are satisfied

Note 2 describes the nature of the Company’s primary types of revenue and the revenue recognition policies and significant payment terms as they pertain to the types of transactions the Company enters into with its customers.

**Contract Balances:** The timing of revenue recognition may differ from the timing of invoicing to customers, and these timing differences result in receivables (billed or unbilled), contract assets, or contract liabilities (deferred revenue) on the Company’s consolidated balance sheets. The Company records a contract asset when revenue is recognized prior to the right to invoice, or deferred revenue when revenue is recognized subsequent to invoicing. The Company records an unbilled receivable when revenue is recognized and it has an unconditional right to invoice and receive payment. The Company reports net contract asset or liability positions on a customer-by-customer basis at the end of each reporting period. Unbilled receivables are included within accounts receivable on the consolidated balance sheets and were \$0.9 million and \$1.7 million as of September 30, 2023 and 2022, respectively.

**Contract Costs:** The Company incurs incremental costs to obtain a contract, consisting primarily of sales commissions, which are payable only if a contract is obtained. When the commission rate for a customer renewal is not commensurate with the commission rate for a new contract, the commission is capitalized if expected to be recovered. Such costs are capitalized and amortized using a portfolio approach consistent with the pattern of transfer of the good or service to which the asset relates. Contract costs are recorded in other current and non-current assets in the consolidated balance sheets.

**Cost of Revenue:** Cost of revenue includes personnel costs related to billable services and software support, direct costs associated with our hardware products and hosting costs. Depreciation and amortization that are excluded from cost of revenue are included in research and development and selling and marketing on the consolidated statement of operations and other comprehensive income (loss).

#### *Restructuring Costs*

Restructuring costs consist of employee severance obligations and other related costs. Restructuring costs were \$2.1 million and \$1.8 million for the twelve months ended September 30, 2023 and 2022, respectively. There were no restructuring costs for the twelve months ended September 30, 2021.

#### *Reclassifications*

A reclassification has been made to the prior periods’ consolidated financial statements in order to conform to the current period presentation. Accrued interest payable and income tax payables were included in the other current liabilities line in the consolidated balance sheet as of September 30, 2022, however, they have been presented separately in the consolidated balance sheet as of September 30, 2023 so that the total of the other current liabilities line is less than five percent of total current liabilities.

#### *Revision of Previously Reported Consolidated Financial Statements*

In connection with the preparation of its consolidated financial statements for the twelve months ended September 30, 2023, the Company determined that its previously issued consolidated financial statements for the period ended September 30, 2022 contained errors in the application of GAAP. See Note 15 for further details.

### Net Income Per Share

The Company calculates net income per share in accordance with FASB ASC Topic 260, *Earnings per Share*. Basic net income per share is based on the weighted-average number of common shares outstanding during the period. Diluted net income per share also gives effect to all potentially dilutive securities outstanding during the period, such as restricted stock units (“RSUs”), stock options and Employee Stock Purchase Plan (“ESPP”) shares, if dilutive. In a period with a net loss position, potentially dilutive securities are not included in the computation of diluted net loss per share because to do so would be antidilutive, and the number of shares used to calculate basic and diluted net loss per share is the same.

For the twelve months ended September 30, 2023, 2022 and 2021, the following potentially dilutive common shares were excluded from the calculation of net income per share, as they would have been antidilutive (*amounts in thousands*):

	2023	2022	2021
Stock options	437	506	543
RSUs	1,455	960	1,113
ESPP common stock equivalents	6	7	9
Performance options	755	623	272
Performance RSUs	268	281	104
Convertible senior notes	7,448	7,448	4,856
Warrants	7,448	7,448	4,856
Total potentially dilutive common shares outstanding	<u>17,817</u>	<u>17,273</u>	<u>11,753</u>

The calculation of basic and diluted net income per share for the twelve months ended September 30, 2023, 2022 and 2021, is as follows (*amounts in thousands, except per share data*):

	2023	2022	2021
Net income	\$ 8,027	\$ 3,694	\$ 7,978
Weighted-average shares outstanding—basic	45,533	44,595	43,509
Common stock equivalents	928	1,185	1,574
Weighted-average shares outstanding—diluted	<u>46,461</u>	<u>45,780</u>	<u>45,083</u>
Net income per share:			
Basic	\$ 0.18	\$ 0.08	\$ 0.18
Diluted	\$ 0.17	\$ 0.08	\$ 0.18

### Cash and Cash Equivalents

Cash and cash equivalents are defined as highly liquid financial instruments with original maturities of three months or less. The Company's cash and cash equivalents are composed of interest and non-interest-bearing deposits and money market funds. Cash and cash equivalents are maintained with various financial institutions.

### Investments

Investments consist of corporate notes and bonds, U.S. Treasury securities, and asset-backed securities. The Company classifies investments as available-for-sale at the time of purchase and reevaluates such classification as of each balance sheet date. All investments are recorded at their estimated fair value. Unrealized gains and losses for available-for-sale securities are included in accumulated other comprehensive loss, a component of stockholders' equity. The Company evaluates its investments to assess whether those with unrealized loss positions are other-than-temporarily impaired. Impairments are considered to be other-than-temporary if they are related to deterioration in credit risk or if it is likely that the Company will sell the securities before the recovery of its cost basis. Realized gains and losses and declines in value judged to be other-than-temporary are determined based on the specific identification method and are reported in other income (expense), net in the consolidated statements of operations and other comprehensive income (loss). No other-than-temporary impairment charges were recognized in the twelve months ended September 30, 2023, 2022, and 2021.

All investments whose maturity or sale is expected within one year are classified as “current” on the consolidated balance sheets. All other securities are classified as “long-term” on the consolidated balance sheets.

### Accounts Receivable and Allowance for Credit Losses

Trade accounts receivable are recorded at the net invoice value and are not interest bearing. The Company considers receivables past due based on the contractual payment terms. Allowances for credit losses are established based on various factors including credit profiles of the Company's customers, contractual terms and conditions, historical payments, and current economic trends. The Company reviews its allowances by assessing individual accounts receivable over a specific aging and amount. Accounts receivable are written off on a case-by-case basis, net of any amounts that may be collected. The Company had \$0.1 million of write-offs to the allowance for credit losses for the twelve months ended September 30, 2023, no write-offs for the twelve months ended September 30, 2022, and \$0.1 million of write-offs for the September 30, 2021. The Company maintained an allowance for credit losses of \$1.5 million and \$0.9 million as of September 30, 2023 and 2022, respectively.

### Concentration of Credit Risk

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist principally of cash and cash equivalents, investments, and accounts receivable. The Company maintains the majority of its cash and cash equivalent balances with financial institutions that management believes are high-credit, quality financial institutions and invests its cash equivalents in highly rated market funds.

### Property and Equipment

Property and equipment are carried at cost less accumulated depreciation and amortization. The following is a summary of property and equipment as of September 30, 2023 and 2022 (amounts in thousands):

	2023	2022
Property and equipment—at cost:		
Leasehold improvements	\$ 2,612	\$ 2,554
Machinery and equipment	3,657	3,384
Capitalized software development costs	3,610	2,902
Furniture and fixtures	728	709
	10,607	9,549
Less: accumulated depreciation and amortization	(7,778)	(6,056)
Total property and equipment, net	\$ 2,829	\$ 3,493

Depreciation and amortization of property and equipment are calculated using the straight-line method over estimated useful lives ranging from three to seven years. Leasehold improvements are amortized over the shorter of the lease term or estimated useful life of the assets. Depreciation and amortization of property and equipment totaled \$1.7 million, \$1.4 million, and \$1.4 million for the twelve months ended September 30, 2023, 2022, and 2021, respectively. Expenditures for repairs and maintenance are expensed when incurred. Total repairs and maintenance expenses were \$0.1 million for each of the twelve months ended September 30, 2023, 2022, and 2021.

### Leases

The Company determines if an arrangement is a lease at inception in accordance with ASC Topic 842, *Leases* ("ASC 842"). The lease term begins on the commencement date, which is the date the Company takes possession of the property, and may include options to extend or terminate the lease when it is reasonably certain that the option will be exercised. The lease term is used to determine lease classification as an operating or finance lease and is used to calculate straight-line expense for operating leases.

Right of use ("ROU") assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make payments arising from the lease. As a practical expedient, lease agreements with lease and non-lease components are accounted for as a single lease component for all asset classes, which are comprised of real estate leases and auto leases. ROU assets and lease liabilities are recognized at the commencement date based upon the present value of lease payments over the lease term. ROU assets also include prepaid lease payments and exclude lease incentives received. The Company estimates contingent lease incentives when it is probable that the Company is entitled to the incentive at lease commencement. Since the Company's leases do not typically provide an implicit rate, the Company uses its incremental borrowing rate based upon the information available at commencement date of each lease. The determination of the incremental borrowing rate requires judgment. The Company determines the incremental borrowing rate using the Company's current secured borrowing rate. The Company elected the short-term lease recognition exemption for all leases that qualify. Therefore, leases with an initial term of twelve months or less are not recorded on the consolidated balance sheet; instead, lease payments are recognized as lease expenses on a straight-line basis over the lease term. See Note 11 for additional details.

Operating lease assets and liabilities are recognized for leases with lease terms greater than 12 months based on the present value of the future lease payments over the lease term at the commencement date. Operating lease expense is recognized on a straight-line basis over the lease term.

#### *Long-Lived Assets*

The Company evaluates the carrying value of long-lived assets, including license agreements and other intangible assets, when events and circumstances indicate that these assets may be impaired or in order to determine whether any revision to the related useful lives should be made. This evaluation is based on management's projections of the undiscounted future cash flows associated with each product or asset. If management's evaluation indicates that the carrying values of these assets are impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. The Company did not record any impairment of long-lived assets during the twelve months ended September 30, 2023, 2022, or 2021.

#### *Capitalized Software Development Costs*

Costs incurred for the development of software that will be sold, leased, or otherwise marketed are capitalized when technological feasibility has been established. Software development costs consist primarily of compensation of development personnel and related overhead incurred to develop new products and upgrade and enhance the Company's current products, as well as fees paid to outside consultants. Capitalization of software development costs ceases and amortization of capitalized software development costs commences when the products are available for general release. Amortization expense of capitalized development costs is included in research and development in the consolidated statements of other comprehensive income (loss). For the twelve months ended September 30, 2023, 2022, and 2021, no software development costs were capitalized because the time period and costs incurred between technological feasibility and general release for all software product releases were not material or were not realizable. The Company had no amortization expense from capitalized software costs during the twelve months ended September 30, 2023, 2022, or 2021.

Qualifying costs related to software acquired, developed, or modified solely to meet the Company's internal requirements, with no substantive plans to market such software at the time of development, are capitalized. Costs incurred during the preliminary planning and evaluation stage of the project and during the post-implementation operational stage are expensed as incurred. Costs incurred during the application development stage of the project are capitalized. The Company defines the design, configuration, and coding process as the application development stage. The Company capitalized \$0.7 million, \$0.8 million, and \$0.8 million of costs related to computer software developed for internal use during the twelve months ended September 30, 2023, 2022 and 2021, respectively. The Company recognized \$0.7 million, \$0.4 million and \$0.3 million of amortization expense from internal use software during the twelve months ended September 30, 2023, 2022 and 2021, respectively.

#### *Goodwill and Purchased Intangible Assets*

The Company's goodwill and intangible assets resulted from prior acquisitions. Goodwill and intangible assets with indefinite useful lives are not amortized, but are tested for impairment at least annually or as circumstances indicate that their value may no longer be recoverable. In accordance with ASC Topic 350, *Intangibles—Goodwill and Other* ("ASC Topic 350"), the Company reviews its goodwill for impairment at least annually in its fiscal fourth quarter and more frequently if events or changes in circumstances occur that indicate a potential reduction in the fair value of its reporting unit and/or its indefinite-lived intangible asset below their respective carrying values. Examples of such events or circumstances include: a significant adverse change in legal factors or in the business climate, a significant decline in the Company's stock price, a significant decline in the Company's projected revenue or cash flows, an adverse action or assessment by a regulator, unanticipated competition, a loss of key personnel, or the presence of other indicators that would indicate a reduction in the fair value of a reporting unit.

The Company's goodwill is considered to be impaired if management determines that the carrying value of the reporting unit to which the goodwill has been assigned exceeds management's estimate of its fair value. Based on the guidance provided by ASC 350 and ASC Topic 280, *Segment Reporting*, management has determined that the Company operates in one segment and consists of one reporting unit. The process of evaluating the potential impairment of goodwill is subjective and requires significant judgment at many points during the analysis. Management determines the fair value of the reporting unit based on the income approach which requires significant judgments to be made about the future cash flows of that reporting unit, discount rates, and growth rates. The Company's cash flow forecasts are based on assumptions that represent the highest and best use for the Company's reporting units. In the fourth quarter of fiscal 2023, management completed its annual goodwill impairment test and concluded that the Company's goodwill was not impaired.

Intangible assets are amortized over their useful lives. Each period, the Company evaluates the estimated remaining useful life of its intangible assets and whether events or changes in circumstances warrant a revision to the remaining period of amortization. The carrying amounts of these assets are periodically reviewed for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be recoverable. Recoverability of these assets is measured by comparing the carrying amount of each asset group to the future undiscounted cash flows the asset is expected to generate. The carrying amount of such assets is reduced to fair value if the undiscounted cash flows used in the test for recoverability are less than the carrying amount of such



assets. No impairment charge related to the impairment of intangible assets was recorded during the twelve months ended September 30, 2023, 2022, or 2021.

#### *Other Borrowings*

The Company has certain loan agreements with Spanish government agencies which were assumed when the Company acquired ICAR Vision Systems, S.L. (“ICAR”) in 2017. These agreements have repayment periods of five to twelve years and bear no interest. As of September 30, 2023, \$1.2 million, was outstanding under these agreements and approximately \$0.2 million and \$1.1 million is recorded in other current liabilities and other non-current liabilities, respectively, in the consolidated balance sheets. As of September 30, 2022, \$1.3 million, was outstanding under these agreements and \$0.1 million and \$1.2 million is recorded in other current liabilities and other non-current liabilities, respectively, in the consolidated balance sheets.

#### *Guarantees*

In the ordinary course of business, the Company is not subject to potential obligations under guarantees that fall within the scope of FASB ASC Topic 460, *Guarantees* (“ASC 460”), except for standard indemnification and warranty provisions that are contained within many of the Company’s customer license and service agreements and certain supplier agreements, and give rise only to the disclosure requirements prescribed by ASC 460. Indemnification and warranty provisions contained within the Company’s customer license and service agreements and certain supplier agreements are generally consistent with those prevalent in the Company’s industry. The Company has not historically incurred significant obligations under customer indemnification or warranty provisions and does not expect to incur significant obligations in the future. Accordingly, the Company does not maintain accruals for potential customer indemnification or warranty-related obligations.

#### *Income Taxes*

The Company accounts for income taxes in accordance with FASB ASC Topic 740, *Income Taxes* (“ASC 740”). Deferred tax assets and liabilities arise from temporary differences between the tax bases of assets and liabilities and their reported amounts in the financial statements that will result in taxable or deductible amounts in future years.

Management evaluates the available evidence about future taxable income and other possible sources of realization of deferred tax assets. The valuation allowance reduces deferred tax assets to an amount that represents management’s best estimate of the amount of such deferred tax assets that more likely than not will be realized. See Note 8 for additional details.

The Company recognizes the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the tax authorities, based on the technical merits of the position. The tax benefit is measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The Company recognizes interest and penalties related to income tax matters in income tax expense. See Note 8 for additional details.

#### *Stock-Based Compensation*

The Company issues RSUs, stock options, performance options, and Senior Executive Long-Term Incentive Restricted Stock Units (“Senior Executive Performance RSUs”) as awards to its employees based on the fair value assigned to RSUs which is based on the closing stock price of its common stock, par value \$0.001 (“Common Stock”) on the date of grant. Additionally, eligible employees may participate in the Company’s ESPP. Employee stock awards are measured at fair value on the date of grant and expense is recognized using the straight-line single-option method in accordance with FASB ASC Topic 718, *Compensation—Stock Compensation* (“ASC 718”). Forfeitures are recorded as they occur. The Company estimates the fair value of stock options and ESPP shares using the Black-Scholes option pricing model. The Black-Scholes option pricing model requires subjective assumptions, including future stock price volatility and expected time to exercise, which greatly affect the calculated values. The expected term of options granted is derived from historical data on employee exercises and post-vesting employment termination behavior. The risk-free rate selected to value any particular grant is based on the U.S. Treasury rate that corresponds to the expected life of the grant effective as of the date of the grant. The expected volatility is based on the historical volatility of the Company’s stock price. These factors could change in the future, affecting the determination of stock-based compensation expense in future periods.

The Company estimates the fair value of performance options, Senior Executive Performance RSUs, and similar awards using the Monte-Carlo simulation. The Monte-Carlo simulation requires subjective assumptions, including the Company’s valuation date stock price, the annual risk-free interest rate, expected volatility, the probability of reaching the stock performance targets, and a 20-trading-day average stock price.

#### *Advertising Expense*

Advertising costs are expensed as incurred and totaled \$1.2 million, \$1.1 million and \$1.2 million during the twelve months ended September 30, 2023, 2022, and 2021, respectively.

### *Research and Development*

Research and development costs are expensed in the period incurred.

### *Segment Reporting*

FASB ASC Topic 280, *Segment Reporting*, requires the use of a management approach in identifying segments of an enterprise. During the twelve months ended September 30, 2023, management determined that the Company has only one operating segment: the development, sale, and service of proprietary software solutions related to mobile imaging. The Company's chief operating decision maker is its Chief Executive Officer, who reviews financial information presented on a consolidated basis for purposes of making operating decisions, assessing financial performance and allocating resources.

### *Comprehensive Income (Loss)*

Comprehensive income (loss) consists of net income, unrealized gains and losses on available-for-sale securities, and foreign currency translation adjustments.

### **Recently Adopted Accounting Pronouncements**

The Company did not adopt any new accounting pronouncements in the twelve months ended September 30, 2023.

### **Recently Issued Accounting Pronouncements**

In December 2023, the FASB issued an Accounting Standards Update ("ASU") 2023-09, Income Taxes (Topic 740): Improvements to Income Tax Disclosures amending existing income tax disclosure guidance, primarily requiring more detailed disclosure for income taxes paid and the effective tax rate reconciliation. The ASU is effective for annual reporting periods beginning after December 15, 2024, with early adoption permitted and can be applied on either a prospective or retroactive basis. The Company is currently evaluating the ASU to determine its impact on its income tax disclosures and expects.

In March 2020, the FASB issued ASU 2020-04, Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting (ASU 2020-04) and also issued subsequent amendments to the initial guidance (collectively, Topic 848). Topic 848 provides optional guidance for contract modifications and certain hedging relationships associated with the transition from reference rates that are expected to be discontinued. The Company will adopt Topic 848 when the relevant contracts are modified upon transition to alternative reference rates. The Company does not expect the adoption of Topic 848 will have a material impact on the consolidated financial statements.

No other new accounting pronouncement issued or effective during the twelve months ended September 30, 2023 had, or are expected to have, a material impact on the Company's consolidated financial statements.

## **2. REVENUE RECOGNITION**

### **Nature of Goods and Services**

The following is a description of principal activities from which the Company generates its revenue. Contracts with customers are evaluated on a contract-by-contract basis as contracts may include multiple types of goods and services as described below.

#### *Software and Hardware*

Software and hardware revenue is generated from on premise software license sales, as well as sales of hardware scanner boxes and on premise appliance products. Software is typically sold as a time-based license with a term of one to three years. For software license agreements that are distinct, the Company recognizes software license revenue upon delivery and after evidence of a contract exists. Hardware revenue is recognized at a point in time upon shipment and after evidence of a contract exists.

#### *Services and Other*

Services and other revenue is generated from the sale of software as a service ("SaaS") products and services, maintenance associated with the sale of on premise software licenses and consulting and professional services. The Company's SaaS offerings give customers the option to be charged upon their incurred usage in arrears ("Pay as You Go"), or commit to a minimum spend over their contracted period, with the ability to purchase unlimited additional transactions above the minimum during the contract term. Revenue related to Pay as You Go contracts are recognized based on the customer's actual usage, in the period of usage. For contracts which include a minimum commitment, the Company is standing ready to provide as many transactions as desired by the customer throughout the contract term, and revenue is recognized on a ratable basis over the contract period including an estimate of usage above the minimum commitment. Usage above minimum commitment is estimated by looking at historical usage, expected volume, and other factors to project out for the remainder of the contract term. The estimated usage-based revenues are constrained to the

amount the Company expects to be entitled to receive in exchange for providing access to its platform. If professional services are deemed to be distinct, revenue is recognized as services are performed. The Company does not view the signing of the contract or the provision of initial setup services as discrete earnings events that are distinct.

### **Significant Judgments in Application of the Guidance**

The Company uses the following methods, inputs, and assumptions in determining amounts of revenue to recognize:

#### *Identification of Performance Obligations*

For contracts that contain multiple performance obligations, which include combinations of software licenses, maintenance, and services, the Company accounts for individual goods or services as a separate performance obligation if they are distinct. The good or service is distinct if the good or service is separately identifiable from other items in the arrangement and if a customer can benefit from it on its own or with other resources that are readily available to the customer. If these criteria are not met, the promised goods or services are accounted for as a combined performance obligation.

#### *Determination of Transaction Price*

The transaction price is determined based on the consideration to which the Company will be entitled in exchange for transferring products or services to the customer. The Company includes any fixed charges within its contracts as part of the total transaction price. To the extent that variable consideration is not constrained, the Company includes an estimate of the variable amount, as appropriate, within the total transaction price and updates its assumptions over the duration of the contract. As a practical expedient, the Company does not adjust the transaction price for the effects of a significant financing component if, at contract inception, the period between customer payment and the transfer of goods or services is expected to be one year or less.

#### *Assessment of Estimates of Variable Consideration*

Many of the Company's contracts with customers contain some component of variable consideration; however, variable consideration will only be included in the transaction price to the extent it is probable that a significant reversal of revenues recognized will not occur when the uncertainty associated with the variable consideration is resolved. The Company may constrain the estimated transaction price in the event of a high degree of uncertainty as to the final consideration amount owed because of an extended length of time over which the fees may be adjusted or due to uncertainty surrounding collectability. The Company estimates variable consideration in its contracts primarily using the expected value method as the Company believes this method represents the most appropriate estimate for this consideration, based on historical usage trends, the individual contract considerations, and its best judgment at the time.

#### *Allocation of Transaction Price*

The transaction price, including any discounts, is allocated between separate goods and services in a contract that contains multiple performance obligations based on their relative standalone selling prices. The standalone selling prices are based on the prices at which the Company separately sells each good or service. For items that are not sold separately, the Company estimates the standalone selling prices using available information such as market conditions and internally approved pricing guidelines. In certain situations, primarily transactional SaaS revenue described above, the Company allocates variable consideration to a series of distinct goods or services within a contract. The Company allocates variable payments to one or more, but not all, of the distinct goods or services or to a series of distinct goods or services in a contract when (i) the variable payment relates specifically to the Company's efforts to transfer the distinct good or service and (ii) the variable payment is for an amount that depicts the amount of consideration to which the Company expects to be entitled in exchange for transferring the promised goods or services to its customer.

## Disaggregation of Revenue

The following table presents the Company's revenue disaggregated by major product category (*amounts in thousands*):

Major product category	Twelve Months Ended September 30,		
	2023	2022	2021
Deposits software and hardware	\$ 78,212	\$ 64,548	\$ 55,129
Deposits services and other	25,922	22,013	20,388
Deposits revenue	104,134	86,561	75,517
Identity verification software and hardware	10,162	8,380	4,940
Identity verification services and other	58,256	49,863	39,340
Identity verification revenue	68,418	58,243	44,280
Total revenue	<u>\$ 172,552</u>	<u>\$ 144,804</u>	<u>\$ 119,797</u>

## Contract Balances

The following table provides information about contract assets and contract liabilities from contracts with customers (*amounts in thousands*) as of September 30, 2023 and 2022:

	September 30, 2023		September 30, 2022	
	\$	18,355	\$	7,037
Contract assets, current				
Contract assets, non-current		5,579		4,218
Contract liabilities (deferred revenue), current		17,360		21,350
Contract liabilities (deferred revenue), non-current		957		1,775

Contract assets reported within a separate line in current assets and the other non-current assets line in the consolidated balance sheets, primarily result from when the right to consideration is conditional upon factors other than the passage of time. Contract liabilities primarily relate to advance consideration received from customers (deferred revenue), for which transfer of control occurs, and therefore revenue is recognized as services are provided. Contract balances are reported in a net contract asset or liability position on a contract-by-contract basis at the end of each reporting period. The Company recognized \$19.3 million and \$10.9 million of revenue during the twelve months ended September 30, 2023 and 2022, respectively, which was included in the contract liability balance at the beginning of each such period. Unbilled receivables are included within accounts receivable, net on the consolidated balance sheets and were \$0.9 million and \$1.7 million as of September 30, 2023 and 2022, respectively.

## Transaction Price Allocated to the Remaining Performance Obligations

As of September 30, 2023, the aggregate amount of the transaction price allocated to the remaining performance obligations that were unsatisfied or partially unsatisfied was \$18.3 million, which is recorded as deferred revenue on the Company's consolidated balance sheets. Of that amount, \$17.4 million will be recognized as revenue during the year ended September 30, 2024, and \$1.0 million thereafter.

As of September 30, 2022, the aggregate amount of the transaction price allocated to the remaining performance obligations that were unsatisfied or partially unsatisfied was \$23.1 million, which is recorded as deferred revenue on the Company's consolidated balance sheets. Of that amount, \$21.4 million was expected to be recognized as revenue during the year ended September 30, 2023, and \$1.8 million thereafter.

## Contract Costs

Contract costs included in other current and non-current assets on the consolidated balance sheets totaled \$2.6 million and \$2.4 million at September 30, 2023 and 2022, respectively. Contract costs are amortized based on the transfer of goods or services to which the asset relates. The amortization period also considers expected customer lives and whether the asset relates to goods or services transferred under a specific anticipated contract. These costs are included in selling and marketing expenses in the consolidated statement of operations and other comprehensive income (loss) and totaled \$1.5 million and \$1.3 million during the twelve months ended September 30, 2023 and 2022, respectively. There were no impairment losses recognized during the twelve months ended September 30, 2023 and 2022 related to capitalized contract costs.

### 3. BUSINESS COMBINATIONS

#### *Acquisition of ID R&D, Inc.*

On May 28, 2021 (the “Closing Date”), the Company completed the ID R&D Acquisition pursuant to an Agreement and Plan of Merger (the “Merger Agreement”) dated May 28, 2021, by and among the Company, ID R&D and Alexey Khitrov (the “Representative”). Upon completion of the ID R&D Acquisition, ID R&D became a direct wholly owned subsidiary of Mitek Systems, Inc. ID R&D is an award-winning provider of artificial intelligence-based voice and face biometrics and liveness detection.

As consideration for the ID R&D Acquisition, the Company agreed to pay an aggregate purchase price of up to \$49.0 million. On the Closing Date, the equityholders of ID R&D received from the Company: (i) \$13.0 million in cash, subject to adjustments for transaction expenses, escrow amounts, indebtedness and working capital adjustments (the “Initial Cash Payment”); and (ii) 867,226 shares, or \$13.9 million, of Common Stock. In addition to the foregoing, the equityholders of ID R&D may become entitled to receive additional consideration from the Company upon achievement of certain milestones as follows (collectively, the “Earnout Payments”): subject to ID R&D’s achievement of target revenue for the period commencing on the Closing Date and ending on the one year anniversary thereof and the period commencing on the one year anniversary of the Closing Date and ending on the one year anniversary thereof (each such period, an “Earnout Period”): (i) an aggregate maximum amount of approximately \$12.3 million with respect to the first Earnout Period and (ii) approximately \$9.8 million with respect to the second Earnout Period, with 15% of the first Earnout Period’s payment to be deposited (as additional funds) into an escrow fund. The Company will make the Earnout Payments in the form of cash and up to 711,535 shares of Common Stock as set forth in the Merger Agreement. The Company has granted the Representative an option to shift the Earnout Period(s) out by one year, pursuant to the terms of the Merger Agreement. Moreover, in the event actual revenue for an Earnout Period exceeds the target revenue for such period, the amount of such excess will be credited towards the achievement of the subsequent Earnout Period’s Earnout Payment. In May and June of 2022, the Company paid the first of the Earnout Payments of an aggregate of \$9.5 million which consisted of \$7.7 million paid in cash and \$1.8 million in shares of Common Stock to the equityholders of ID R&D. Pursuant to the Merger Agreement, 15% of the Earnout Payments with respect to the first Earnout Period, were deposited into the escrow fund which consisted of both cash and Common Stock. The Company released the cash and shares held in escrow in the fourth quarter of fiscal 2023. The second Earnout Period ended in May 2023 and the Representative did not exercise their option to shift the Earnout Period. In the first quarter of fiscal 2024, the Company paid the second Earnout Payment of an aggregate \$8.0 million which consisted of \$4.7 million paid in cash and \$3.3 million in shares of Common Stock to the equityholders of ID R&D.

The Company estimated the fair value of the consideration for the Earnout Periods to be \$15.7 million on the Closing Date, which was determined using a discounted cash flow methodology based on financial forecasts determined by management that included assumptions about revenue growth and discount rates, and is included in level three of the fair value hierarchy. Each quarter, the Company revised the estimated fair value of the consideration for the Earnout Periods. Accordingly, the Company recognized an expense of \$2.1 million and gain of \$1.4 million in amortization and acquisition-related costs in the consolidated statements of operations and other comprehensive income (loss) for the twelve months ended September 30, 2023 and 2022, respectively.

The Company incurred \$0.6 million of expense in connection with the acquisition primarily related to legal fees, outside service costs, and travel expense, which are included in amortization and acquisition-related costs in the consolidated statements of operations and other comprehensive income (loss).

On the Closing Date, the Company deposited a portion of the Initial Cash Payment and a number of shares of Common Stock having a collective value of approximately \$4.0 million into an escrow fund to serve as collateral and partial security for working capital adjustments and certain indemnification rights of the Company. As indicated above, 15% of the Earnout Payment with respect to the first Earnout Period was also deposited into the escrow fund. The escrow fund was released to the equityholders of ID R&D in the fourth quarter of fiscal 2023. The Company used cash on hand for the Initial Cash Payment.

#### *Acquisition of HooYu Ltd.*

On March 23, 2022, the Company completed the acquisition (“HooYu Acquisition”) of HooYu Ltd (“HooYu”) pursuant to the Purchase Agreement (the “Purchase Agreement”) dated March 23, 2022, by and among the Company and certain persons identified in the Purchase Agreement (the “Sellers”). Pursuant to the Purchase Agreement, the Company, among other things, acquired 100% of the outstanding share capital of HooYu, a leading global customer onboarding platform designed to increase the integrity of KYC and maximize the success of customer onboarding. As consideration for the HooYu Acquisition, the Company paid aggregate consideration in the amount of \$129.1 million (the “Closing Consideration”), as such amount may be adjusted for transaction expenses and indebtedness. Pursuant to the Purchase Agreement, \$1.6 million was withheld as a reduction to the Closing Consideration and was retained by the Company for the final working capital adjustments and indemnification of certain tax matters under the Purchase Agreement.

The Company incurred \$3.2 million of expense in connection with the acquisition primarily related to legal fees, outside service costs, foreign currency and realized losses on investments, and travel expense, which are included in amortization and acquisition-related costs in the consolidated statements of operations and other comprehensive income (loss).

On March 23, 2022, using cash on hand, the Company transferred an aggregate of \$127.5 million to the Sellers and its third-party legal and investment advisors, net of cash acquired of \$0.5 million. In July 2022 the Company paid an additional \$0.4 million to the Sellers in settling final working capital.

The following table summarizes the estimated fair values of the assets acquired and liabilities assumed from the ID R&D Acquisition and HooYu Acquisition as of September 30, 2023 (amounts in thousands):

	<b>ID R&amp;D</b>	<b>HooYu</b>
Accounts receivable	\$ 173	\$ 1,234
Property, plant, and equipment	114	504
Other current assets	147	630
Intangible assets	16,930	73,100
Goodwill	27,748	74,206
Current liabilities	(425)	(2,264)
Deferred revenue	—	(2,612)
Deferred income tax liabilities	(2,355)	(16,896)
Net assets acquired	<u>\$ 42,332</u>	<u>\$ 127,902</u>

The goodwill recognized is due to expected market participant synergies and other factors and is not expected to be deductible for income tax purposes. The Company estimated the fair value of identifiable acquisition-related intangible assets with definite lives primarily based on discounted cash flow projections that were estimated to arise from these assets. The Company exercised significant judgment with regard to assumptions used in the determination of fair value such as with respect to revenue growth rates, discount rates and the determination of the estimated useful lives of the intangible assets. The following table summarizes the estimated fair values and estimated useful lives of intangible assets with definite lives acquired from the ID R&D Acquisition and HooYu Acquisition during the twelve months ended September 30, 2023 (amounts in thousands, except for years):

**ID R&D**

	<b>Amortization Period</b>	<b>Amount assigned</b>
Completed technologies	7.0 years	\$ 14,020
Customer relationships	3.0 years	2,540
Trade name	5.0 years	370
Total intangible assets acquired		<u>\$ 16,930</u>

**HooYu**

	<b>Amortization Period</b>	<b>Amount assigned</b>
Completed technologies	7.0 years	\$ 61,400
Customer relationships	5.0 years	5,000
Trade name	5.0 years	6,100
Covenants not to compete	3.0 years	\$ 600
<b>Total intangible assets acquired</b>		<b>\$ 73,100</b>

The following unaudited pro forma financial information should not be taken as representative of the Company's future consolidated results of operations and includes adjustments for the amortization expense related to the identified intangible assets. The following table summarizes the Company's unaudited pro forma financial information and is presented as if the ID R&D Acquisition and HooYu Acquisition occurred on October 1, 2020 and 2021, respectively (*amounts shown in thousands*):

	<b>For the twelve months ended September 30,</b>	
	<b>2022</b>	<b>2021</b>
Pro forma revenue	\$ 149,679	\$ 130,302
Pro forma net income (loss)	\$ (6,683)	\$ (8,516)

The following table summarizes the results of ID R&D and HooYu that are included in the Company's consolidated results (*amounts shown in thousands*):

	<b>For the twelve months ended September 30,</b>	
	<b>2022</b>	<b>2021</b>
<b>ID R&amp;D</b>		
Revenue	\$ 5,663	\$ 849
Net Income (loss)	\$ (3,769)	\$ (3,021)
<b>HooYu</b>		
Revenue	\$ 5,738	
Net Income (loss)	\$ (1,587)	

**4. RESTRUCTURING**

In order to streamline the organization and focus resources going forward, the Company undertook strategic restructurings in June and November 2022, which included reductions in workforce. Restructuring costs consist of employee severance obligations and other related costs. The following table summarizes changes in the restructuring accrual during the twelve months ended September 30, 2023 (*amounts in thousands*):

Balance at September 30, 2022	\$ 901
Additional costs incurred	2,109
Payments	(3,070)
Foreign currency effect on the restructuring accrual	60
Balance at September 30, 2023	<u>\$ —</u>

**5. INVESTMENTS**

The Company determines the appropriate designation of investments at the time of purchase and reevaluates such designation as of each balance sheet date. All of the Company's investments are designated as available-for-sale debt securities. As of September 30, 2023 and 2022, the Company's short-term investments have maturity dates of less than one year from the balance sheet date. The Company's long-term investments have maturity dates of greater than one year from the balance sheet date.

Available-for-sale marketable securities are carried at fair value as determined by quoted market prices for identical or similar assets, with unrealized gains and losses, net of taxes, and reported as a separate component of stockholders' equity. Management reviews the fair value of the portfolio at least monthly and evaluates individual securities with fair value below amortized cost at the balance sheet date. For debt securities, in order to determine whether impairment is other-than-temporary, management must conclude whether the Company intends to sell the impaired security and whether it is more likely than not that the Company will be required to sell the security before recovering its amortized cost basis. If management intends to sell an impaired debt security or it is more likely than not that the Company will be required to sell the security prior to recovering its amortized cost basis, an other-than-temporary impairment is deemed to have occurred. The amount of an other-than-temporary impairment on debt securities related to a credit loss, or securities that management intends to sell before recovery, is recognized in earnings. The amount of an other-than-temporary impairment on debt securities related to other factors is recorded consistent with changes in the fair value of all other available-for-sale securities as a component of stockholders' equity in other comprehensive income (loss). No other-than-temporary impairment charges were recognized in the twelve months ended September 30, 2023, 2022, and 2021. The Company had no realized gain or loss from the sale of available-for-sale securities during the twelve months ended September 30, 2023. The Company realized a \$0.3 million loss from the sale of available-for-sale securities during the twelve months ended September 30, 2022. There were no realized gains or losses from the sale of available-for-sale securities during the twelve months ended September 30, 2021.

The cost of securities sold is based on the specific identification method. Amortization of premiums, accretion of discounts, interest, dividend income, and realized gains and losses are included in other income, net in the consolidated statements of operations and other comprehensive income (loss).

The following tables summarize investments by type of security as of September 30, 2023 and 2022, respectively (*amounts in thousands*):

<b>September 30, 2023:</b>	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Market Value
Available-for-sale securities:				
U.S. Treasury, short-term	\$ 40,329	\$ 1	\$ (76)	\$ 40,254
Corporate debt securities, short-term	34,545	—	(99)	34,446
U.S. Treasury, long-term	1,371	—	(67)	1,304
<b>Total</b>	<b>\$ 76,245</b>	<b>\$ 1</b>	<b>\$ (242)</b>	<b>\$ 76,004</b>

<b>September 30, 2022:</b>	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Market Value
Available-for-sale securities:				
U.S. Treasury, short-term	\$ 6,016	\$ —	\$ (134)	\$ 5,882
Foreign government and agency securities, short-term	2,865	—	(38)	2,827
Commercial paper, short-term	18,245	—	(223)	18,022
Corporate debt securities, short-term	32,065	—	(528)	31,537
U.S. Treasury, long-term	3,431	—	(210)	3,221
Corporate debt securities, long-term	7,692	—	(280)	7,412
<b>Total</b>	<b>\$ 70,314</b>	<b>\$ —</b>	<b>\$ (1,413)</b>	<b>\$ 68,901</b>

#### *Fair Value Measurements and Disclosures*

FASB ASC Topic 820, *Fair Value Measurements* ("ASC 820") defines fair value, establishes a framework for measuring fair value under GAAP and enhances disclosures about fair value measurements. Fair value is defined under ASC 820 as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value under ASC 820 must maximize the use of observable inputs and minimize the use of unobservable inputs. ASC 820 describes a fair value hierarchy based on the following three levels of inputs that may be used to measure fair value, of which the first two are considered observable and the last unobservable, that may be used to measure fair value which consists of the following:

- Level 1—Quoted prices in active markets for identical assets or liabilities;
- Level 2—Inputs other than Level 1 inputs that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities; and



- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The following tables represent the fair value hierarchy of the Company's investments and acquisition-related contingent consideration as of September 30, 2023 and 2022, respectively (amounts in thousands):

	Balance	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<b>September 30, 2023</b>				
<b>Assets:</b>				
Short-term investments:				
U.S. Treasury	\$ 40,254	\$ 40,254	\$ —	\$ —
Corporate debt securities	34,446	—	34,446	—
Total short-term investments at fair value	74,700	40,254	34,446	—
Long-term investments:				
U.S. Treasury	1,304	1,304	—	—
Total long-term investments at fair value	1,304	1,304	—	—
Total assets at fair value	\$ 76,004	\$ 41,558	\$ 34,446	\$ —
<b>Liabilities:</b>				
Current liabilities:				
Acquisition-related contingent consideration	\$ 7,976	\$ —	\$ 7,976	\$ —
Total liabilities at fair value	\$ 7,976	\$ —	\$ 7,976	\$ —

	Balance	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<b>September 30, 2022</b>				
<b>Assets:</b>				
Short-term investments:				
U.S. Treasury	\$ 5,882	\$ 5,882	\$ —	\$ —
Commercial paper	18,022	—	18,022	—
Foreign government and agency securities	2,827	—	2,827	—
Corporate debt securities	31,537	—	31,537	—
Total short-term investments at fair value	58,268	5,882	52,386	—
Long-term investments:				
U.S. Treasury	3,221	3,221	—	—
Corporate debt securities	7,412	—	7,412	—
Total long-term investments at fair value	10,633	3,221	7,412	—
Total assets at fair value	\$ 68,901	\$ 9,103	\$ 59,798	\$ —
<b>Liabilities:</b>				
Current liabilities:				
Acquisition-related contingent consideration	\$ 5,920	\$ —	\$ —	\$ 5,920
Total liabilities at fair value	\$ 5,920	\$ —	\$ —	\$ 5,920

- Level 1: Includes investments in U.S. Government and agency securities, which are valued based on recently executed transactions in the same or similar securities.
- Level 2: Convertible Senior Notes and corporate debt securities. Corporate debt securities are valued using quoted prices for similar assets or liabilities, quoted prices in markets that are not active or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities. On February 5, 2021, the Company issued the 2026 Notes as further described in Note 9. Concurrently with the issuance of the 2026 Notes, the

Company entered into the Notes Hedge and Warrant Transactions which in combination are intended to reduce the potential dilution from the conversion of the 2026 Notes (see Note 9).

The fair value of the Notes Hedge and the embedded conversion derivative were estimated using a Black-Scholes model. Based on the fair value hierarchy, the Company classified the Notes Hedge and the embedded conversion derivative as Level 2 as significant inputs are observable, either directly or indirectly. The significant inputs and assumptions used in the models to calculate the fair value of the derivatives include the Common Stock price, exercise price of the derivatives, risk-free interest rate, volatility, annual coupon rate and remaining contractual term.

As of September 30, 2023, total acquisition-related contingent consideration of \$8.0 million is recorded in acquisition-related contingent consideration in the consolidated balance sheets. The Company recorded the acquisition date fair value based on the likelihood of contingent earnout payments related to the Company's acquisition of ID R&D, as part of the consideration transferred. The earnout payments consist of cash payments and issuances of Common Stock and are subsequently remeasured to fair value each reporting date. The Company used a Monte Carlo Simulation to estimate fair value of total contingent consideration. Additionally, for contingent consideration to be settled in a variable number of shares of Common Stock, the Company used the most recent Mitek share price as reported by the Nasdaq Capital Market to determine the fair value of the shares expected to be issued. The Company previously classified the contingent consideration as Level 3, due to the lack of relevant observable inputs and market activity. The second earnout period ended on May 28, 2023 and the value recorded as of September 30, 2023 is based on the calculated final payout and the Company reclassified the contingent consideration as Level 2 during the third quarter of fiscal year 2023. The following table includes a roll-forward of the contingent consideration liability during the twelve months ended September 30, 2023 (*amounts in thousands*):

Balance at September 30, 2022	\$	5,920
Expenses recorded due to changes in fair value		2,056
Balance at September 30, 2023	\$	<u>7,976</u>

The following tables summarize the quantitative information including the unobservable inputs related to our acquisition-related contingent consideration as of September 30, 2022 (*amounts in thousands*):

	Fair Value at September 30, 2022		Valuation Technique	Unobservable Input	Input Used
	\$				
Acquisition-related contingent consideration	\$	5,920	Monte Carlo simulation	Weighted-average cost of capital	14.80 %
				Revenue weight-average cost of capital	4.40 %
				Revenue volatility	0.20

## 6. GOODWILL AND INTANGIBLE ASSETS

### Goodwill

The Company had a goodwill balance of \$123.5 million and \$115.6 million at September 30, 2023 and 2022, respectively, representing the excess of costs over fair value of assets of businesses acquired. The following table summarizes changes in the balance of goodwill during the twelve months ended September 30, 2023 (*amounts in thousands*):

Balance at September 30, 2022	\$	115,632
Foreign currency effect on goodwill		7,916
Balance at September 30, 2023	\$	<u>123,548</u>

### Intangible Assets

Intangible assets include the value assigned to purchased completed technology, customer relationships, trade names, and covenants not to compete. The estimated useful lives for all of these intangible assets range from three to seven years and they are amortized on a straight-line basis. Intangible assets as of September 30, 2023 and 2022 are summarized as follows (*amounts in*

thousands, except for years):

<b>September 30, 2023:</b>	<b>Weighted Average Amortization Period (in years)</b>	<b>Cost</b>	<b>Accumulated Amortization</b>	<b>Net</b>
Completed technologies	6.9 years	\$ 95,761	\$ 39,254	\$ 56,507
Customer relationships	4.7 years	25,168	21,396	3,772
Trade names	5.0 years	7,088	2,967	4,121
Covenants not to compete	3.0 years	\$ 600	\$ 326	274
<b>Total intangible assets</b>		<b>\$ 128,617</b>	<b>\$ 63,943</b>	<b>\$ 64,674</b>

<b>September 30, 2022:</b>	<b>Weighted Average Amortization Period (in years)</b>	<b>Cost</b>	<b>Accumulated Amortization</b>	<b>Net</b>
Completed technologies	6.9 years	\$ 95,761	\$ 32,265	\$ 63,496
Customer relationships	4.7 years	25,168	18,241	6,927
Trade names	5.0 years	7,088	2,174	4,914
Covenants not to compete	3.0 years	600	181	419
<b>Total intangible assets</b>		<b>\$ 128,617</b>	<b>\$ 52,861</b>	<b>\$ 75,756</b>

Amortization expense related to acquired intangible assets was \$17.0 million, \$13.5 million, and \$7.5 million for twelve months ended September 30, 2023, 2022, and 2021, respectively, and is recorded within amortization and acquisition-related costs on the consolidated statements of operations and other comprehensive income (loss).

The estimated future amortization expense related to intangible assets for each of the five succeeding fiscal years is expected to be as follows (*amounts in thousands*):

	<b>Estimated Future Amortization Expense</b>
2024	14,650
2025	13,404
2026	12,207
2027	11,095
2028	9,418
Thereafter	3,900
<b>Total</b>	<b>\$ 64,674</b>

## 7. STOCKHOLDERS' EQUITY

### *Stock-Based Compensation Expense*

The following table summarizes stock-based compensation expense related to RSUs, stock options, and ESPP shares for the twelve months ended September 30, 2023, 2022, and 2021, which were allocated as follows (*amounts in thousands*):

	<b>2023</b>	<b>2022</b>	<b>2021</b>
Cost of revenue	\$ 468	\$ 289	\$ 339
Selling and marketing	3,023	4,383	3,399
Research and development	2,757	3,701	3,218
General and administrative	4,215	4,973	4,576
<b>Stock-based compensation expense included in expenses</b>	<b>\$ 10,463</b>	<b>\$ 13,346</b>	<b>\$ 11,532</b>

No options were granted in the twelve months ended September 30, 2023 or 2022. As of September 30, 2023, the Company had \$20.3 million of unrecognized compensation expense related to outstanding stock options and RSUs expected to be recognized over a weighted-average period of approximately 2.3 years.

#### *2020 Incentive Plan*

In January 2020, the Company's Board of Directors (the "Board") adopted the Mitek Systems, Inc. 2020 Incentive Plan (the "2020 Plan") upon the recommendation of the Compensation Committee of the Board. On March 4, 2020, the Company's stockholders approved the 2020 Plan. The total number of shares of Common Stock reserved for issuance under the 2020 Plan is 4,500,000 shares plus such number of shares, not to exceed 107,903, as remained available for issuance under the 2002 Stock Option Plan, 2006 Stock Option Plan, 2010 Stock Option Plan, and 2012 Incentive Plan (collectively, the "Prior Plans") as of January 17, 2020, plus any shares underlying awards under the Prior Plans that are terminated, forfeited, cancelled, expire unexercised or are settled in cash after January 17, 2020. As of September 30, 2023, (i) 1,834,474 RSUs and 730,393 performance-based restricted stock unit awards ("Performance RSUs") were outstanding under the 2020 Plan, (ii) 1,425,042 shares of Common Stock were reserved for future grants under the 2020 Plan, and (iii) stock options to purchase an aggregate of 434,090 shares of Common Stock and 94,309 RSUs were outstanding under the Prior Plans.

On October 2, 2023, the Company held an annual meeting of its stockholders (the "Annual Meeting"). At the Annual Meeting, the Company's stockholders approved an amendment and restatement of the 2020 Plan to increase the number of shares authorized for issuance thereunder by 5,108,000 shares (the 2020 Plan as so amended and restated, the "A&R 2020 Plan").

The A&R 2020 Plan had been previously approved, subject to stockholder approval, by the Company's Board of Directors (the "Board"), upon recommendation of the Compensation Committee of the Board, on August 9, 2023. A summary of the A&R 2020 Plan was included in the Company's definitive proxy statement for the Annual Meeting filed with the U.S. Securities and Exchange Commission on August 22, 2023, as supplemented and amended on September 19, 2023 (the "Proxy Statement").

#### *Employee Stock Purchase Plan*

In January 2018, the Board adopted the ESPP. On March 7, 2018, the Company's stockholders approved the ESPP. The total number of shares of Common Stock reserved for issuance thereunder is 1,000,000 shares. As of September 30, 2023, (i) 729,124 shares have been issued to participants pursuant to the ESPP and (ii) 270,876 shares of Common Stock were reserved for future purchases under the ESPP. The Company commenced the initial offering period on April 2, 2018.

The ESPP enables eligible employees to purchase shares of Common Stock at a discount from the market price through payroll deductions, subject to certain limitations. Eligible employees may elect to participate in the ESPP only during an open enrollment period. The offering period immediately follows the open enrollment window, at which time ESPP contributions are withheld from the participant's regular paycheck. The ESPP provides for a 15% discount on the market value of the stock at the lower of the grant date price (first day of the offering period) and the purchase date price (last day of the offering period). The Company recognized \$0.3 million, \$0.4 million and \$0.6 million in stock-based compensation expense related to the ESPP during each of the twelve months ended September 30, 2023, 2022, and 2021, respectively.

#### *Director Restricted Stock Unit Plan*

In January 2011, the Board adopted the Mitek Systems, Inc. Director Restricted Stock Unit Plan, as amended and restated (the "Director Plan"). On March 10, 2017, the Company's stockholders approved an amendment to the Director Plan to increase the number of shares of Common Stock available for future grants. The total number of shares of Common Stock reserved for issuance thereunder is 1,500,000 shares. The Director Plan expired on December 31, 2022. As of September 30, 2023, (i) 259,513 RSUs were outstanding under the Director Plan and (ii) no shares of Common Stock were reserved for future grants under the Director Plan.

### Stock Options

The following table summarizes stock option activity under the Company's equity plans during the twelve months ended September 30, 2023, 2022, and 2021:

	Number of Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding at September 30, 2020	1,162,505	\$ 7.51	6.1	\$ 6,081
Granted	—	\$ —		
Exercised	(329,878)	\$ 7.63		\$ 2,670
Canceled	(15,910)	\$ 9.41		
Outstanding at September 30, 2021	816,717	\$ 7.42	5.8	\$ 9,046
Granted	—	\$ —		
Exercised	(35,625)	\$ 6.68		\$ 279
Canceled	—	\$ —		
Outstanding at September 30, 2022	781,092	\$ 7.46	3.7	\$ 1,512
Granted	—	\$ —		
Exercised	(98,952)	\$ 7.44		\$ 338
Canceled	(30,871)	\$ 9.49		
Outstanding at September 30, 2023	651,269	\$ 7.37	3.6	\$ 2,185
Vested and Expected to Vest at September 30, 2023	651,269	\$ 7.37	3.6	\$ 2,185
Exercisable at September 30, 2023	647,884	\$ 7.35	3.6	\$ 2,181

The Company recognized \$0.4 million, \$0.5 million, and \$0.7 million in stock-based compensation expense related to outstanding stock options during the twelve months ended September 30, 2023, 2022, and 2021, respectively. As of September 30, 2023, the Company had \$9,000 of unrecognized compensation expense related to outstanding stock options expected to be recognized over a weighted-average period of approximately 0.1 years.

Aggregate intrinsic value represents the value of the Company's closing stock price on the last trading day of the fiscal period in excess of the weighted-average exercise price, multiplied by the number of options outstanding and exercisable. There were no options granted during either of the twelve months ended September 30, 2023, 2022, or 2021.

### Restricted Stock Units

The following table summarizes RSU activity under the Company's equity plans during the twelve months ended September 30, 2023, 2022, and 2021:

	Number of Shares	Weighted- Average Fair Value Per Share
Outstanding at September 30, 2020	2,661,943	\$ 7.95
Granted	887,049	\$ 13.35
Settled	(975,764)	\$ 7.64
Canceled	(161,961)	\$ 8.94
Outstanding at September 30, 2021	2,411,267	\$ 9.99
Granted	1,272,917	\$ 14.43
Settled	(898,178)	\$ 9.57
Canceled	(344,329)	\$ 11.16
Outstanding at September 30, 2022	2,441,677	\$ 12.29
Granted	1,101,925	\$ 10.24
Settled	(665,635)	\$ 11.33
Canceled	(689,671)	\$ 12.49
Outstanding at September 30, 2023	2,188,296	\$ 11.49

The cost of RSUs is determined using the fair value of Common Stock on the award date, and the compensation expense is recognized ratably over the vesting period. The Company recognized \$7.1 million, \$9.4 million, and \$8.1 million in stock-based compensation expense related to outstanding RSUs in the twelve months ended September 30, 2023, 2022, and 2021, respectively. As of September 30, 2023, the Company had \$16.7 million of unrecognized compensation expense related to outstanding RSUs, which is expected to be recognized over a weighted-average period of approximately 2.5 years.

### Performance Restricted Stock Units

The following table summarizes Performance RSU activity under the Company's equity plans during the twelve months ended September 30, 2023, 2022, and 2021:

	Number of Shares	Weighted- Average Fair Market Value Per Share
Outstanding at September 30, 2020	353,556	\$ 6.06
Granted	284,765	\$ 11.84
Settled	(90,345)	\$ 6.06
Canceled	(19,252)	\$ 6.06
Outstanding at September 30, 2021	528,724	\$ 9.17
Granted	629,279	\$ 15.60
Settled	(176,864)	\$ 8.42
Canceled	(61,683)	\$ 13.51
Outstanding at September 30, 2022	919,456	\$ 13.43
Granted	325,837	\$ 10.23
Settled	(27,245)	\$ 9.25
Canceled	(487,655)	\$ 11.61
Outstanding at September 30, 2023	730,393	\$ 13.37

The cost of Performance RSUs is determined using a Monte Carlo simulation to estimate the fair value on the award date, and the compensation expense is recognized ratably over the vesting period. The Company recognized \$2.7 million, \$3.0 million, and \$1.3 million in stock-based compensation expense related to outstanding Performance RSUs in the twelve months ended September 30, 2023, 2022, and 2021, respectively. As of September 30, 2023, the Company had \$3.4 million of unrecognized compensation expense related to outstanding RSUs expected to be recognized over a weighted-average period of approximately 1.7 years.

#### *Performance Options*

On November 6, 2018, as an inducement grant pursuant to Nasdaq Listing Rule 5635(c)(4), the Company's Chief Executive Officer was granted performance options (the "Performance Options") to purchase up to 800,000 shares of Common Stock at an exercise price of \$9.50 per share, the closing market price for a share of Common Stock on the date of the grant. During the fiscal year ended September 30, 2021, the performance conditions were achieved. In November 2021, the time vesting condition was met and the performance options vested in full. The Company recognized \$0.1 million and \$0.8 million in stock-based compensation expense related to outstanding Performance Options in the twelve months ended September 30, 2022 and 2021, respectively. The Company did not recognize any stock-based compensation expense related to outstanding performance options for the twelve months ended September 30, 2023.

#### *Share Repurchase Program*

On June 15, 2021, the Board authorized and approved a share repurchase program for up to \$15 million of the currently outstanding shares of our Common Stock. The share repurchase program was completed during the second quarter of fiscal 2022 and as such the Company made no purchase during the twelve months ended September 30, 2023.

The Company made purchases of \$14.8 million, or approximately 886,204 shares, during twelve months ended September 30, 2022 at an average price of \$16.73 per share and subsequently retired the shares. The share repurchase program expired on June 30, 2022 and as such no purchases were made after this date. The timing, price and volume of repurchases were based on market conditions, relevant securities laws and other factors. The repurchases were made from time to time, through solicited or unsolicited transactions in the open market, in privately negotiated transactions or pursuant to a share repurchase trading plan.

#### *Rights Agreement*

On October 23, 2018, the Company entered into the Section 382 Rights Agreement (the "Rights Agreement") and issued a dividend of one preferred share purchase right (a "Right") for each share of Common Stock payable on November 2, 2018 to the stockholders of record of such shares on that date. Each Right entitles the registered holder, under certain circumstances, to purchase from the Company one one-thousandth of a share of Series B Junior Preferred Stock, par value \$0.001 per share (the "Preferred Shares"), of the Company, at a price of \$35.00 per one one-thousandth of a Preferred Share represented by a Right, subject to adjustment. The description and terms of the Rights are set forth in the Rights Agreement.

The Rights are not exercisable until the Distribution Date (as defined in the Rights Agreement). Until a Right is exercised, the holder thereof, as such, will have no rights as a stockholder of the Company, including, without limitation, the right to vote or to receive dividends.

At any time prior to the time any person becomes an Acquiring Person (as defined in the Rights Agreement), the Board may redeem the Rights in whole, but not in part, at a price of \$0.0001 per Right (the "Redemption Price"). The redemption of the Rights may be made effective at such time, on such basis and with such conditions as the Board in its sole discretion may establish. Immediately upon any redemption of the Rights, the right to exercise the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

On February 28, 2019, the Company entered into an Amendment No. 1 to the Rights Agreement for the purpose of (i) modifying the definitions of "Beneficial Owner," "Beneficially Own," and "Beneficial Ownership" under the Rights Agreement to more closely align such definitions to the actual and constructive ownership rules under Section 382 of the Internal Revenue Code of 1986, as amended ("Section 382") or such similar provisions of the Tax Cuts and Jobs Act of 2017 and the rules and regulations promulgated thereunder, and (ii) adding an exemption request process for persons to seek an exemption from becoming an "Acquiring Person" under the Rights Agreement in the event such person wishes to acquire 4.9% or more of the Common Stock then outstanding.

The Rights expired on October 22, 2021 and no Rights were redeemed or exchanged.

## 8. INCOME TAXES

### Provision for Income Taxes

Income before income taxes for the twelve months ended September 30, 2023, 2022, and 2021 is comprised of the following (amounts in thousands):

	2023	2022	2021
Domestic	\$ 23,836	\$ 11,483	\$ 10,966
Foreign	(13,495)	(7,881)	(2,164)
Total	<u>\$ 10,341</u>	<u>\$ 3,602</u>	<u>\$ 8,802</u>

For the twelve months ended September 30, 2023, 2022, and 2021 the income tax benefit (provision) was as follows (amounts in thousands):

	2023	2022	2021
Current:			
Federal	\$ (4,414)	\$ (233)	\$ —
State	(1,215)	(325)	(78)
Foreign	(1,023)	(1,800)	(1,119)
Total current provision for income taxes	<u>(6,652)</u>	<u>(2,358)</u>	<u>(1,197)</u>
Deferred:			
Federal	(659)	(1,400)	(1,387)
State	819	513	457
Foreign	4,178	3,337	1,303
Total deferred provision for income taxes	<u>4,338</u>	<u>2,450</u>	<u>373</u>
Total tax benefit (expense)	<u>\$ (2,314)</u>	<u>\$ 92</u>	<u>\$ (824)</u>

### Deferred Income Tax Assets and Liabilities

Significant components of the Company's net deferred tax assets and liabilities as of September 30, 2023 and 2022 are as follows (amounts in thousands):

	2023	2022
Deferred tax assets:		
Stock-based compensation	\$ 2,357	\$ 1,793
Net operating loss carryforwards	11,548	6,656
Research credit carryforwards	4,336	7,747
Lease liability	1,185	859
Intangibles	4,606	—
Other, net	852	1,117
Total deferred assets	<u>24,884</u>	<u>18,172</u>
Deferred tax liabilities:		
Right of use asset	(1,032)	(633)
Intangibles	(15,914)	(14,139)
Total deferred liabilities	<u>(16,946)</u>	<u>(14,772)</u>
Valuation allowance for net deferred tax assets	(2,769)	(2,868)
Net deferred tax asset	<u>\$ 5,169</u>	<u>\$ 532</u>

The net change in the total valuation allowance for the twelve months ended September 30, 2023 and 2022 was a decrease of \$0.1 million and an increase of \$2.1 million, respectively. There was no material change in the total valuation allowance during the twelve months ended September 30, 2023. The valuation allowance increased due to foreign losses incurred in the twelve months ended September 30, 2022. In assessing the realizability of deferred tax assets, the Company considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during periods in which those temporary differences become deductible. The Company considers projected future taxable income and planning strategies in making this assessment. Based on the level of historical operating



results and the projections for future taxable income, the Company has determined that it is more likely than not that the deferred tax assets will be realized with the exception of the net foreign deferred tax assets for certain foreign entities. During the year ended September 30, 2022 the Company completed the HooYu Acquisition, as detailed in Note 3 which increased deferred tax liabilities related to intangible assets.

As of September 30, 2023, the Company has no available net operating loss carryforwards for federal income tax purposes. The net operating losses for state purposes are \$25.2 million, which will begin to expire in 2032. As of September 30, 2023, the Company has no available federal research and development credit carryforwards as the Company fully utilized all federal research and development credits. As of September 30, 2023, the Company has available California research and development credit carryforwards, net of reserves, of \$4.4 million, which do not expire. As of September 30, 2023, the Company has available foreign research and development credit carryforwards of \$0.8 million, which will begin to expire in 2037.

Sections 382 and 383 of the Internal Revenue Code of 1986, as amended (the "IRC") limit the utilization of tax attribute carryforwards that arise prior to certain cumulative changes in a corporation's ownership. The Company has completed an IRC Section 382/383 analysis through March 31, 2017 and any identified ownership changes had no impact to the utilization of tax attribute carryforwards. Any future ownership changes may have an impact on the utilization of the tax attribute carryforwards.

Earnings from the Company's foreign subsidiaries are considered to be indefinitely reinvested. A distribution of these non-U.S. earnings in the form of dividends or otherwise would subject the Company to foreign withholding taxes and may subject the Company to U.S. federal and state taxes.

#### *Income Tax Provision Reconciliation*

The difference between the income tax benefit (provision) and income taxes computed using the U.S. federal income tax rate was as follows for the twelve months ended September 30, 2023, 2022, and 2021 (*amounts shown in thousands*):

	2023	2022	2021
Amount computed using statutory rate	\$ (2,172)	\$ (756)	\$ (1,849)
Net change in valuation allowance for net deferred tax assets	292	(1,702)	(19)
Other	(477)	1,605	—
Foreign rate differential	504	268	13
Non-deductible items	(14)	(64)	(141)
Transaction costs	—	(411)	—
State income tax	(100)	251	(276)
Research and development credits	791	1,166	1,248
Foreign income tax	—	—	(15)
Contingent consideration	(432)	285	—
Uncertain tax positions	(184)	(318)	—
Stock compensation, net	(522)	(232)	215
Income tax (provision) benefit	<u>\$ (2,314)</u>	<u>\$ 92</u>	<u>\$ (824)</u>

#### *Uncertain Tax Positions*

In accordance with authoritative guidance, the Company recognizes the benefit of uncertain income tax positions only if those positions are more likely than not of being sustained. An uncertain income tax position will not be recognized if it has less than a 50% likelihood of being sustained.

The following table reconciles the beginning and ending amount of unrecognized tax benefits for the twelve months ended September 30, 2023, 2022, and 2021 (*amounts shown in thousands*):

	2023	2022	2021
Gross unrecognized tax benefits at the beginning of the year	\$ 2,664	\$ 2,114	\$ 1,810
Additions from tax positions taken in the current year	330	484	268
Additions from tax positions taken in prior years	—	66	36
Reductions from tax positions taken in prior years	(9)	—	—
Gross unrecognized tax benefits at end of the year	<u>\$ 2,985</u>	<u>\$ 2,664</u>	<u>\$ 2,114</u>

Of the total unrecognized tax benefits at September 30, 2023, \$2.4 million will impact the Company's effective tax rate. The Company does not anticipate that there will be a substantial change in unrecognized tax benefits within the next twelve months.

The Company's practice is to recognize interest and/or penalties related to income tax matters in income tax expense. As of September 30, 2023, no accrued interest or penalties related to uncertain tax positions are recorded in the consolidated financial statements.

The Company is subject to income taxation in the U.S. at the federal and state levels. All tax years are subject to examination by U.S., California, and other state tax authorities due to the carryforward of unutilized net operating losses and tax credits. The Company is also subject to foreign income taxes in the countries in which it operates. To the Company's knowledge, the Company is not currently under examination by any other taxing authorities.

## 9. CONVERTIBLE SENIOR NOTES

The carrying values of the 0.75% convertible notes due 2026 issued by the Company in an aggregate principal amount of \$155.3 million (the "2026 Notes") are as follows (*amounts in thousands*):

	September 30, 2023	September 30, 2022
2026 Notes:		
Principal amount	\$ 155,250	\$ 155,250
Less: unamortized discount and issuance costs, net of amortization	(19,734)	(27,280)
Carrying amount	<u>\$ 135,516</u>	<u>\$ 127,970</u>

In February 2021, the Company issued \$155.3 million aggregate principal amount of the 2026 Notes (including the Additional Notes, as defined below). The 2026 Notes are senior unsecured obligations of the Company. The 2026 Notes were issued pursuant to an indenture, dated February 5, 2021 (the "Indenture"), between the Company and UMB Bank, National Association, as trustee. The Indenture includes customary covenants and sets forth certain events of default after which the 2026 Notes may be declared immediately due and payable and sets forth certain types of bankruptcy or insolvency events of default involving the Company after which the 2026 Notes become automatically due and payable. The Company granted the initial purchasers of the 2026 Notes (collectively, the "Initial Purchasers") a 13-day option to purchase up to an additional \$20.3 million aggregate principal amount of the 2026 Notes (the "Additional Notes"), which was exercised in full. The 2026 Notes were purchased in a transaction that was completed on February 5, 2021. As of January 13, 2023 ("Date of Noncompliance"), the Company was not in compliance with certain of the covenants in the Indenture as a result of the Company not timely filing its Form 10-K for the fiscal year ended September 30, 2022 ("Form 10-K") and the Form 10-Q for the quarter ended December 31, 2022 ("Q1 Form 10-Q") with the SEC. As a result of not being in compliance, the 2026 Notes began to accrue additional special interest of 0.25% of the outstanding principal of the 2026 Notes for the 90 days after the Date of Noncompliance and 0.50% of the outstanding principal of the 2026 Notes for the 91st through 180th day after the Date of Noncompliance. The Company subsequently did not timely file its Form 10-Q for the quarter ended March 31, 2023 ("Q2 Form 10-Q") and its Form 10-Q for the quarter ended June 30, 2023 ("Q3 Form 10-Q"). The Company then filed its Form 10-K with the SEC on July 31, 2023, its Q1 Form 10-Q with the SEC on September 6, 2023, and its Q2 Form 10-Q with the SEC on September 29, 2023. As a result, the Company was no longer required to accrue additional special interest. As of February 15, 2024, the Company was not in compliance with certain covenants in the Indenture as a result of not timely filing its Form 10-Q for the quarter ended December 31, 2023 with the SEC.

In December 2023, the Company was notified that we were not in compliance with the Nasdaq listing rules as a result of the failure to timely file the Company's Form 10-K for the year ended September 30, 2023, and the Nasdaq issued a delisting determination. The Company requested and received a stay pending a hearing to occur on March 19, 2024. The Company has a panel hearing with the Nasdaq on March 19, 2024 to review the Company's request to extend the stay of suspension of the Company's common stock from the Nasdaq. The Company's common stock will continue to trade on the Nasdaq Capital Market under the symbol "MITK" until the Panel issues its decision following the hearing and through the expiration of any additional extension period granted by the Panel. The Panel has discretion to grant an exception for up to 180 days after the Nasdaq Staff's initial delisting decision. There can be no assurance that the Panel will grant the Company's request for a stay pending the hearing process or any further extension following the hearing or continued listing. If the Company's common stock ceases to be listed for trading on the Nasdaq the Company could be in default under the covenants within the 2026 Notes which could result in the Company's debt becoming due and payable earlier than the maturity date. If the notes are called, the Company would seek a refinancing of all or a portion of the notes, repay the notes, or a combination of these actions.

The 2026 Notes will mature on February 1, 2026, unless earlier redeemed, repurchased or converted. The 2026 Notes bear interest from February 5, 2021 at a rate of 0.750% per year, payable semiannually in arrears on February 1 and August 1 of each year, beginning on August 1, 2021. The 2026 Notes will be convertible at the option of the holders at any time prior to the close of business on the business day immediately preceding August 1, 2025, only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending on June 30, 2021, if the last reported sale price per share of Common Stock exceeds 130% of the conversion price for each of at least 20 trading days during the 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter; (2) during five consecutive business days immediately after any five consecutive trading day period (such five consecutive trading day period, the "measurement period") in which the trading price 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 per share of the Common Stock on such trading day and the conversion rate on such trading day; (3) upon the occurrence of certain corporate events or distributions on the Common Stock. On or after August 1, 2025, until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert all or any portion of their 2026 Notes, in multiples of \$1,000 principal amount, at the option of the holder regardless of the foregoing circumstances. Upon conversion, the Company may satisfy its conversion obligation by paying and/or delivering, as the case may be, cash and, if applicable at the Company's election, shares of the Common Stock, based on the applicable conversion rate(s); provided that the Company will be required to settle conversions solely in cash unless and until the Company (i) receives stockholder approval to increase the number of authorized shares of the Common Stock and (ii) reserves such amount of shares of the Common Stock for future issuance as required pursuant to the Indenture that governs the 2026 Notes. The conversion rate for the 2026 Notes will initially be 47.9731 shares of the Common Stock per \$1,000 principal amount of 2026 Notes, which is equivalent to an initial conversion price of approximately \$20.85 per share of the Common Stock. The initial conversion price of the 2026 Notes represents a premium of approximately 37.5% to the \$15.16 per share last reported sale price of the Common Stock on February 2, 2021. The conversion rate is subject to adjustment under certain circumstances in accordance with the terms of the Indenture.

The net proceeds from this offering were approximately \$149.7 million, after deducting the Initial Purchasers' discounts and commissions and the Company's estimated offering expenses related to the offering. The Company used approximately \$9.3 million of the net proceeds from the offering to pay the cost of the Notes Hedge, after such cost is partially offset by the proceeds from the Warrant Transactions described below. The Initial Purchasers exercised their option to purchase Additional Notes in full and the Company used a portion of the net proceeds from the sale of such Additional Notes to enter into additional Notes Hedges, after such cost is partially offset by the proceeds from the additional Warrant Transactions, with the Option Counterparties (as defined below). The Company intends to use the remainder of the net proceeds from the offering for general corporate purposes, which may include working capital, capital expenditures, and potential acquisitions and strategic transactions.

As of September 30, 2023, the number of authorized and unissued shares of Common Stock that are not reserved for other purposes is sufficient to settle the 2026 Notes into equity. Accordingly, the Company may settle conversions of notes through payment or delivery, as the case may be, of cash, shares of Common Stock or a combination of cash and shares of Common Stock, at the Company's election.

In accounting for the issuance of the 2026 Notes, the conversion option of the 2026 Notes was deemed an embedded derivative requiring bifurcation from the 2026 Notes ("host contract") and separate accounting as an embedded derivative liability, as a result of the Company not having the necessary number of authorized but unissued shares of its Common Stock available to settle the conversion option of the 2026 Notes in shares. The proceeds from the 2026 Notes were first allocated to the embedded derivative liability and the remaining proceeds were then allocated to the host contract. On February 5, 2021, the fair value of the embedded derivative liability representing the conversion option was \$33.2 million and the remaining \$116.5 million was allocated to the host contract. The difference between the principal amount of the 2026 Notes and the fair value of the host contract (the "debt discount") is amortized to interest expense using the effective interest method over the term of the 2026 Notes.

In the second quarter of fiscal 2022, the stockholders of the Company approved an increase to the number of authorized shares of Common Stock, to an amount sufficient to settle the conversion of the 2026 Notes. As a result of the increase to the number of authorized shares of Common Stock, the Company reclassified the embedded conversion derivative to additional paid-in capital.

As of September 30, 2023, the embedded conversion derivative is included in additional paid-in capital in the consolidated balance sheets and will not be remeasured provided the requirements to qualify for the scope exception in ASC 815-10-15-74(a) continue to be met.

Debt issuance costs for the issuance of the 2026 Notes were approximately \$5.5 million, consisting of initial purchasers' discount and other issuance costs. In accounting for the transaction costs, the Company allocated the total amount incurred to the 2026 Notes. Transaction costs were recorded as debt issuance cost (presented as contra debt in the consolidated balance sheet) and are being amortized using the effective interest method to interest expense over the term of the 2026 Notes.

The following table presents the total amount of interest cost recognized relating to the 2026 Notes for the twelve months ended September 30, 2023 and 2022 (amounts in thousands):

	2023	2022
Contractual interest expense	\$ 1,615	\$ 1,179
Amortization of debt discount and issuance costs	7,546	7,053
Total interest expense recognized	<u>\$ 9,161</u>	<u>\$ 8,232</u>

The derived effective interest rate on the 2026 Notes host contract was determined to be 6.71%, which remains unchanged from the date of issuance. The remaining unamortized debt discount was \$19.7 million as of September 30, 2023, and will be amortized over approximately 2.3 years.

### *Convertible Senior Notes Hedge and Warrants*

In connection with the pricing of the 2026 Notes, the Company entered into the Notes Hedge with Bank of America, N.A., Jefferies International Limited and Goldman Sachs & Co. LLC (the "Option Counterparties"). The Notes Hedge provided the Company with the option to acquire, on a net settlement basis, approximately 7.4 million shares of Common Stock at a strike price of \$20.85, which is equal to the number of shares of Common Stock that notionally underlie and correspond to the conversion price of the 2026 Notes. The Company also entered into Warrant Transactions with the Option Counterparties relating to the same number of shares of the Common Stock, subject to customary anti-dilution adjustments. The strike price of the Warrant Transactions is \$26.53 per share, which represents a 75.0% premium to the last reported sale price of the Common Stock on the Nasdaq Capital Market on February 2, 2021, and is subject to certain adjustments under the terms of the Warrant Transactions.

The Company was initially required to settle the Notes Hedge in cash, as they did not qualify for the scope exception for contracts involving an issuer's own equity in ASC 815 and were accounted for as a derivative asset. Upon initial purchase, the Notes Hedge was recorded in convertible senior notes hedge at \$33.2 million in the consolidated balance sheets. In the second quarter of fiscal 2022, the stockholders of the Company approved an increase to the number of authorized shares of Common Stock, to an amount sufficient to settle the conversion of the 2026 Notes. As a result of the increase to the number of authorized shares of Common Stock, the Company reclassified the Notes Hedge to additional paid-in capital.

As of September 30, 2023, the Notes Hedge is included in additional paid-in capital in the consolidated balance sheet and will not be remeasured provided the requirements to qualify for the scope exception in ASC 815-10-15-74(a) continue to be met and the Company had not purchased any shares under the Notes Hedge.

As a result of the Warrant Transactions, the Company is required to recognize incremental dilution of earnings per share to the extent the average share price is over \$26.53 for any fiscal quarter. During fiscal 2023, there was no dilution of earnings per share. The Warrant Transactions expire over a period of 80 trading days commencing on May 1, 2026 and may be settled in net shares of Common Stock or net cash at the Company's election. Upon initial sale, the Warrant Transactions were recorded as an increase in additional paid-in capital within stockholders' equity of \$23.9 million. As of September 30, 2023, the Warrant Transactions had not been exercised and remained outstanding.

## **10. COMMITMENTS AND CONTINGENCIES**

### **Legal Proceedings**

#### *Claim Against ICAR*

On June 11, 2018, a claim was filed before Court of First Instance 5 (Juzgado de Primera Instancia) of Barcelona, Spain, the first instance court in the Spanish civil procedure system, against ICAR. The claim, also directed towards Mr. Xavier Codó Grasa, the former controlling shareholder of ICAR and its current General Manager at the time the claim was filed, was brought by the Spanish company Global Equity & Corporate Consulting, S.L. for an alleged breach by ICAR of a services agreement entered into in the context of the sale of all of the shares in ICAR to Mitek Holding B.V., a wholly owned subsidiary of the Company. ICAR responded to the claim on September 7, 2018. After several postponements as a consequence of the COVID-19 pandemic, on March 3, 2022 the trial was held. On June 7, 2022, the Court of First Instance 5 of Barcelona issued a judgment which fully upheld the claim and declared that Mr. Xavier Codó Grasa and ICAR had to pay the amount and damages claimed by Global Equity & Corporate Consulting, S.L. equal to €0.8 million (or \$0.8 million as of September 30, 2023), plus the interest accrued and the legal fees.

ICAR and Mr. Xavier Codó Grasa submitted an appeal against this judgment on July 13, 2022. Global Equity & Corporate Consulting, S.L. filed an opposition to that appeal on September 2, 2022. The next procedural step will be the voting and issuing of the ruling on the appeal. Global Equity & Corporate Consulting, S.L. requested the provisional enforcement of the judgment, asking ICAR and Mr. Xavier Codó Grasa to deposit the damages awarded plus 30% to cover the possible interests that may continue to accrue during the appeal (€1.1 million in total) with the Court.

According to the terms of the sale and purchase agreement concerning the acquisition of the shares in ICAR, Mitek Holding B.V. is to be indemnified in respect of any damages suffered by ICAR and/or Mitek Holding B.V. in respect of this claim. As a consequence, the escrow (€0.9 million) was released pursuant to the provisional enforcement of the judgment, and Mr. Xavier Codó Grasa deposited the remaining €0.2 million. Global Equity & Corporate Consulting, S.L. also requested that ICAR and Mr. Xavier Codó Grasa bear the costs of the provisional enforcement. This amounted to €16,475 for the accrued interests, and €10,995 as legal costs. ICAR and Mr. Xavier Codó Grasa have complied with this request, having such amounts charged to the damages deposited with the Court.

#### *Third-Party Claims Against the Company's Customers*

The Company receives indemnification demands from end-user customers who received third party patentee offers to license patents and allegations of patent infringement. Some of the offers and allegations have resulted in ongoing litigation. The Company is not a party to any such litigation. License offers to and infringement allegations against the Company's end-customers were made by

Lighthouse Consulting Group, LLC; Lupercal, LLC; Pebble Tide, LLC; Dominion Harbor Group, LLC; and IP Edge, LLC, which appear to be non-practicing entities (“NPEs”)—often called “patent trolls”—and not the Company’s competitors. These NPEs may seek to extract settlements from our end-customers, resulting in new or renewed indemnification demands to the Company. At this time, the Company does not believe it is obligated to indemnify any customers or end-customers resulting from license offers or patent infringement allegations by the companies listed above. However, the Company could incur substantial costs if it is determined that it is required to indemnify any customers or end-customers in connection with these offers or allegations. Given the potential for impact to other customers and the industry, the Company is actively monitoring the offers, allegations and any resulting litigation.

On July 7, 2018, United Services Automobile Association (“USAA”) filed a lawsuit against Wells Fargo Bank, N.A. (“Wells Fargo”) in the Eastern District of Texas alleging that Wells Fargo’s remote deposit capture systems (which in part utilize technology provided by the Company to Wells Fargo through a partner) infringe four USAA owned patents related to mobile deposits (the “First Wells Lawsuit”). On August 17, 2018, USAA filed a second lawsuit (the “Second Wells Lawsuit” and together with the First Wells Lawsuit, the “Wells Lawsuits”) against Wells Fargo in the Eastern District of Texas asserting that an additional five patents owned by USAA were infringed by Wells Fargo’s remote deposit capture system. In neither lawsuit was the Company named in the Complaint as an infringer nor at any time did USAA allege specifically that the Company’s products by themselves infringed any of the asserted patents. Subsequently, on November 6, 2019, a jury in the First Wells Lawsuit found that Wells Fargo willfully infringed at least one of the Subject Patents (as defined below) and awarded USAA \$200 million in damages. In the Second Wells Lawsuit, USAA dropped two of the patents from the litigation, and the judge in the case found that one of the remaining three patents was invalid. On January 10, 2020, a jury in the Second Wells Lawsuit found that Wells Fargo willfully infringed at least one of the patents at issue in that case and awarded USAA \$102 million in damages. No Mitek product was accused of infringing either of the two patents in question in the Second Wells Lawsuit as the litigation involved broad banking processes and not the Company’s specific mobile deposit features. USAA and Wells Fargo subsequently reached a settlement, and on April 1, 2021, the Court granted the parties’ joint motion and stipulation of dismissal of the Wells Lawsuits with prejudice.

Wells Fargo filed petitions for *Inter Partes* Review (“IPR”) with the Patent Trial and Appeal Board (“PTAB”) challenging the validity of the four patents in the First Wells Lawsuit. Three of those four petitions were instituted, while one (relating to U.S. Patent No. 9,818,090 (“the ‘090 Patent”)) was denied institution. On November 24, 2020, and January 26, 2021, the PTAB issued final written decisions determining that Wells Fargo had not demonstrated by a preponderance of the evidence that any claims of the U.S. Patent Nos. 8,977,571 (“the ‘571 Patent”), 8,699,779 (“the ‘779 Patent”), or 9,336,517 (“the ‘517 Patent”) were unpatentable.

On September 30, 2020, USAA filed suit against PNC Bank (the “First PNC Lawsuit”) in the Eastern District of Texas alleging infringement of U.S. Patent Nos. 10,482,432 (“the ‘432 Patent”) and 10,621,559. These two patents are continuations of an asserted patent in the Second Wells Lawsuit and relate to similar subject matter. On October 19, 2020, PNC Bank’s integration partner, NCR Corporation, sent an indemnification demand to the Company requesting indemnification from all claims related to the First PNC Lawsuit. The complaint against PNC Bank does not claim that any Company product infringes any of the asserted patents. At this time, the Company does not believe it is obligated to indemnify NCR Corporation or end-users of NCR Corporation resulting from the patent infringement allegations by USAA. On December 4, 2020, USAA filed an amended complaint against PNC Bank also asserting two patents at issue in the First Wells Lawsuit—the ‘779 Patent and the ‘571 Patent. On February 2, 2021, NCR Corporation sent a second indemnification demand to the Company requesting indemnification of the claims described in the amended complaint. On March 31, 2021, USAA filed another suit against PNC Bank in the Eastern District of Texas alleging infringement of two patents from the Second Wells Lawsuit, U.S. Patent Nos. 10,013,605 (“the ‘605 Patent”) and 10,013,681 (“the ‘681 Patent”) (the “Second PNC Lawsuit”). On July 7, 2021, USAA filed a third lawsuit against PNC Bank (the “Third PNC Lawsuit” and together with the First PNC Lawsuit and the Second PNC Lawsuit, the “PNC Lawsuits”) asserting infringement of U.S. Patents 10,769,598; 10,402,638; and 9,224,136. A jury trial was held in May 2022 on the consolidated First PNC Lawsuit and Second PNC Lawsuit. The jury found that PNC willfully infringed at least one patent claim and awarded USAA \$218 million in damages. The Court denied PNC Bank’s equitable defenses and entered a Final Judgment in the consolidated First PNC Lawsuit and Second PNC Lawsuit on August 19, 2022. A jury trial was held in September 2022 on the Third PNC Lawsuit. The jury found that PNC infringed at least one patent claim and awarded USAA \$4.3 million in damages. The Court entered a Final Judgment in the Third PNC Lawsuit on February 16, 2023.

While neither the Wells Lawsuits nor the PNC Lawsuits name the Company as a defendant, given (among other factors) the Company’s prior history of litigation with USAA and the continued use of the Company’s products by its customers, on November 1, 2019, the Company filed a complaint in the U.S. District Court for the Northern District of California seeking declaratory judgment that its products do not infringe the ‘779 Patent, the ‘571 Patent, the ‘517 Patent, and the ‘090 Patent (collectively, the “Subject Patents”). On January 15, 2020, USAA filed motions requesting the dismissal of the declaratory judgement of the Subject Patents and transfer of the case to the Eastern District of Texas, both of which the Company opposed. On April 21, 2020, the Court in the Northern District of California transferred the Company’s declaratory judgement action to the Eastern District of Texas and did not rule on USAA’s motion to dismiss. On April 28, 2021, the Court in the Eastern District of Texas granted USAA’s motion to dismiss the Company’s declaratory judgment action on jurisdictional grounds. The Court’s ruling did not address the merits of the Company’s claim of non-infringement. The Company appealed the ruling on the motion to dismiss and the decision to transfer the declaratory judgment action from California to Texas to the U.S. Court of Appeals for the Federal Circuit. The Federal Circuit heard oral argument on the Company’s appeal on April 4, 2022 and on May 20 2022, issued an opinion vacating and remanding the district court’s order granting USAA’s motion to dismiss. On August 1, 2022, the parties submitted additional briefing to the district court in

light of Federal Circuit’s opinion. The court held another hearing on USAA’s motion to dismiss the Company’s declaratory judgment action on jurisdictional grounds, and once again granted USAA’s motion to dismiss on February 23, 2023. The Company timely filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit. The appeal is fully briefed, and the Company is awaiting oral argument. The Company continues to believe that its products do not infringe the Subject Patents and will vigorously defend the right of its end-users to use its technology.

In April, May, and June 2020, the Company filed petitions for IPR with the PTAB of the U.S. Patent & Trademark Office challenging the validity of the Subject Patents. On November 6 and 17, 2020, the PTAB decided to exercise its discretion and deny institution of the four petitions due to the alleged relationship between the Company and Wells Fargo, who previously filed petitions for IPR on the Subject Patents. The PTAB did not address the merits of the Company’s petitions or the prior art cited in those petitions. The Company continues to believe that the prior art cited in the petitions renders all the claims of the Subject Patents invalid. On each of December 6, 2020, December 17, 2020, and February 23, 2021, the Company filed requests for rehearing and Precedential Opinion Panel (“POP”) review of the four denied IPR petitions. The Patent Office denied the requests for rehearing and for POP review.

In September 2020, the Company filed an additional two petitions for IPR with the U.S. Patent & Trademark Office challenging the validity of the ‘681 Patent and the ‘605 Patent—two of the patents at issue in the Second Wells Lawsuit. In March 2021, the PTAB decided not to institute the two petitions.

On July 7, July 14, and July 21 2021, PNC Bank filed six additional petitions for IPR with the U.S. Patent & Trademark Office challenging the validity of the ‘779 Patent, the ‘571 Patent, the ‘559 Patent, and the ‘432 Patent. On August 27, 2021, PNC filed two additional petitions for IPR challenging the validity of the ‘681 Patent and the ‘605 Patent. In October and November of 2021, PNC Bank filed four more petitions for IPR challenging the validity of the ‘638 Patent, the ‘136 Patent, and the ‘598 Patent. The Patent Office denied institution with respect to the petitions challenging the ‘432 Patent, the ‘605 Patent, the ‘681 Patent, and the ‘638 Patent, but instituted *inter partes* review on the petitions relating to the ‘779 Patent, the ‘571 Patent, the ‘559 Patent, and the ‘598 Patent—finding a reasonable likelihood that at least one challenged patent claim was invalid. The U.S. Patent & Trademark Office issued a final written decision in each of the IPRs challenging the ‘779 Patent, the ‘571 Patent, and the ‘559 Patent and found all challenged claims of each patent unpatentable. USAA filed requests for rehearing and requests for POP review. The requests for POP review and for rehearing were denied in March 2023.

On August 16, 2021, USAA filed suit against BBVA USA (“BBVA”) in the Eastern District of Texas alleging infringement of the same patents at issue in the PNC Lawsuits. While the Company’s IPR petitions were mentioned in the complaint, the Company was not named as a defendant or mentioned in connection with any alleged infringement. BBVA then sent the Company an indemnification demand on September 7, 2021. For the same reasons discussed above in connection with PNC Bank and PNC Lawsuits, the Company does not believe it is obligated to indemnify BBVA. On June 6, 2022, the Court granted the parties’ request to administratively close the case and stay all deadlines in view of the pending appeal in the PNC Lawsuits.

On July 29, 2022, USAA filed another patent infringement lawsuit against Truist Bank (“Truist”) in the Eastern District of Texas. The lawsuit alleges infringement of the ‘090 Patent, the ‘432 Patent, and the U.S. Patent No. 11,182,753 (“the ‘753 Patent”). The Company was not named as a defendant or mentioned in connection with any alleged infringement. On October 5, 2022, Truist’s integration partner, NCR Corporation, sent an indemnification demand to the Company requesting indemnification from all claims related to the lawsuit. For the same reasons discussed above in connection with the PNC Lawsuits, the Company does not believe it is obligated to indemnify NCR Corporation or end-users of NCR Corporation resulting from the patent infringement allegations by USAA. On October 7, 2022, Truist filed a motion to transfer venue to the Western District of North Carolina. The motion was denied on April 8, 2023. On December 30, 2022, Truist filed a motion for leave to file counterclaims against USAA alleging patent infringement of U.S. Patent Nos. 7,336,813; 7,519,214; 8,136,721; and 9,760,797, which was granted on April 8, 2023. On March 13, 2023, USAA moved for leave to file a First Amended Complaint, adding an additional allegation of patent infringement of U.S. Patent No. 11,544,944 (“the ‘944 Patent”). On April 4, 2023, Truist sent another indemnification demand to the Company requesting indemnification related to the lawsuit. On May 3, 2023, USAA moved for leave to file a Second Amended Complaint, adding an additional allegation of patent infringement of U.S. Patent No. 11,625,770 (“the ‘770 Patent”). On May 30, 2023, Truist sent another indemnification demand to the Company requesting indemnification related to the Second Amended Complaint. On October 6, 2023, the parties filed a Notice of Settlement and Joint Motion and Stipulation of Dismissal. All claims and causes of actions between the parties were dismissed with prejudice on October 10, 2023 in view of the settlement.

In October and November of 2022, Truist filed a petition for IPR with the U.S. Patent & Trademark Office challenging the validity of the ‘090 Patent, the ‘432 Patent, and the ‘753 Patent. The Patent Office instituted the petitions directed to the ‘090 and ‘753 Patents, but denied institution of the petition directed to the ‘432 Patent. In view of the settlement between USAA and Truist, the IPRs were withdrawn.

The Company incurred legal fees of \$1.4 million in the fiscal year ended September 30, 2023 related to third party claims against our customers. Such fees are included in general and administrative expenses in the consolidated statement of operations and other comprehensive income (loss).

*Claim Against UrbanFT, Inc.*

On July 31, 2019, the Company filed a lawsuit against one of its customers, UrbanFT, Inc. (“UrbanFT”) in the United States District Court for the Southern District of California (case No. 19-CV-1432-CAB-DEB). UrbanFT is delinquent in payment and attempted to justify its non-payment by asserting that the Company is or may be infringing on purported UrbanFT patents. The Company filed such lawsuit to collect the delinquent payments and to obtain a declaratory judgment of non-infringement of five purported UrbanFT patents. UrbanFT filed an answer and later asserted infringement of two of the five patents-at-issue in the Company’s lawsuit against UrbanFT. The Company thereafter filed counterclaims seeking a declaration that the two patents now asserted by UrbanFT are invalid in addition to being not infringed. During the course of the litigation, the Company learned that a judgment had been entered against UrbanFT’s affiliates and its predecessor owner in which an Oregon court ordered that the patents in issue revert to a prior owner, Mr. Stevens, because UrbanFT’s affiliates did not pay the purchase price owed to the prior owner. On September 8, 2020, the Company filed a motion for summary judgment on its breach of contract claim. On September 15, 2020, the district court issued an order to show cause regarding jurisdiction over patent issues in light of the Oregon judgment. On December 17, 2020, the district court dismissed Mitek’s claims for declaratory judgment of non-infringement and UrbanFT’s counterclaims for patent infringement and related affirmative defenses based on infringement of the patents for lack of subject matter jurisdiction because UrbanFT does not own the patents. The district court then dismissed the remaining state law claims without prejudice to refile in state court.

On December 18, 2020, the Company filed a new suit against UrbanFT in the Superior Court of the State of California, County of San Diego (case no. 37-2020-00046670-CU-BC-CTL) asserting claims for breach of contract, open book account, and monetary damages. UrbanFT filed an answer and did not assert any cross-claims. The Company filed a motion for summary judgment which was heard on April 15, 2022. The Court granted the Company’s motion and on June 2, 2022, entered a judgment in favor of the Company for \$1.7 million in compensatory damages, plus costs, including attorney’s fees. The Court awarded the Company \$2,600 in costs plus \$0.6 million in attorneys’ fees for a total judgment of \$2.3 million. The time for UrbanFT to appeal the \$1.7 million in compensatory damage judgment has expired but the time for UrbanFT to appeal the attorneys’ fee and cost award has not. No appeal has been filed.

On August 2, 2023, the Company filed a separate lawsuit against Richard Steggall, UFT (North America), LLC fka Urban FT LLC; Urban FT Group, Inc; Urban FT Client Solutions, LLC; UFT Professional Services, LLC; and X-35 Financial Technologies, in the San Diego Superior Court, (case No. 37-2023-00033005-CU-FR-CTL) (“Fraud Conveyance Action”). The Fraud Conveyance Action alleges that the Mr. Steggall orchestrated a scheme to strip UFT (North America), LLC of any assets and effectively transfer the Urban FT business to other entities he owns and controls, all to avoid the Company’s collection efforts. The Fraud Conveyance Action also alleges that Mr. Steggall funnels Urban FT’s revenues through a web of other entities he owns and controls, all to ensure that creditors, including the Company, cannot collect their debts. The parties have started discovery.

On February 23, 2024, the Court set the Fraud Conveyance Action for trial on March 14, 2025. Separately, the Company filed two motions to compel discovery set for April 12, 2024. The defendants have filed a motion to quash the Company’s subpoena to Chase Bank and the defendants filed an Order to Show Cause to hold the Company in contempt for violating the parties’ Protective Order. The Company anticipates filing its own motion for sanctions against defendants for their frivolous contempt motion.

*Claim Against Mapbear, Inc (dba Instacart):*

On December 13, 2021, Mitek filed a lawsuit against Mapbear Inc., d/b/a Instacart (“Instacart”), in California Superior Court – San Diego County (Case No. 37-2021-00052089-CU-BC-CTL) (the “Instacart Lawsuit”). Mitek alleged causes of action for breach of contract as well as breach of the implied covenant and requested over \$2.0 million in damages.

On August 3, 2018 Instacart entered into a Master Services Agreement (the “Master Services Agreement”) with Mitek agreeing to purchase a subscription to Mitek’s Mobile Verify Advanced service. On June 19, 2020, the parties entered into a second Order Form in connection with the Master Services Agreement. The Order Form had a term of June 18, 2020 to December 31, 2023 and called for an annual commitment of \$1.2 million. On September 23, 2021, Instacart sent a letter to Mitek purporting to outline breaches under the Master Services Agreement. Mitek responded on November 11, 2021, refuting Instacart’s claims and offering to engage in further discussions. Instacart thereafter sent a Notice of Termination of the Master Services Agreement dated November 24, 2021.

The Parties participated in mediation on March 15, 2022. The mediation did not result in the resolution of the case and, following mediation, the Parties stipulated that Instacart’s response to Mitek’s complaint would be due on April 27, 2022. In lieu of filing a response to the complaint, Instacart elected to file a Motion to Transfer Venue to the County of San Francisco, which the Court denied, thereby keeping the case in the County of San Diego.

On November 28, 2022, Instacart filed a cross-complaint against Mitek alleging: (1) Fraudulent Inducement; (2) Intentional Misrepresentation; (3) False Advertising; (4) Fraudulent Business Practices; (5) Unlawful Business Practices; (6) Unfair Business Practices; (7) Breach of Contract; and (8) Breach of the Implied Covenant of Good Faith and Fair Dealing. On January 27, 2023, Mitek filed a demurrer to the cross-complaint (the functional equivalent of a motion to dismiss). Both Parties also filed motions to

compel further responses to written discovery requests. The Court did not decide the demurrer or the motions to compel before the Parties resolved and dismissed the case.

On September 29, 2023, the Parties reached an agreement to resolve the case. The terms of the settlement were completed and, on October 24, 2023, the Company filed a Request for Dismissal, signed by counsel for both parties and asking the clerk of the Court to dismiss the Company's complaint and causes of action as well as Instacart's cross-complaint and causes of action. The Court entered the Request for Dismissal on October 24, 2023 and dismissed the Parties' respective claims with prejudice.

#### *Biometric Information Privacy Act Claims*

On December 16, 2021, the Company was sued in a putative class action in the Circuit Court of Cook County, Illinois alleging that the Company had violated the Illinois Biometric Information Privacy Act ("BIPA") with respect to identity verification services that the Company provided to its customer HyreCar, Inc. ("HyreCar") for HyreCar's customers in Illinois (the "BIPA Lawsuit"). Plaintiff claimed that the Company had not obtained the required consent to collect and use Plaintiff's biometric information, and that Plaintiff and a class of similarly situated individuals therefore are entitled to statutory damages under BIPA.

The Company removed the BIPA Lawsuit to the U.S. District Court for the Northern District of Illinois, and on March 4, 2022 the Company filed a Motion to Compel Arbitration based on HyreCar's terms and conditions requiring HyreCar customers to arbitrate on an individual (non-class) basis (the "Arbitration Motion"). On May 4, 2022 the trial court denied the Arbitration Motion. On December 21, 2022, the trial court's ruling was upheld on appeal, and the case subsequently was remanded back to the trial court.

On March 10, 2023, Plaintiff filed an Amended Complaint adding a second named plaintiff, who is also HyreCar end-user, but otherwise not materially changing the allegations. On March 27, 2023, the Company filed a Motion to Dismiss or, in the Alternative, to Strike Class Allegations.

On May 11, 2023, and after the Company's Motion to Dismiss or, in the Alternative, to Strike Class Allegations had been fully briefed, Plaintiffs filed a Motion for Leave to File a Second Amended Complaint seeking to add two new named plaintiffs, who are end-users of the Company's customers Instacart and Roadie, and to remove one named plaintiff. The Company opposed the Motion for Leave.

On September 13, 2023, Plaintiffs filed a Notice of Voluntary Dismissal. On September 14, 2023, the Court dismissed the lawsuit without prejudice, ending the litigation.

#### *Other Legal Matters*

In addition to the foregoing, the Company is subject to various claims and legal proceedings arising in the ordinary course of its business. The Company accrues for such liabilities when it is both (i) probable that a loss has occurred and (ii) the amount of the loss can be reasonably estimated in accordance with ASC 450, *Contingencies*. While any legal proceeding has an element of uncertainty, the Company believes that the disposition of such matters, in the aggregate, will not have a material effect on the Company's financial condition or results of operations.

#### *Employee 401(k) Plan*

The Company has a 401(k) plan that allows participating employees to contribute a percentage of their salary, subject to Internal Revenue Service annual limits. In 2015, the Company implemented a company match to the plan. The Company's contributions are made in an amount equal to 50% of the first 6% of an employee's designated deferral of their eligible compensation. The Company's total cost related to the 401(k) plan was \$0.5 million, \$0.7 million, and \$0.7 million for the twelve months ended September 30, 2023, 2022, and 2021, respectively.



## 11. LEASES

### Leases

The Company leases office and research and development facility leases under non-cancelable operating leases for various terms through 2030. Certain lease agreements include renewal options, rent abatement periods, and rental increases throughout the term. Operating lease costs are included within cost of revenue, selling and marketing, research and development, and general and administrative expenses, dependent upon the nature and use of the ROU asset, in the Company's consolidated statement of operations and other comprehensive income (loss).

The following table provides the components of lease cost recognized in the consolidated statements of operations and comprehensive income for the periods presented (*amounts in thousands*):

	Twelve Months Ended September 30,	
	2023	2022
Operating lease cost	2,025	1,881
Variable lease cost	319	385
Total lease cost <sup>(1)</sup>	2,344	2,266

1. Short-term lease costs incurred by the Company for the twelve months ended September 30, 2023 and 2022 were immaterial.

Other information related to leases as of the balance sheet dates presented are as follows:

	Twelve Months Ended September 30,	
	2023	2022
Weighted-average remaining lease term (years) - operating leases	4.3	4.5
Weighted-average discount rate - operating leases	3.7 %	3.5 %

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

	Operating Leases <sup>1</sup>
2024	1,985
2025	713
2026	701
2027	616
2028	413
Thereafter	574
Total lease payments	5,002
Less: amount representing interest	\$ (233)
Present value of future lease payments	\$ 4,769

1. Excludes approximately \$1.8 million of legally binding minimum lease payments for an office lease signed but not yet commenced.

## 12. REVENUE CONCENTRATION

### Revenue Concentration

For the twelve months ended September 30, 2023, the Company derived revenue of \$27.7 million from one customer, with such customer accounting for 16% of the Company's total revenue. For the twelve months ended September 30, 2022, the Company derived revenue of \$25.0 million from the same single customer, with such customer accounting for 17% of the Company's total revenue. For the twelve months ended September 30, 2021, the Company derived revenue of \$20.2 million from the same single customer, with such customer accounting for 17% of the Company's total revenue. The corresponding accounts receivable balances of customers from which revenues were in excess of 10% of total revenue were \$2.7 million, \$8.0 million, and \$3.4 million at September 30, 2023, 2022, and 2021, respectively.

From a geographic perspective, approximately 72% and 68% of the Company's total long-term assets as of September 30, 2023 and 2022, respectively, are associated with the Company's international subsidiaries. From a geographic perspective, approximately

23% and 18% of the Company's total long-term assets excluding goodwill and other intangible assets as of September 30, 2023 and 2022, respectively, are associated with the Company's international subsidiaries.

The United States was the only country that accounted for more than 10% of the Company's revenue in the twelve months ended September 30, 2023, 2022, and 2021. Revenue for the twelve months ended September 30, 2023, 2022, and 2021 were as follows (*amounts in thousands*):

	Twelve Months Ended September 30,		
	2023	2022	2021
United States	\$ 134,957	\$ 113,499	\$ 92,832
All other countries	37,595	31,305	26,965
Total revenue	<u>\$ 172,552</u>	<u>\$ 144,804</u>	<u>\$ 119,797</u>

### 13. QUARTERLY INFORMATION (UNAUDITED)

As previously reported, there was a restatement of the second and third quarters of fiscal 2022, as described in Note 15 of the accompanying notes to the consolidated financial statements included in the Company's Annual Report on Form 10-K for the year ended September 30, 2022. The following table sets forth selected quarterly financial information for fiscal 2023 and 2022 as follows (amounts in thousands except per share data):

	2023			
	Q1	Q2	Q3	Q4
Revenue	\$ 45,703	\$ 46,123	\$ 43,070	\$ 37,656
Cost of revenue (exclusive of depreciation & amortization)	5,069	5,898	5,712	6,272
Operating expenses	32,261	31,539	35,566	34,671
Operating income (loss)	8,373	8,686	1,792	(3,287)
Interest expense	2,137	2,163	2,362	2,401
Other income, net	340	454	925	2,121
Income tax benefit (provision)	(1,846)	(1,808)	(783)	2,123
Net income (loss)	4,730	5,169	(428)	(1,444)
Net income (loss) per share:				
Basic income (loss) per share	0.11	0.11	(0.01)	(0.03)
Shares used in calculating net income (loss) per share—basic	44,930	45,377	46,002	45,997
Diluted income (loss) per share	0.10	0.11	(0.01)	(0.03)
Shares used in calculating net income (loss) per share—diluted	45,634	45,780	46,473	47,050
	2022			
	Q1	Q2	Q3	Q4
Revenue	\$ 32,473	\$ 33,510	\$ 39,195	\$ 39,626
Cost of revenue (exclusive of depreciation & amortization)	4,556	4,451	5,784	5,217
Operating expenses	23,089	26,379	32,518	30,610
Operating income (loss)	4,828	2,680	893	3,799
Interest expense	2,008	2,040	2,077	2,107
Other income (expense), net	135	(225)	89	(365)
Income tax benefit (provision)	168	20	880	(976)
Net income (loss)	3,123	435	(215)	351
Net income (loss) per share:				
Basic income (loss) per share	0.07	0.01	—	0.01
Shares used in calculating net income (loss) per share—basic	44,788	44,775	44,669	44,661
Diluted income (loss) per share	0.07	0.01	—	0.01
Shares used in calculating net income (loss) per share—diluted	46,155	46,097	45,224	45,311

### 14. SUBSEQUENT EVENTS

On February 13, 2024 (the "Closing Date"), the Company, A2iA Corp., and ID R&D, Inc. (jointly and severally, individually and collectively, "Borrower") entered into a Loan and Security Agreement (the "Credit Agreement") with Silicon Valley Bank, a division of First-Citizens Bank & Trust Company (the "Bank"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Credit Agreement.

The Credit Agreement provides for a revolving line of credit whereby Borrower may borrow up to \$35.0 million (the "Revolving Line") with an additional \$15.0 million to be advanced under the Revolving Line at the sole discretion of the Bank. The Revolving Line is secured on a first priority basis by Borrower's assets. Any newly formed or acquired subsidiary of Borrower or any Guarantor, will either join the Credit Agreement as a co-borrower or become a Guarantor under the Credit Agreement, as determined by the Bank in its sole discretion. Borrower intends to use the Revolving Line for working capital and general business purposes.

The Revolving Line terminates, and any outstanding principal amount of all advances made thereunder, and any accrued and unpaid interest thereon, become immediately due and payable on the earlier of (a) the three year anniversary of the Closing Date and (b) the date that is within 90 days of the maturity date of the "2026 Convertible Note" if such notes are outstanding as of such date.

“2026 Senior Convertible Note” means the existing unsecured Indebtedness issued pursuant to that certain Indenture between the Company as issuer and UMB Bank, National Association as Indenture Trustee dated as of February 5, 2021, which provide for the issuance from time to time of debentures, notes or other debt instruments of Borrower, to be issued in one or more series.

Borrowings under the Credit Agreement generally bear interest at a variable rate equal to (a) term SOFR plus a specified margin or (b) WSJ prime plus a specified margin, in each case which will be adjusted based on the Company’s net leverage ratio at the time of borrowing. Borrower must also pay Bank (i) a commitment fee of \$87,500 and (ii) an “Unused Revolving Line Facility Fee” of 0.25% per annum of the average unused portion of the Revolving Line.

The Credit Agreement contains representations, warranties, and negative and affirmative covenants customary for transactions of this type. These include covenants limiting the ability of Borrower, and any of their subsidiaries, subject to certain exceptions and baskets, to, among other things, (i) incur indebtedness, (ii) incur liens on their assets, (iii) enter into any merger or consolidation with, or acquire all or substantially all of the equity or property of, another person, (iv) dispose of any of their business or property, (v) make or permit any payment on subordinated debt, or (vi) pay any dividend, make any other distribution, or redeem any equity.

The Credit Agreement contains customary events of default and also provides that an event of default includes any default resulting in a right by third parties to accelerate maturity of indebtedness in excess of \$500,000. If any event of default occurs and is not cured within applicable grace periods set forth in the Credit Agreement or waived, all loans and other obligations could become due and immediately payable and the facility could be terminated. In addition, Borrower may be required to deposit cash with the Bank in an amount equal to 105% of any undrawn letters of credit denominated in U.S. Dollars or 115% of any undrawn letters of credit denominated in a foreign currency.

## 15. REVISION OF PREVIOUSLY REPORTED CONSOLIDATED FINANCIAL STATEMENTS

In connection with the preparation of its consolidated financial statements for the twelve months ended September 30, 2023, the Company determined that its previously issued consolidated financial statements for the period ended September 30, 2022 contained errors in the application of GAAP as follows:

i. The Company incorrectly netted accounts receivable and deferred revenue balances where the right of offset did not exist, which resulted in an understatement of \$8.0 million in both accounts receivable, net and deferred revenue, current portion.

ii. The Company determined it had failed to include the impact of share-based compensation deductions triggered by the HooYu Acquisition when recording the business combination in March 2022. This resulted in an understatement of \$21.6 million of deferred tax assets relating to NOLs that should have been recorded in the Company’s deferred tax asset balance (understatement of \$5.4 million, tax effected) upon the acquisition of HooYu. The adjustment was \$4.6 million after the impacts of foreign exchange.

iii. The Company incorrectly identified termination for convenience clauses in six software license contracts and incorrectly recognized revenue on certain of its multiyear term licenses. As such, the Company recognized \$0.9 million of additional revenue for the twelve months ended September 30, 2022. This also resulted in a increase in contract assets, current portion of \$0.8 million, a decrease in deferred revenue of \$0.2 million, a decrease in income tax benefit of \$0.2 million, a decrease in prepaids of \$0.1 million, a decrease in deferred income tax assets of \$0.1 million, an increase in income tax payables of \$12,000 and a decrease in other current liabilities of \$7,000.

In accordance with SEC Staff Accounting Bulletin No. 99, “Materiality,” (“SAB 99”) and SEC Staff Accounting Bulletin No. 108, “Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements,” (“SAB 108”), the Company evaluated the errors and has determined that the related impact was immaterial to the previously issued consolidated financial statements; however, correcting the error in the current period would have a material impact on the current financial statements. Therefore, the Company, in consultation with the Audit Committee of the Company’s Board of Directors, concluded that the affected period should be revised to present the identified adjustment discussed below. The Company has not filed, and does not intend to file, an amendment to the previously filed Annual Report on Form 10-K for the period ended September 30, 2022, but instead is revising its previously reported financial statements in this Annual Report on Form 10-K, as follows (*amounts in thousands*):

	As of September 30, 2022		
	As Previously Reported	Total Adjustments	As Revised
Accounts receivable, net (i)	\$ 27,874	\$ 8,048	\$ 35,922
Contract assets, current portion (iii)	6,273	764	7,037
Prepaid expenses (iii)	2,000	(54)	1,946
Goodwill (ii)	120,186	(4,554)	115,632
Deferred income tax assets (iii)	10,245	(135)	10,110
<b>Total assets</b>	<b>360,410</b>	<b>4,069</b>	<b>364,479</b>
Income tax payables (iii)	194	12	206
Other current liabilities (iii)	2,409	(7)	2,402
Deferred revenue, current portion (i)(iii)	13,394	7,956	21,350
Deferred income tax liabilities (ii)	14,132	(4,554)	9,578
<b>Total liabilities</b>	<b>\$ 190,093</b>	<b>\$ 3,407</b>	<b>\$ 193,500</b>

	Twelve months ended September 30, 2022		
	As Previously Reported	Total Adjustments	As Revised
<b>Revenue</b>			
Software and hardware (iii)	\$ 72,494	\$ 434	\$ 72,928
Services and other (iii)	71,449	427	71,876
<b>Total revenue</b>	<b>143,943</b>	<b>861</b>	<b>144,804</b>
<b>Operating income</b>	<b>11,339</b>	<b>861</b>	<b>12,200</b>
Other expense, net (iii)	(370)	4	(366)
Income tax benefit (iii)	295	(203)	92
<b>Net income</b>	<b>\$ 3,032</b>	<b>\$ 662</b>	<b>\$ 3,694</b>

The statement of cash flows and impacted footnote disclosures have also been revised to give effect to this correction. Management also evaluated the above misstatements and concluded they were not material to the interim periods for fiscal years 2022 and 2023, individually and in aggregate. As a result, the Company plans to prospectively correct the relevant prior period condensed consolidated financial statements and related footnotes for these misstatements.

**THIRD AMENDED AND RESTATED  
BYLAWS**

**OF**

**MITEK SYSTEMS, INC.**

**(Effective March 17, 2024)**

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## ARTICLE I

### OFFICES

**Section 1. Registered Office.** The registered office of Mitek Systems, Inc. (the “**Corporation**”) shall be in the State of Delaware and shall be at such address as shall be set forth in the Certificate of Incorporation of the Corporation (as the same may be amended from time to time, including by any certificate of designation, the “**Certificate of Incorporation**”).

**Section 2. Other Offices.** The Corporation may also have offices at such other places both within and outside the State of Delaware as the Board of Directors of the Corporation (the “**Board**”) may from time to time designate or the business of the Corporation may require.

## ARTICLE II

### MEETINGS OF STOCKHOLDERS

**Section 1. Place of Meetings.** Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the Board and stated in the notice of the meeting. In the absence of any such designation, stockholders’ meetings shall be held at the registered office of the Corporation. The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication, as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (the “**DGCL**”).

**Section 2. Annual Meetings.** The annual meeting of stockholders shall be held on such day and at such time as may be designated by the Board for the purpose of electing directors and for the transaction of such other business as properly may come before such meeting.

**Section 3. Notice of Stockholders’ Meetings.** Except as otherwise provided by law, notice of each meeting of stockholders, whether annual or special, shall be given not less than ten (10) days nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting. The notices of all meetings shall state the place, if any, date and time of the meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting. The notice of a special meeting shall state, in addition, the purpose or purposes for which the meeting is called.

**Section 4. Manner of Giving Notice; Affidavit of Notice; Waiver.**

(a) If mailed, notice to stockholders shall be deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder’s address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders may be given by facsimile, telegraph, telex, or by electronic transmission in the manner provided in Section 232 of the DGCL. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under the provisions of the DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any stockholder who fails to object in writing to the Corporation, within sixty (60) days of having been given written notice by the Corporation of its intention to send such single notice, shall be deemed to have consented to receiving such single written notice. Any such consent shall be revocable by the stockholder by written notice to the Corporation.

(b) An affidavit of the secretary or an assistant secretary of the Corporation or of the transfer agent or any other agent of the Corporation that the notice has been given by mail or by a form of electronic transmission, as applicable, shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

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(c) A written waiver of any notice, signed by a stockholder entitled to notice, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting shall constitute waiver of notice except attendance for the sole purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

#### **Section 5. Advance Notice Provisions for Stockholder Proposals.**

(a) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) specified in the notice of meeting (or any supplement or amendment thereto) given by or at the direction of the Board, (ii) if not specified in a notice of meeting, otherwise brought before the meeting by or at the direction of the Board or any committee thereof, or (iii) otherwise properly brought before the meeting by a stockholder who (A) was a stockholder of record of the Corporation both at the time of giving the notice provided for in this Section 5 and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) has complied with this Section 5 as to such business. The only matters that may be brought before a special meeting are the matters specified in the notice of meeting given by or at the direction of the person calling the meeting pursuant to Section 7 of this Article II. Stockholders seeking to nominate persons for election to the Board must comply with Section 6 of this Article II, and this Section 5 shall not be applicable to nominations except as expressly provided in Section 6 of this Article II.

(b) Without qualification, for business to be properly brought before an annual meeting by a stockholder, the stockholder must (i) provide Timely Notice (as defined below) thereof in writing and in proper form to the secretary of the Corporation, (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 5 and (iii) constitute a proper matter for stockholder action. To be timely, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the one hundred twentieth (120th) day prior to the one (1)-year anniversary of the preceding year's annual meeting; *provided, however*, that if the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the ninetieth (90th) day prior to such annual meeting or, if later, the tenth (10th) day following the day on which public disclosure of the date of such annual meeting was first made (such notice within such time periods, "**Timely Notice**"). In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of Timely Notice as described above.

(c) To be in proper form for purposes of this Section 5, a stockholder's notice to the secretary of the Corporation shall set forth:

(i) As to each Proposing Person (as defined below), (A) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation's books and records); and (B) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the "**Exchange Act**")) by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future (the disclosures to be made pursuant to the foregoing clauses (A) and (B) are referred to as "**Stockholder Information**");

(ii) As to each Proposing Person:

(A) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price

related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a “**Derivative Instrument**”), directly or indirectly, owned beneficially by each such party, and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation;

(B) any proxy, agreement, arrangement, understanding, or relationship pursuant to which such Proposing Person has or shares a right to vote any shares of any security of any class or series of the Corporation;

(C) any short interest in any security of the Company held by such Proposing Person (for purposes of this Section 5(c) a Proposing Person shall be deemed to have a short interest in a security if such person, directly or indirectly, through any agreement, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security) (“*Short Interests*”);

(D) any rights to dividends on the shares of any class or series of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation;

(E) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which either party is a general partner or, directly or indirectly, beneficially owns an interest in a general partner;

(F) any performance related fees (other than an asset based fee) that such Proposing Person is entitled to based on any increase or decrease in the price or value of shares of any class or series of the Corporation, or any Derivative Instruments or Short Interests, if any, in each case with respect to clauses (A) through (F) herein as of the close of business on the date of such notice, including without limitation any such interests held by members of each such Proposing Person’s immediate family sharing the same household;

(G) any material pending or threatened legal proceeding in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation; and

(H) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (A) through (G) and this clause (H) are referred to as “**Disclosable Interests**”); *provided, however*, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company, or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner;

(iii) As to each Proposing Person, (A) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business and (B) a representation whether the Proposing Person intends or is part of a group which intends, with respect to any proposed business, (1) to deliver a proxy statement and form of proxy to holders of at least the percentage of the Corporation’s outstanding capital stock required to approve or adopt any such proposed business and/or (2) otherwise to solicit proxies from stockholders in support of such business. Notwithstanding the foregoing, if a stockholder no longer plans to solicit proxies in accordance with its representation in the preceding sentence, such stockholder shall inform the Corporation of this change by delivering a written notice to the Secretary at the principal

executive offices of the Corporation no later than two business days after making the determination not to proceed with a solicitation of proxies; and

(iv) As to each item of business that the stockholder proposes to bring before the annual meeting, (A) a reasonably brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any direct or indirect material interest in such business of each Proposing Person, (B) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the Corporation and the language of the proposed amendment), (C) a reasonably detailed description of all agreements, arrangements, and understandings, existing presently or existing during the prior twenty-four months (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other person or entity (including their names) in connection with the proposal of such business by such stockholder and (D) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act.

For purposes of this Section 5, the term “**Proposing Person**” shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation or associate (within the meaning of Rule 12b-2 under the Exchange Act for purposes of these Bylaws) of such stockholder or beneficial owner, and (iv) any other person with whom such stockholder or beneficial owner (or any of their respective associates or other participants in such solicitation) is Acting in Concert (as defined below).

A person shall be deemed to be “**Acting in Concert**” with another person for purposes of these Bylaws if such person knowingly acts (pursuant to an express agreement, arrangement, or understanding) in concert with, or towards a common goal relating to the management, governance, or control of the Corporation with such other person; provided that a person shall not be deemed to be Acting in Concert with any other person solely as a result of the solicitation or receipt of revocable proxies or consents from such other person in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a proxy or consent solicitation statement filed on Schedule 14A.

(d) A stockholder providing notice of business proposed to be brought before an annual meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 5 shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the secretary of the Corporation at the principal executive offices of the Corporation not later than five (5) business days following the later of the record date for the meeting or the date notice of the record date for the meeting is first publicly disclosed (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

(e) The foregoing notice requirements of this Section 5 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her, or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder’s proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

(f) Except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, no business shall be conducted at an annual meeting except in accordance with this Section 5. Except as otherwise provided by law, the chairperson of the meeting shall have the power and duty, if the facts

warrant, (i) to determine whether business was properly brought before the meeting in accordance with this Section 5 (including whether the Proposing Person solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such Proposing Person's proposal in compliance with such Proposing Person's representation as required by clause (c)(iii)(B) of this Section 5), and (ii) if he or she should so determine that the business was not proposed in compliance with this Section 5, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted. Notwithstanding the foregoing provisions of this Section 5, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the Corporation to present the proposed business, such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of these Bylaws, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager, or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(g) Notwithstanding the foregoing provisions of this Section 5 with respect to any business proposed to be brought before an annual meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to any such business proposals; *provided, however*, that references in these Bylaws to the Exchange Act, or the rules and regulations promulgated thereunder are not intended to and shall not limit the requirements of these Bylaws applicable to proposals or any other business to be considered pursuant to this Section 5 (including paragraphs (a)(iii) and (b) of this Section 5), and compliance with paragraphs (a)(iii) and (b) of this Section 5 shall be the exclusive means for a stockholder to submit other business (other than, as provided in paragraph (e) of this Section 5, business other than nominations brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time). If a stockholder fails to comply with any applicable requirements of the Exchange Act, such stockholder's proposed business shall be deemed to have not been made in compliance with these Bylaws and shall be disregarded. Nothing in this Section 5 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act.

(h) For purposes of these Bylaws, "**public disclosure**" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press, or other national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14, or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

#### **Section 6. Advance Notice Provisions for Nominations of Directors.**

(a) Nominations of any person for election to the Board at an annual meeting or at a special meeting (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting) may be made at such meeting only (i) by or at the direction of the Board, including by any committee or persons authorized to do so by the Board, (ii) pursuant to the Corporation's notice of meeting (or any supplement or amendment thereto), or (iii) by a stockholder who (A) was a stockholder of record of the Corporation both at the time of giving the notice provided for in this Section 6 and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) has complied with this Section 6 as to such nomination.

(b) Without qualification:

(i) For a stockholder to make any nomination of a person or persons for election to the Board at an annual meeting, the stockholder must (A) provide Timely Notice (as defined in Section 5(b) of this Article II) thereof in writing and in proper form to the secretary of the Corporation and (B) provide any updates or supplements to such notice at the times and in the forms required by this Section 6.

(ii) If the election of directors is a matter specified in the notice of a special meeting given by or at the direction of the person calling a special meeting, then for a stockholder to make any nomination of a person or persons for election to the Board at a special meeting, the stockholder must (A) provide timely



notice thereof in writing and in proper form to the secretary of the Corporation at the principal executive offices of the Corporation and (B) provide any updates or supplements to such notice at the times and in the forms required by this Section 6. To be timely, a stockholder's notice for nominations to be made at a special meeting must be delivered to, or mailed and received at, the principal executive offices of the Corporation not earlier than the one hundred twentieth (120th) day prior to such special meeting and not later than the ninetieth (90th) day prior to such special meeting or, if later, the tenth (10th) day following the day on which public disclosure (as defined in Section 5(h) of this Article II) of the date of such special meeting and of the nominees proposed by the Board to be elected at such meeting was first made.

(c) In no event shall any adjournment or postponement of an annual meeting or special meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(d) To be in proper form for purposes of this Section 6, a stockholder's notice to the secretary of the Corporation shall set forth:

(i) As to each Nominating Person (as defined below), the Stockholder Information (as defined in Section 5(c)(i) of this Article II, except that for purposes of this Section 6 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 5(c)(i) of this Article II);

(ii) As to each Nominating Person, any Disclosable Interests (as defined in Section 5(c)(ii) of this Article II, except that for purposes of this Section 6 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 5(c)(ii) of this Article II and the disclosure in clause (H) of Section 5(c)(ii) of this Article II shall be made with respect to the election of directors at the meeting);

(iii) As to each Nominating Person, (A) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business and (B) a representation whether the Proposing Person intends or is part of a group which intends with respect to any proposed nomination, (1) to deliver a proxy statement and form of proxy to holders of at least 67 percent of the voting power of all of the shares of capital stock of the Corporation entitled to vote on the election of directors, or otherwise solicit proxies or votes from stockholders in support of any nomination, and (2) to solicit proxies in support of the proposed nominee in accordance with Rule 14a-19 promulgated under the Exchange Act. Notwithstanding the foregoing, if a stockholder no longer plans to solicit proxies in accordance with its representation in the preceding sentence, such stockholder shall inform the Corporation of this change by delivering a written notice to the Secretary at the principal executive offices of the Corporation no later than two business days after making the determination not to proceed with a solicitation of proxies; and

(iv) As to each person whom a Nominating Person proposes to nominate for election as a director, (A) all information with respect to such proposed nominee that would be required to be set forth in a stockholder's notice pursuant to this Section 6 if such proposed nominee were a Nominating Person, (B) all information relating to such proposed nominee that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14(a) under the Exchange Act (including such proposed nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), (C) a description of all direct and indirect compensation and other material agreements, arrangements, and understandings during the past three (3) years, and any other material relationships, between or among any Nominating Person, on the one hand, and each proposed nominee, his or her respective associates or any other participants in such solicitation, and any other persons with whom such proposed nominee (or any of his or her respective associates or other participants in such solicitation) is Acting in Concert, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the "registrant" for purposes of such rule and the proposed nominee were a director or executive officer of such registrant, and (D) a completed and signed questionnaire, representation, and agreement as provided in Section 6(h) below (the disclosures and

documents to be made or provided pursuant to the foregoing clauses (A) through (D) are referred to as “**Nominee Information**”).

For purposes of this Section 6, the term “**Nominating Person**” shall mean (a) the stockholder providing the notice of the nomination proposed to be made at the meeting, (b) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, (c) any participant with such stockholder in such solicitation or associate of such stockholder or beneficial owner, and (d) any other person with whom such stockholder or such beneficial owner (or any of their respective associates or other participants in such solicitation) is Acting in Concert.

(e) The Corporation may require any proposed nominee to furnish such other information (i) as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or (ii) that could be material to a reasonable stockholder’s understanding of the independence or lack of independence of such proposed nominee.

(f) A stockholder providing notice of any nomination proposed to be made at an annual or special meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 6 shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the secretary of the Corporation at the principal executive offices of the Corporation not later than five (5) business days following the later of the record date for the meeting or the date notice of the record date for the meeting is first publicly disclosed (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

(g) Except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, no person shall be eligible for election as a director of the Corporation unless nominated in accordance with this Section 6. Except as otherwise provided by law, the chairperson of the meeting shall have the power and duty, if the facts warrant, (i) to determine whether a nomination was properly made in accordance with this Section 6 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such stockholder’s nominee or proposal in compliance with such stockholder’s representation as required by clause (c)(iii) of this Section 6), and (ii) if he or she should so determine that any proposed nomination was not made in compliance with this Section 6, he or she shall so declare such determination to the meeting and the defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 6, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(h) To be eligible to be a nominee for election as a director of the Corporation, the proposed nominee must deliver (in accordance with the time periods prescribed for delivery of notice under this Section 6) to the secretary of the Corporation at the principal executive offices of the Corporation a written questionnaire with respect to the background, qualifications, stock ownership, and independence of such proposed nominee (which questionnaire shall be provided by the secretary of the Corporation upon written request) and a written representation and agreement (in the form provided by the secretary of the Corporation upon written request) that such proposed nominee (i) is not and, if elected as a director, will not, during his or her term, become a party to (A) any agreement, arrangement, or understanding with, and has not given any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a “**Voting Commitment**”) that has not been disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such proposed nominee’s ability to comply, if elected as a director of the Corporation, with such proposed nominee’s fiduciary duties under applicable law, (ii) is not and will not become a party to any agreement, arrangement, or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement, or indemnification in connection with service or

action as a director that has not been disclosed to the Corporation, and (iii) in such proposed nominee's individual capacity and on behalf of the stockholder (or the beneficial owner, if different) on whose behalf the nomination is made, would be in compliance, if elected to a director of the Corporation, and will comply with applicable publicly disclosed corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines of the Corporation.

(i) Notwithstanding anything in this Section 6 to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is increased effective after the time period for which nominations would otherwise be due under Section 6(b) and there is no public disclosure by the Corporation naming the nominees for the additional directorships at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 6 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public disclosure is first made by the Corporation.

(j) In addition to the requirements of this Section 6 with respect to any nomination proposed to be made at a meeting, each Nominating Person shall comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder, including, but not limited to, Rule 14a-19 of the Exchange Act, with respect to any such nominations; *provided, however*, that references in these Bylaws to the Exchange Act, or the rules and regulations promulgated thereunder are not intended to and shall not limit the requirements of these Bylaws applicable to nominations to be considered pursuant to these Bylaws (including paragraphs (a)(iii) and (b) of this Section 6), and compliance with paragraphs (a)(iii) and (b) of this Section 6 shall be the exclusive means for a stockholder to make nominations. Nothing in this Section 6 shall be deemed to affect any rights (i) of stockholders to request inclusion of nominations in the Corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or (ii) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation. If a stockholder fails to comply with any applicable requirements of the Exchange Act, including, but not limited to, Rule 14a-19 promulgated thereunder, such stockholder's nominations shall be deemed to have not been made in compliance with these Bylaws and shall be disregarded.

(k) Notwithstanding the foregoing provisions of these Bylaws, if any stockholder provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act, subsequently fails to comply with the requirements of Rule 14a-19(a)(2) or Rule 14a-19(a)(3) promulgated under the Exchange Act, including the provision to the Corporation of notices required thereunder with timely notice, and no other stockholder has provided notice pursuant to, and in compliance with, Rule 14a-19 under the Exchange Act that it intends to solicit proxies in support of the election of the stockholder nominee in accordance with Rule 14a-19(b) under the Exchange Act, then such stockholder nominee shall be disqualified from nomination, the Corporation shall disregard the nomination of such stockholder nominee and no vote on the election of such stockholder nominee shall occur. Upon request by the Corporation, if any stockholder provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act, such stockholder shall deliver to the Corporation, no later than five (5) business days prior to the applicable meeting date, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act.

#### **Section 7. Special Meetings of Stockholders.**

(a) Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation, may be called only by (i) the chairman of the board or the president, (ii) the chairman of the board, the president, or the secretary, pursuant to a resolution approved by a majority of the entire Board, or (iii) by the secretary of the Corporation, following his or her receipt of one or more written demands to call a special meeting of stockholders in accordance with, and subject to, this Section 7 from stockholders of record as of the record date fixed in accordance with Section 7(d) of this Article II who hold, in the aggregate, not less than twenty-five percent (25%) of the voting power of the outstanding shares of the Corporation. Except in accordance with this Section 7, stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders. Stockholders who nominate persons for election to the Board at a special meeting must also comply with the requirements set forth in Section 6 of this Article II.



(b) No stockholder may demand that the secretary of the Corporation call a special meeting of the stockholders pursuant to Section 7(a) of this Article II unless a stockholder of record has first submitted a request in writing that the Board fix a record date (a “**Demand Record Date**”) for the purpose of determining the stockholders entitled to demand that the secretary of the Corporation call such special meeting, which request shall be in proper form and delivered to, or mailed and received by, the secretary of the Corporation at the principal executive offices of the Corporation.

(c) To be in proper form for purposes of this Section 7, a request by a stockholder for the Board to fix a Demand Record Date shall set forth:

(i) As to each Requesting Person (as defined below), the Stockholder Information (as defined in Section 5(c)(i) of this Article II, except that for purposes of this Section 7 the term “Requesting Person” shall be substituted for the term “Proposing Person” in all places it appears in Section 5(c)(i) of this Article II);

(ii) As to each Requesting Person, any Disclosable Interests (as defined in Section 5(c)(ii) of this Article II, except that for purposes of this Section 7 the term “Requesting Person” shall be substituted for the term “Proposing Person” in all places it appears in Section 5(c)(ii) of this Article II and the disclosure in clause (H) of Section 5(c)(ii) of this Article II shall be made with respect to the business proposed to be conducted at the special meeting or the proposed election of directors at the special meeting, as the case may be);

(iii) As to the purpose or purposes of the special meeting, (A) a reasonably brief description of the purpose or purposes of the special meeting and the business proposed to be conducted at the special meeting, the reasons for conducting such business at the special meeting and any direct or indirect material interest in such business of each Requesting Person, and (B) a reasonably detailed description of all agreements, arrangements, and understandings (x) between or among any of the Requesting Persons or (y) between or among any Requesting Person and any other person or entity (including their names) in connection with the request for the special meeting or the business proposed to be conducted at the special meeting; and

(iv) If directors are proposed to be elected at the special meeting, the Nominee Information for each person whom a Requesting Person expects to nominate for election as a director at the special meeting.

(v) For purposes of this Section 7(c), the term “**Requesting Person**” shall mean (i) the stockholder making the request to fix a Demand Record Date for the purpose of determining the stockholders entitled to demand that the secretary call a special meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf such request is made, and (iii) any affiliate or associate of such stockholder or beneficial owner.

(d) Within ten (10) days after receipt of a request to fix a Demand Record Date in proper form and otherwise in compliance with this Section 7 from any stockholder of record, the Board may adopt a resolution fixing a Demand Record Date for the purpose of determining the stockholders entitled to demand that the secretary of the Corporation call a special meeting, which date shall not precede the date upon which the resolution fixing the Demand Record Date is adopted by the Board. If no resolution fixing a Demand Record Date has been adopted by the Board within the ten (10) day period after the date on which such a request to fix a Demand Record Date was received, the Demand Record Date in respect thereof shall be deemed to be the twentieth (20th) day after the date on which such a request is received. Notwithstanding anything in this Section 7 to the contrary, no Demand Record Date shall be fixed if the Board determines that the demand or demands that would otherwise be submitted following such Demand Record Date could not comply with the requirements set forth in clauses (ii), (iv), (v), or (vi) of Section 7(f).

(e) Without qualification, a special meeting of the stockholders shall not be called pursuant to Section 7(a) unless stockholders of record as of the Demand Record Date who hold, in the aggregate, not less than twenty-five percent (25%) of the voting power of the outstanding shares of the Corporation (the “**Requisite**

**Percentage**”) timely provide one or more demands to call such special meeting in writing and in proper form to the secretary of the Corporation at the principal executive offices of the Corporation. Only stockholders of record on the Demand Record Date shall be entitled to demand that the secretary of the Corporation call a special meeting of the stockholders pursuant to Section 7(a). To be timely, a stockholder’s demand to call a special meeting must be delivered to, or mailed and received at, the principal executive offices of the Corporation not later than the sixtieth (60th) day following the Demand Record Date. To be in proper form for purposes of this Section 7, a demand to call a special meeting shall set forth (i) the business proposed to be conducted at the special meeting or the proposed election of directors at the special meeting, as the case may be, (ii) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment), if applicable, and (iii) with respect to any stockholder or stockholders submitting a demand to call a special meeting (except for any stockholder that has provided such demand in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A) (a **“Solicited Stockholder”**) the information required to be provided pursuant to this Section 7 of a Requesting Person. A stockholder may revoke a demand to call a special meeting by written revocation delivered to the secretary at any time prior to the special meeting. If any such revocation(s) are received by the secretary after the secretary’s receipt of written demands from the holders of the Requisite Percentage of stockholders, and as a result of such revocation(s), there no longer are unrevoked demands from the Requisite Percentage of stockholders to call a special meeting, the Board shall have the discretion to determine whether or not to proceed with the special meeting.

(f) The secretary shall not accept, and shall consider ineffective, a written demand from a stockholder to call a special meeting (i) that does not comply with this Section 7, (ii) that relates to an item of business to be transacted at such meeting that is not a proper subject for stockholder action under applicable law, (iii) that includes an item of business to be transacted at such meeting that did not appear on the written request that resulted in the determination of the Demand Record Date, (iv) that relates to an item of business (other than the election of directors) that is identical or substantially similar to an item of business (a **“Similar Item”**) for which a record date for notice of a stockholder meeting (other than the Demand Record Date) was previously fixed and such demand is delivered between the time beginning on the sixty-first (61st) day after such previous record date and ending on the one-year anniversary of such previous record date, (v) if a Similar Item will be submitted for stockholder approval at any stockholder meeting to be held on or before the ninetieth (90th) day after the secretary receives such demand, or (vi) if a Similar Item has been presented at the most recent annual meeting or at any special meeting held within one year prior to receipt by the secretary of such demand to call a special meeting.

(g) After receipt of demands in proper form and in accordance with this Section 7 from a stockholder or stockholders holding the Requisite Percentage, the Board shall duly call, and determine the place, date, and time of, a special meeting of stockholders for the purpose or purposes and to conduct the business specified in the demands received by the Corporation. Notwithstanding anything in these Bylaws to the contrary, the Board may submit its own proposal or proposals for consideration at such a special meeting. The record date for notice and voting for such a special meeting shall be fixed in accordance with Section 11 of this Article II. The Board shall provide written notice of such special meeting to the stockholders in accordance with Section 3 of this Article II. The business to be conducted at any special meeting of the stockholders shall be limited to the purpose or purposes stated in the notice.

(h) In connection with a special meeting called in accordance with this Section 7, the stockholder or stockholders (except for any Solicited Stockholder) who requested that the Board fix a record date for the special meeting in accordance with this Section 7 or who delivered a demand to call a special meeting to the secretary shall further update and supplement the information previously provided to the Corporation in connection with such request or demand, if necessary, so that the information provided or required to be provided in such request or demand pursuant to this Section 7 shall be true and correct as of the record date for the special meeting and as of the date that is ten (10) business days prior to the special meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the secretary at the principal executive offices of the Corporation not later than five (5) business days following the later of the record date for the meeting or the date notice of the record date for the meeting is first publicly disclosed (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the special meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the special meeting has been adjourned or postponed) (in the case of

the update and supplement required to be made as of ten (10) business days prior to the special meeting or any adjournment or postponement thereof).

(i) Notwithstanding anything in these Bylaws to the contrary, the secretary shall not be required to call a special meeting pursuant to this Section 7 except in accordance with this Section 7. If the Board shall determine that any request to fix a record date for the special meeting or demand to call and hold a special meeting was not properly made in accordance with this Section 7, or shall determine that the stockholder or stockholders requesting that the Board fix such record date or submitting a demand to call the special meeting have not otherwise complied with this Section 7, then the Board shall not be required to fix such record date or to call and hold the special meeting. In addition to the requirements of this Section 7, each Requesting Person shall comply with all requirements of applicable law, including all requirements of the Exchange Act, with respect to any request to fix a record date for the special meeting or demand to call a special meeting.

#### **Section 8. Quorum and Adjournment.**

(a) At any meeting of the stockholders, the holders of a majority in voting power of the stock issued and outstanding and entitled to vote at the meeting, present in person, present by any means of remote communication authorized by the Board in its sole discretion, or represented by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number may be required by law, the Certificate of Incorporation, or these Bylaws. Where a separate vote by a class or classes or series is required, a majority of the voting power of the shares of such class or classes or series present in person, present by any means of remote communication authorized by the Board in its sole discretion, or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

(b) If a quorum shall not be present or represented at any annual or special meeting of the stockholders, the chairperson of the meeting, or the holders of a majority in voting power of the shares of stock of the Corporation, which are entitled to vote at the meeting and are present in person, present by any means of remote communication authorized by the Board in its sole discretion or represented by proxy, shall have power to adjourn the meeting from time to time until a quorum is present or represented. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, are (i) announced at the meeting at which the adjournment is taken, (ii) displayed, during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication or (iii) set forth in the notice of meeting given in accordance with these Bylaws; *provided, however*, that if the date of any adjourned meeting is more than thirty (30) days after the date for which the meeting was originally noticed, notice of the place, if any, date, and time of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, shall be given in conformity herewith. If, after the adjournment, a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting. At any adjourned meeting, any business may be transacted that might have been transacted at the original meeting.

**Section 9. Voting.** The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 11 of this Article II, Section 217 (relating to voting rights of fiduciaries, pledgers, and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL. Except as may be otherwise provided in the Certificate of Incorporation or these Bylaws, each stockholder voting shall be entitled to one (1) vote for each share of capital stock of the Corporation held by such stockholder that has voting power upon the matter in question. At all meetings of stockholders for the election of directors at which a quorum is present, a plurality of the votes cast shall be sufficient to elect a director. All other elections and questions presented to the stockholders at a meeting at which a quorum is present shall, unless otherwise provided by the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or applicable law or pursuant to any regulation applicable to the Corporation or its securities, be

decided by the affirmative vote of the majority of shares present or represented by proxy and entitled to vote on the subject matter.

#### **Section 10. Stockholder Action by Written Consent.**

(a) Any action required or permitted to be taken at an annual or special meeting of stockholders may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, (i) shall be signed by holders of record on the record date established pursuant to Section 10(b) below (the “**Written Consent Record Date**”) of outstanding shares of the Corporation having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and (ii) shall be delivered to the Corporation at its registered office in the State of Delaware, at its principal place of business or to an officer or agent of the Corporation having custody of the minute books in which proceedings of meetings of stockholders are recorded. Delivery shall be made by hand or by certified or registered mail, return receipt requested. Every written consent shall bear the date of the signature of each stockholder who signs the consent, and no written consent shall be effective to take corporate action unless, within sixty (60) days of the earliest dated valid consent delivered in the manner described in this Section 10, written consents signed by a sufficient number of holders to take such action are delivered to the Corporation in the manner described in this Section 10. Only stockholders of record on the Written Consent Record date shall be entitled to consent to corporate action in writing without a meeting.

(b) Without qualification, any stockholder of record seeking to have the stockholders authorize or take any action by written consent shall first request in writing that the Board fix a Written Consent Record Date for the purpose of determining the stockholders entitled to take such action, which request shall be in proper form and delivered to, or mailed and received by, the secretary of the Corporation at the principal executive offices of the Corporation. Within ten (10) days after receipt of a request in proper form and otherwise in compliance with this Section 10(b) from any such stockholder, the Board may adopt a resolution fixing a Written Consent Record Date for the purpose of determining the stockholders entitled to take such action, which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board. If no resolution fixing a record date has been adopted by the Board within such ten (10) day period after the date on which such a request is received, (i) the Written Consent Record Date for determining stockholders entitled to consent to such action, when no prior action of the Board of Directors is required by applicable law, shall be the first date on which valid signed written consents constituting the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and setting forth the action taken or proposed to be taken is delivered to the Corporation in the manner described in this Section 10, and (ii) the Written Consent Record Date for determining stockholders entitled to consent to such action, when prior action by the Board is required by applicable law, shall be at the close of business on the date on which the Board adopts the resolution taking such prior action.

(c) To be in proper form for purposes of this Section 10, a request by a stockholder for the Board to fix a Written Consent Record Date shall set forth:

(i) As to each Soliciting Person (as defined below), the Stockholder Information (as defined in Section 5(c)(i) of this Article II, except that for purposes of this Section 10 the term “Soliciting Person” shall be substituted for the term “Proposing Person” in all places it appears in Section 5(c)(i) of this Article II);

(ii) As to each Soliciting Person, any Disclosable Interests (as defined in Section 5(c)(ii) of this Article II, except that for purposes of this Section 10 the term “Soliciting Person” shall be substituted for the term “Proposing Person” in all places it appears in Section 5(c)(ii) of this Article II and the disclosure in clause (H) of Section 5(c)(ii) of this Article II shall be made with respect to the action or actions proposed to be taken by written consent);

(iii) As to the action or actions proposed to be taken by written consent, (A) a reasonably brief description of the action or actions, the reasons for taking such action or actions and any material interest in such action or actions of each Soliciting Person, (B) the text of the resolutions or consent proposed to be acted upon by written consent of the stockholders, and (C) a reasonably detailed description of all



agreements, arrangements, and understandings (x) between or among any of the Soliciting Persons and (y) between or among any Soliciting Person and any other person or entity (including their names) in connection with the request or such action or actions; and

(iv) If directors are proposed to be elected by written consent, the Nominee Information for each person whom a Requesting Person proposes to elect as a director by written consent.

For purposes of this Section 10, the term “**Soliciting Person**” shall mean (A) the stockholder making a request for the Board to fix a record date and proposing the action or actions to be taken by written consent, (B) the beneficial owner or beneficial owners, if different, on whose behalf such request is made, and (C) any affiliate or associate of such stockholder or beneficial owner.

(d) In connection with an action or actions proposed to be taken by written consent in accordance with this Section 10, the stockholder or stockholders seeking such action or actions shall further update and supplement the information previously provided to the Corporation in connection therewith, if necessary, so that the information provided or required to be provided pursuant to this Section 10 shall be true and correct as of the record date for determining the stockholders eligible to take such action and as of the date that is five (5) business days prior to the date the consent solicitation is commenced, and such update and supplement shall be delivered to, or mailed and received by, the secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for determining the stockholders eligible to take such action (in the case of the update and supplement required to be made as of the record date), and not later than three (3) business days prior to the date that the consent solicitation is commenced (in the case of the update and supplement required to be made as of five (5) business days prior to the commencement of the consent solicitation).

(e) Notwithstanding anything in these Bylaws to the contrary, no action may be taken by the stockholders by written consent except in accordance with this Section 10. If the Board shall determine that any request to fix a Written Consent Record Date or to take stockholder action by written consent was not properly made in accordance with this Section 10, or the stockholder or stockholders seeking to take such action do not otherwise comply with this Section 10, then the Board of Directors shall not be required to fix a Written Consent Record Date and any such purported action by written consent shall be null and void to the fullest extent permitted by applicable law. In addition to the requirements of this Section 10 with respect to stockholders seeking to take an action by written consent, each Soliciting Person shall comply with all requirements of applicable law, including all requirements of the Exchange Act, with respect to such action.

#### **Section 11. Record Date.**

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may, except as otherwise required by law, fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of any meeting of stockholders. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

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

(c) A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

**Section 12. Proxies and Voting.** Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by delivering to the secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date. A proxy may be in the form of a telegram, cablegram, or other means of electronic transmission, which sets forth or is submitted with information from which it can be determined that the telegram, cablegram, or other means of electronic transmission was authorized by the stockholder. Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board.

**Section 13. List of Stockholders Entitled to Vote.** The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (*provided, however*, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date); arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of ten (10) days ending on the day before the meeting date: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the Corporation's principal executive office. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

## ARTICLE III

### DIRECTORS

**Section 1. Powers.** Subject to the provisions of the DGCL and any limitations in the Certificate of Incorporation or these Bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the Corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board.

**Section 2. Number of Directors.** The number of directors which shall constitute the whole Board shall be not less than three (3) nor more than nine (9). The exact number of directors within the minimum and maximum limitation specified in the preceding sentence shall be fixed from time to time exclusively by resolution of the Board, acting by the vote of not less than a majority of the directors then in office. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

**Section 3. Election, Qualification, and Term of Office of Directors.** Except as provided in Section 4 of this Article III, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the

term for which elected and until such director's successor is duly elected and qualified or until such director's earlier death, resignation, or removal. Directors need not be stockholders unless so required by the Certificate of Incorporation or these Bylaws. The Certificate of Incorporation or these Bylaws may prescribe other qualifications for directors.

#### **Section 4. Resignations and Vacancies.**

(a) Any director may resign at any time by giving notice in writing or by electronic transmission to the chairman of the board, the president, or the secretary of the Corporation. Such resignation shall take effect at the time specified therein or upon the happening of an event or events specified therein, or if the time is not specified and the resignation is not made contingent upon the happening of an event or events, upon receipt thereof; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(b) Unless otherwise provided in the Certificate of Incorporation or these Bylaws, vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. If at any time, by reason of death or resignation or other cause, the Corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee, or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the Certificate of Incorporation or these Bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the DGCL. If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole Board (as constituted immediately prior to any such increase), then the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent (10%) of the total number of the shares at the time outstanding, having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of DGCL as far as applicable.

**Section 5. Place of Meetings; Meetings by Telephone.** The Board may hold meetings, both regular and special, either within or outside the State of Delaware. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting pursuant to this Section 5 shall constitute presence in person at the meeting.

**Section 6. Regular Meetings.** Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board.

**Section 7. Special Meetings.** Special meetings of the Board may be called by the chairman of the board or the president on two (2) days' notice to each director if provided either by mail or overnight courier, or upon advance notice if provided either personally, by telephone, or email. Special meetings of the Board shall be called by the chairman of the board, president, or secretary in like manner and on like notice on the written request of two directors unless the Board consists of only one director, in which case special meetings shall be called by the chairman of the board, president, or secretary in like manner and on like notice on the written request of the sole director.

**Section 8. Quorum.** At all meetings of the Board, a majority of the authorized number of directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by statute or by the Certificate of Incorporation. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

**Section 9. Board Action by Written Consent Without a Meeting.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board, or of any

committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

**Section 10. Fees and Compensation of Directors.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board shall have the authority to fix stated salaries for directors for their service in such capacity and to provide for payment of a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board. The Board shall also have the authority to provide for payment of a fixed sum and expenses of attendance, if any, payable to members of committees for attending committee meetings.

**Section 11. Removal of Directors.** Unless otherwise restricted by statute, by the Certificate of Incorporation, or by these Bylaws, any director or the entire Board may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

**Section 12. Waivers.** A written waiver of any notice, signed by a director entitled to notice, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting shall constitute waiver of notice except attendance for the sole purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

#### ARTICLE IV

#### COMMITTEES OF DIRECTORS

**Section 1. Committees of Directors.** The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these Bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (a) approve or adopt, or recommend to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval or (b) adopt, amend, or repeal any bylaw of the Corporation.

**Section 2. Committee Minutes.** Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

**Section 3. Meetings and Action of Committees.** Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of: Section 5 of Article III (Place of Meetings and Meetings by Telephone), Section 6 of Article III (Regular Meetings), Section 7 of Article III (Special Meetings), Section 8 of Article III (Quorum), Section 12 of Article III (Waivers), and Section 9 of Article III (Board Action by Written Consent Without a Meeting), with such changes in the context of those Bylaws as are necessary to substitute the committee and its members for the Board and its members. However, (a) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee, (b) special meetings of committees may also be called by resolution of the Board, and (c) notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.



## ARTICLE V

### OFFICERS

**Section 1. Officers.** The officers of the Corporation shall be a chairman of the board, a president, and a secretary. The Corporation may also have, at the discretion of the Board, a chief executive officer, a chief financial officer, or treasurer, one or more vice presidents, one or more assistant secretaries, one or more assistant treasurers, and any such other officers as may be appointed in accordance with the provisions of these Bylaws. Any number of offices may be held by the same person, unless the Certificate of Incorporation or these Bylaws otherwise provide.

**Section 2. Appointment of Officers.** The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 3 or Section 8 of this Article V, shall be chosen by the Board, subject to the rights, if any, of an officer under any contract of employment.

**Section 3. Subordinate Officers.** The Board may appoint, or empower the chief executive officer or, in the absence of a chief executive officer, the president, to appoint, such other officers and agents as the business of the Corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board may from time to time determine.

**Section 4. Removal and Resignation of Officers.**

(a) Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the Board then in office at any regular or special meeting of the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

(b) Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

**Section 5. Vacancies in Offices.** Any vacancy occurring in any office of the Corporation shall be filled by the Board or as provided in Section 3 of this Article V.

**Section 6. Chairman of the Board.** The chairman of the board shall, if present, preside at meetings of the Board and of the stockholders of the Corporation and exercise and perform such other powers and duties as may from time to time be assigned to him by the Board or as may be prescribed by these Bylaws.

**Section 7. Chief Executive Officer.** The chief executive officer shall be responsible for corporate policy and strategy and general supervision, direction, and control of the business, property, affairs, and officers of the Corporation. The chief executive officer shall preside, in the absence or non-existence of a chairman of the board, at all meetings of the Board and all meetings of the stockholders. The chief executive officer shall have the general powers and duties of management usually vested in the office of chief executive officer of a corporation and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

**Section 8. President.** The president will have general responsibility for the management and control of the operations of the Corporation. If there is no chief executive officer, the president shall be the chief executive officer of the Corporation, except as the Board may otherwise provide.

**Section 9. Chief Financial Officer.** The chief financial officer shall act in an executive financial capacity. The chief financial officer shall provide such assistance to and perform such other duties as may be requested by the Board, the chairman of the board, the chief executive officer or the president in the general supervision of the Corporation's financial policies and affairs.

**Section 10. Vice President.** In the absence of the president or in the event of his or her inability or refusal to act, the vice-president (or in the event there be more than one vice-president, the vice-presidents in the order designated by the Board, or in the absence of any designation, then in the order of their election) shall perform the duties of the president and, when so acting, shall have all the powers of and be subject to all the restrictions upon the president. The vice-presidents shall perform such other duties and have such other powers as the Board may from time to time prescribe.

**Section 11. Secretary and Assistant Secretary.**

(a) The secretary shall keep or cause to be kept, at the principal executive office of the Corporation or such other place as the Board may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders. The minutes shall show the time and place of each meeting, whether regular or special (and, if special, how authorized and the notice given), the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof. The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board required to be given by law or by these Bylaws. He or she shall keep the seal of the Corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board or by these Bylaws.

(b) The assistant secretary, or if there be more than one, the assistant secretaries in the order designated by the Board (or if there be no such designation, then in the order of their election) shall, in the absence of the secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of secretary and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

**Section 12. Treasurer and Assistant Treasurer.**

(a) The treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director. The treasurer shall deposit all money and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board. He or she shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the chief executive officer and directors, whenever they request it, an account of all of his or her transactions as treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

(b) The assistant treasurer, or if there shall be more than one, the assistant treasurers in the order determined by the Board (or if there be no such determination, then in the order of their election) shall, in the absence of the treasurer or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the treasurer and shall perform such other duties and have such other powers as the board of the directors may from time to time prescribe.

**ARTICLE VI**

**STOCK**

**Section 1. Certificates for Shares; Uncertificated Shares.** The shares of the Corporation shall be evidenced by certificates; *provided, however*, that the Board may provide by resolution or resolutions that some or all of any or all classes or series of stock of the Corporation shall be uncertificated shares. Any such resolution shall not apply to shares evidenced by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board, every holder of stock evidenced by certificates, and upon request every holder of uncertificated shares, shall be entitled to have a certificate signed by, or in the name of the Corporation by, the chairperson or a vice-chairperson of the Board or the president or a vice-president, and by treasurer or an assistant treasurer, or the secretary or an assistant secretary, certifying the number of shares owned by such stockholder. Any or all of the signatures on a certificate may be a facsimile. In case any officer, transfer agent or

registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

**Section 2. Lost Certificates.** Except as provided in this Section 2, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and cancelled at the same time. The Corporation may direct a new certificate or certificates or uncertificated shares to be issued in place of any certificate or certificates theretofore issued by the Corporation, alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates or uncertificated shares, the Board may, in its discretion and as a condition precedent to the issuance thereof, require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

**Section 3. Transfers of Stock.** Subject to any restrictions on transfer and unless otherwise provided by the Board, shares of stock that are represented by a certificate may be transferred on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate theretofore properly endorsed or accompanied by a written assignment or power of attorney properly executed, with transfer stamps (if necessary) affixed, and with such proof of the authenticity of signature as the Corporation or its transfer agent may reasonably require. Shares of stock that are not represented by a certificate may be transferred on the books of the Corporation by submitting to the Corporation or its transfer agent such evidence of transfer and following such other procedures as the Corporation or its transfer agent may require.

**Section 4. Registered Stockholders.** The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for call and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

## ARTICLE VII

### GENERAL PROVISIONS

**Section 1. Dividends.** Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

**Section 2. Annual Statement.** The Board shall present at each annual meeting, and at any special meeting of the stockholders when called for by vote of the stockholders, a full and clear statement of the business and condition of the Corporation.

**Section 3. Checks.** From time to time, the Board shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes, or other evidences of indebtedness that are issued in the name of or payable to the Corporation, and only the persons so authorized shall sign or endorse those instruments.

**Section 4. Fiscal Year.** The fiscal year of the Corporation shall be as fixed by resolution of the Board.

**Section 5. Seal.** The corporate seal shall be in the form adopted by the Board and such seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

## ARTICLE VIII

### INDEMNIFICATION

**Section 1. Right to Indemnification.** The Corporation shall indemnify its officers, directors, employees and agents to the fullest extent permitted by Section 145 of the DGCL, as amended from time to time, and by the Certificate of Incorporation. Each person who was or is made a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter, a “**proceeding**”) (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, partner, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an “**indemnitee**”), shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, against all expense, liability and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) actually and reasonably incurred or suffered by such indemnitee in connection therewith if such indemnitee acted in good faith and in a manner the indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal proceeding, had no reasonable cause to believe the conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the indemnitee did not act in good faith and in a manner which the indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal proceeding, had reasonable cause to believe that the conduct was unlawful.

**Section 2. Actions by the Corporation.** Each person who was or is made a party or is threatened to be made a party to any threatened, pending or completed proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, partner, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise shall be indemnified and held harmless by the Corporation against all expense, liability and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) actually and reasonably incurred by such person in connection with the defense or settlement of such proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless, and only to the extent that, the Court of Chancery or the court in which such proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court may deem proper.

**Section 3. Continuation of Indemnification.** The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

**Section 4. Right to Advancement of Expenses.** In addition to the right to indemnification conferred in this Article VIII, any director or officer shall, to the fullest extent not prohibited by applicable law, also have the right to be paid by the Corporation the expenses (including attorneys’ fees) incurred by such director or officer in defending any such proceeding in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such person is not entitled to be indemnified by the Corporation as authorized in this Article VIII or otherwise.

**Section 5. Board Authorization.** Unless ordered by a court of competent jurisdiction, any indemnification or advancement of expenses provided for in this Article VIII shall be made by the Corporation only as authorized in the

specific case upon a determination that indemnification of the present or former director, officer, employee or agent or advancement of expenses to such person is proper in the circumstances because that person has met the applicable standard of conduct. Such determination shall be made, with respect to a person who is a director or officer of the Corporation at the time of such determination: (a) by a majority vote of the directors who are not parties to such proceeding, even though less than a quorum; (b) by a committee of such directors designated by majority vote of such directors, even though less than a quorum; (c) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion; or (d) by the stockholders of the Corporation.

**Section 6. Non-Exclusivity of Rights.** The rights to indemnification and to the advancement of expenses conferred in this Article VIII shall not be exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, these Bylaws, agreement, vote of stockholders or disinterested directors, or otherwise.

**Section 7. Insurance.** The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such liability under the DGCL.

**Section 8. Other Indemnification.** The Corporation's obligation, if any, to indemnify or advance expenses to any indemnitee who was or is serving at its request as a director, officer, employee, agent, or trustee of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such indemnitee may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise, or non-profit enterprise.

**Section 9. Nature of Rights.** The rights conferred upon indemnitees in this Article VIII shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer, or trustee and shall inure to the benefit of the indemnitee's heirs, executors, and administrators. Any amendment, alteration, or repeal of this Article VIII that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any Proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration, or repeal.

**Section 10. Saving Clause.** If this Article VIII or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and advance expenses to each director and officer to the fullest extent not prohibited by any applicable portion of this Article VIII that shall not have been invalidated, or by any other applicable law. If this Article VIII shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the Corporation shall indemnify and advance expenses to each director and officer to the fullest extent permitted under any other applicable law.

## ARTICLE IX

### FORUM FOR ADJUDICATION OF DISPUTES

Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (c) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, or (d) any action asserting a claim governed by the internal affairs doctrine shall be a state or federal court located within the state of Delaware, in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article IX.

## **ARTICLE X**

### **AMENDMENTS**

These Bylaws may be altered, amended, or repealed or new bylaws may be adopted by the stockholders or by the Board, when such power is conferred upon the Board by the Certificate of Incorporation at any regular meeting of the stockholders or of the Board or at any special meeting of the stockholders or of the Board if notice of such alteration, amendment, repeal, or adoption of new bylaws be contained in the notice of such special meeting. If the power to adopt, amend, or repeal bylaws is conferred upon the Board by the Certificate of Incorporation it shall not divest or limit the power of the stockholders to adopt, amend, or repeal bylaws.





## MITEK

### Annual Incentive Plan

The Mitek Annual Incentive Plan (the "Plan") applies to employees of Mitek for achievement of objectives as defined in this Plan. This Plan is designed to support the growth, profitability, and success of the organization through shared objectives and alignment with the creation of shareholder value.

#### Definitions

The Company: Refers to Mitek Systems Inc. and its affiliates

Plan Term: The fiscal year beginning October 1<sup>st</sup> and ending September 30<sup>th</sup> of the applicable fiscal year

Plan Participant: A full time employee of the Company designated as a participant in the Plan, who is not already participating in an alternative commission or incentive plan and is employed by the Company through the completion of the applicable fiscal year

Business Area: The business area, either Deposits, Identity or ID R&D, for which the Plan Participant is designated for participation purposes. Each Plan Participant will be assigned a primary business area and/or Total Company revenue for purposes of the plan

Revenue: Defined as the applicable revenue determined in accordance with generally accepted accounting principles excluding acquisition-related revenue not included in the original plan target and adjusted for acquisition-related write-downs of revenue or deferred revenue

Non-GAAP Operating Income: Defined in accordance with generally accepted accounting principles and as determined by the Company

Individual Objectives: Assigned goals as applicable for the fiscal year

#### Eligibility & Applicability

To be eligible for participation in the Plan, a Plan Participant must be employed by the Company through the completion of the fiscal year for which the plan is approved and in force.

Plan Participants who are partial year employees, either due to commencing following the start of the fiscal year or having taken certain types of leaves of absence during the year, but who are employed by the Company through the completion of the fiscal year, will be eligible to receive a pro-rated payment under the Plan. Generally, partial year employees must be employed prior to the beginning of the 4<sup>th</sup> quarter of the fiscal year to be eligible for plan participation.

#### Term

This Plan is effective for the applicable fiscal year beginning October 1st ending September 30th.

#### Plan Structure

Each Plan Participant is eligible to earn a target incentive up to, equal to or in excess of their annual incentive target percentage multiplied by their annual base salary based upon performance against plan objectives.

Earnings under the Plan result from successful performance against a combination of two Financial Targets (Revenue and Non-GAAP Operating Income targets) and against Individual Performance Objectives as applicable.

The two Financial Targets of the Plan are weighted individually and specific participation in the Plan is accordance with the following:

**Director-level and above:** Achievement under the Plan is tied to the two Financial Targets (Revenue and Non-GAAP Operating Income) upon which 100% of target bonus is earned at plan. The plan is structured as follows:

- 70% of the target incentive shall be based upon the achievement of the Revenue component of the plan



- The target incentive related to Revenue achievement will either be comprised of: (i) the entire 70% will be based upon the combination of all Business Area revenue targets or (ii) will be comprised of 55% based upon a Primary Business Area revenue target and 15% based on the combination of all Business Area revenue targets.
- A minimum of a defined percentage of the respective Revenue target must be attained for any earnings under the component to be achieved.
- 30% of the target incentive shall be based upon the achievement of the Non-GAAP Operating Income component of the plan.
  - A minimum of 60 % of the Non-GAAP Operating Income target must be attained for any earnings under the component to be achieved.
- Participants may achieve up to 200% of the target incentive based on overachievement of Plan Targets.
- Specific to the CEO & direct reports to the CEO: Individual achievement against the financial metrics of the plan is subject to modification by the board of directors at their sole discretion by up to 10% of the participants target incentive amount based upon individual contribution.

**All Other Plan Participants:** Achievement under the Plan is tied to the two Financial Targets (Revenue and Non-GAAP Operating Income) upon which 100% of target bonus is earned at plan. The plan is structured as follows:

- 60% of the target incentive shall be based upon the achievement of the Revenue component of the plan
  - The target incentive related to Revenue achievement will either be comprised of (i) the entire 60% will be based upon the combination of all Business Area revenue targets or (ii) will be comprised of 50% based upon a Primary Business Area revenue target and 10% based on the combination of all Business Area revenue targets.
  - A minimum of a defined percentage of the respective Revenue target must be attained for any earnings under the component to be achieved.
- 20% of the target incentive shall be based upon the achievement of the Non-GAAP Operating Income component of the plan.
  - A minimum of 60 % of the Non-GAAP Operating Income target must be attained for any earnings under the component to be achieved.
- 20% of the target incentive shall be based upon the achievement of Individual Objectives as determined at the sole discretion of the Company.
  - A minimum of a defined percentage of the aggregate Revenue targets must be attained for any earnings under the component to be achieved.
- Participants may achieve up to 200% of target incentive based on overachievement of Plan Targets.

**Plan Structure**

Plan Elements		ELT	Director Level & Above	All Other Participants
Core Identity	Core Identity Revenue	55 %	55 %	50 %
	All Mitek Revenue	15 %	15 %	10 %
ID R&D	ID R&D Revenue	55 %	55 %	50 %
	All Mitek Revenue	15 %	15 %	10 %
Deposits	Deposits Revenue	55 %	55 %	50 %
	All Mitek Revenue	15 %	15 %	10 %
Corporate	All Mitek Revenue	70 %	70 %	60 %
ALL	Non-GAAP Operating Income	30 %	30 %	20 %
	Individual Objectives	BOD & CEO ability to modify financial metric outcome by 10% based upon individual contribution		20 %

**Plan Targets**

The Financial Metrics shall be set by the Company upon approval by its Board of Directors, in their sole discretion.

**Payment Schedule**

Incentives shall be earned for the applicable fiscal year and shall be paid in the quarter that follows the year for which the incentive is earned at the sole discretion and following approval of the Company's Board of Directors.

**General Provisions**

A Plan Participant shall not assign nor give any part of an incentive to any agent, customer or representative of the customer, or any other person, as an inducement in obtaining an order. Unless expressly approved in advance by the CEO of the Company, a Plan Participant shall not accept any compensation from third parties related to sales of third-party products or services made by the Company.

In the event a Plan Participant, compensated in accordance with this Plan, owes any sum of money to the Company, including without limitation draw payments, charge backs, and travel advances, the Company shall have the right at any time to offset such obligations against the employee's base salary, commissions, or bonuses.

The Company reserves the right without advance notice to:

- Accept, reject, or cancel any order,
- Make any adjustments or revisions to targets, structure, incentive rates, quotas, salaries, or any other matters pertaining to this Plan; and
- Resolve, in its sole and absolute discretion, any matters of interpretation under the Plan and matters not covered by the provisions of the Plan.
- Modify or terminate this Plan at any time.

The contents of this Plan are Company proprietary and confidential and are not to be disclosed by any Plan Participant to any person who is not an employee of the Company. Any legal action brought concerning this Plan shall be brought only in the state or federal courts of the country in which the Plan Participant is employed, and both parties submit to venue and jurisdiction in these courts. This Plan contains the entire agreement of the parties with respect to the matters addressed herein, and supersedes all other representations, statements and understandings concerning this subject matter.

To: David Lyle  
From: Max Carnecchia  
RE: Chief Financial Officer Appointment  
Date: December 1, 2023

We are very pleased to offer you the following role with Mitek Systems (the "Company" or "Mitek") and it is our hope that you will become a part of the leadership team of our exciting and innovative organization. The following will confirm the terms of our offer of employment to you.

**Position/Location:** You will assume the role of Mitek's Senior Vice President and Chief Financial Officer. In this role you will report directly to Max Carnecchia, Chief Executive Officer. Your principal place of employment shall be proximate to our San Diego, California headquarters office.

**Start Date:** As mutually agreed, anticipated to be January 2, 2024

**Compensation:** Your compensation in the above position will include an annual target compensation of \$701,250. This amount will include a base salary of \$425,000.00 paid semi-monthly in the amount of \$17,708.33, less applicable withholding, and in accordance with the Company's 24 regular payroll periods. In addition, you will have the opportunity to participate in our annual Management Incentive Plan designed to allow you to earn an additional 65% of your base salary upon reaching established corporate financial targets and subject to the terms of the plan. For FY24, this amount shall be prorated in accordance with your partial year of service.

**Equity Grant:** Mitek will request that the Board of Directors confirm approval of your participation in the Mitek Systems, Inc. Amended and Restated 2020 Incentive Plan (the "Plan"). This grant will include a Restricted Stock Unit (RSU) grant valued at \$1,500,000. \$750,000 of the value of this grant will be in the form of time-based restricted stock units (vesting over 4 years, 25% annually) and \$750,000 of the value of this grant will be in the form of performance-based restricted stock units (vesting over 3 years, 1/3 annually in accordance with achieving at-target performance criteria). The number of shares issuable pursuant to the grant will be determined utilizing the closing market price of Mitek stock (MITK) as of the grant date approved by the Board (expected to be your date of hire or the first trading day following your day of hire on which the market is open). Vesting of this grant will commence as of your date of hire and will follow Mitek's standard vesting schedules along with all other provisions contained within the Plan. You will be provided with full grant agreement and details of the Plan following approval of the grant.

**Benefits:** As an employee of the Company, you will be eligible to participate in our employee benefits package. Mitek is committed to maintaining a competitive position in the employment marketplace and endeavors to ensure an attractive and comprehensive benefits program. We are pleased to make available to you our standard employee benefits package which is effective upon commencement of your employment with us. Full program details can be found in our benefits overview and enrollment in all benefits will be provided to you during your onboarding.

**Separation & Change of Control Agreement:** Conditional upon your commencement of employment with us, the Company will provide you with an Executive Severance and Change in Control Agreement (“CIC”) that will compensate you for 12 months of base salary and 12 months of COBRA payments for medical insurance in the event of your termination by the company other than for cause. In addition, your agreement will provide for additional equity vesting in the event of termination following a change in control. The details of this can be found in the Executive Employment Agreement provided. Employment: As a condition of your employment with the Company, you agree to observe and comply with all reasonable and lawful rules, regulations, policies and procedures established by the Company from time to time and all applicable laws, rules and regulations imposed by any governmental regulatory authority from time to time. Without limiting the foregoing, you agree that during your employment with the Company, you will devote your full business time, attention, skill and best efforts to the performance of your employment duties and you are not to engage in any other business or occupation. As a condition of your employment, you will be required to execute and be bound by the Company's Invention Assignment and Proprietary Agreement.

It is understood that this offer of employment, its acceptance, or the maintenance of Company policies, procedures, and benefits do not create a contract of employment for a specified term or guarantee of specific benefits. Thus, employment at the Company is not for a specific term and can be terminated by you or by the Company at any time for any reason, with or without cause.

This letter supersedes any prior or contrary representations that may have been made by the Company and upon acceptance of this offer, the terms described in this letter along with all provisions contained within the Executive Employment Agreement shall be the terms of your employment. Please be advised that the at-will status of your employment may not be modified except by a written agreement between you and the Company and signed by the CEO.

Your employment is subject to completion of the Company's reference and background check and to your submission of an I-9 form and satisfactory documentation with respect to your identification and right to work in the United States.

We would appreciate your acceptance of this offer which remains valid through Monday, December 18, 2023. Please indicate your acceptance by signing and dating this letter where indicated below and return it to me at [mcarnecchia@miteksystems.com](mailto:mcarnecchia@miteksystems.com) with a cc: to Judy Ohrn Hicks at [jhicks@miteksystems.com](mailto:jhicks@miteksystems.com) . Should you have any questions, please feel free to contact me directly.

We look forward to the potential of you joining the Mitek team and the start of what we are confident will represent a meaningful and rewarding journey with us.

Accepted:

/s/ David Lyle \_\_\_\_\_

Signature

Date: December 18, 2023

**List of Subsidiaries**

The following is a list of subsidiaries of Mitek Systems, Inc., omitting certain subsidiaries which, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as of September 30, 2023.

<u>Name of Entity</u>	<u>Jurisdiction</u>
A2iA Corp.	United States of America
A2iA LLC	Russia
A2iA SAS	France
HooYu Ltd.	United Kingdom
ICAR Mexico, Business Identity Intelligence S.A.	Mexico
ICAR Sistemas Informaticos e de Identificacao LTDA	Brazil
ICAR Vision Systems, S.L.	Spain
IDChecker, Inc.	United States of America
ID R&D, Inc.	United States of America
Mitek Holding B.V.	Netherlands
Mitek Systems B.V.	Netherlands
Mitek Systems Private Limited	United Kingdom

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in Registration Statements on Form S-8 (Nos. 333-133765, 333-172810, 333-172811, 333-179942, 333-194151, 333-210127, 333-219991, 333-223858, 333-230545, 333-237442, 333-260123 and 333-275246) Mitek Systems, Inc. of our reports dated March 19, 2024, relating to the consolidated financial statements, and the effectiveness of Mitek Systems, Inc.'s internal control over financial reporting, which appear in this Annual Report on Form 10-K. Our report on the effectiveness of internal control over financial reporting expresses an adverse opinion on the effectiveness of the Company's internal control over financial reporting as of September 30, 2023.

/s/ BDO USA, P.C.  
Troy, Michigan  
March 19, 2024

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in Registration Statement Nos. 333-133765, 333-172810, 333-172811, 333-179942, 333-194151, 333-210127, 333-219991, 333-223858, 333-230545, 333-237442, 333-260123, and 333-275246 on Form S-8 of our report dated December 10, 2021, relating to the consolidated financial statements of Mitek Systems, Inc. for the year ended September 30, 2021, included in this Annual Report on Form 10-K for the year ended September 30, 2023.

/s/ Mayer Hoffman McCann P.C.  
San Diego, California  
March 19, 2024

## CERTIFICATION OF CHIEF EXECUTIVE OFFICER

Pursuant to Rule 13a-14(a) adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Scipio Maximus Carnecchia, certify that:

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

March 19, 2024

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/s/ Scipio Maximus Carnecchia  
Scipio Maximus Carnecchia  
Chief Executive Officer  
(Principal Executive Officer)



## CERTIFICATION OF CHIEF FINANCIAL OFFICER

Pursuant to Rule 13a-14(a) adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, David Lyle, certify that:

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

March 19, 2024

/s/ David Lyle  
\_\_\_\_\_  
David Lyle  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

**CERTIFICATIONS**  
**PURSUANT TO SECTION 18 U.S.C. SECTION 1350**  
**AS ADOPTED PURSUANT TO**  
**SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Each of the undersigned, in his capacity as the principal executive officer or principal financial officer of Mitek Systems, Inc. (the "Company"), as the case may be, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

1. This Annual Report of the Company on Form 10-K for the period ended September 30, 2023 (this "Annual Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. The information contained in this Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

March 19, 2024

/s/ Scipio Maximus Carnecchia

\_\_\_\_\_  
Scipio Maximus Carnecchia  
Chief Executive Officer  
(Principal Executive Officer)

March 19, 2024

/s/ David Lyle

\_\_\_\_\_  
David Lyle  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission ("SEC") or its staff upon request.

This certification accompanies this Annual Report to which it relates, is not deemed filed with the SEC and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Exchange Act (whether made before or after the date of this Annual Report), irrespective of any general incorporation language contained in such filing.

**Mitek Systems, Inc.****Clawback Policy**

The Board of Directors (the “**Board**”) of Mitek Systems, Inc. (the “**Company**”) believes that it is in the best interests of the Company and its stockholders to adopt this Clawback Policy (this “**Policy**”), which provides for the recovery of certain incentive compensation in the event of an Accounting Restatement (as defined below). This Policy is designed to comply with, and shall be interpreted to be consistent with, Section 10D of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), Rule 10D-1 promulgated under the Exchange Act (“**Rule 10D-1**”) and Nasdaq Listing Rule 5608 (the “**Listing Standards**”).

**1. Administration**

Unless otherwise determined by the Board, the Compensation Committee of the Board (the “**Compensation Committee**”) (or another committee of the Board) shall administer this Policy (the Board or such committee charged with administration of this Policy, the “**Administrator**”). The Administrator is authorized to interpret and construe this Policy and to make all determinations necessary, appropriate or advisable for the administration of this Policy. Any determinations made by the Administrator shall be final and binding on all affected individuals and need not be uniform with respect to each individual covered by this Policy. In the administration of this Policy, the Administrator is authorized and directed to consult with the full Board or such other committees of the Board, as may be necessary or appropriate as to matters within the scope of such other committee’s responsibility and authority. Subject to any legal limitation, the Administrator may authorize and empower any officer or employee of the Company to take any and all actions necessary or appropriate to carry out the purpose and intent of this Policy (other than with respect to any recovery under this Policy involving such officer or employee).

**2. Definitions**

As used in this Policy, the following definitions shall apply:

- “**Accounting Restatement**” means an accounting restatement of the Company’s financial statements due to the Company’s material noncompliance with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.
- “**Administrator**” has the meaning set forth in Section 1 hereof.
- “**Applicable Period**” means the three completed fiscal years immediately preceding the date on which the Company is required to prepare an Accounting Restatement, as well as any transition period (that results from a change in the Company’s fiscal year) within or immediately following those three completed fiscal years (except that a transition period that comprises a period of at least nine months shall count as a completed fiscal year). The “**date on which the Company is required to prepare an Accounting Restatement**” is the earlier to occur of (a) the date the Board, a committee of the Board or the officer or officers of the Company authorized to take such action if Board action is not required, concludes or reasonably should have concluded, that the Company is required to prepare an Accounting Restatement or (b) the date a court, regulator or other legally authorized body directs the Company to prepare an Accounting Restatement, in each case regardless of if or when the restated financial statements are filed.

- “**Code**” means the U.S. Internal Revenue Code of 1986, as amended. Any reference to a section of the Code or regulation thereunder includes such section or regulation, any valid regulation or other official guidance promulgated under such section, and any comparable or future legislation or regulation amending, supplementing, or superseding such section or regulation.
- “**Compensation Committee**” has the meaning set forth in Section 1 hereof.
- “**Covered Executives**” means the Company’s current and former executive officers, as determined by the Administrator in accordance with the definition of executive officer set forth in Rule 10D-1 and the Listing Standards; *provided that* executive officers for purposes of this Policy shall include at a minimum executive officers identified pursuant to 17 C.F.R. 229.401(b).
- “**Effective Date**” has the meaning set forth in Section 9 hereof.
- “**Erroneously Awarded Compensation**” has the meaning set forth in Section 5 hereof.
- A “**Financial Reporting Measure**” is any measure that is determined and presented in accordance with the accounting principles used in preparing the Company’s financial statements, and any measure that is derived wholly or in part from such measure. Financial Reporting Measures include but are not limited to the following (and any measures derived from the following): Company stock price; total shareholder return (“**TSR**”); revenues; net income; operating income; profitability of one or more reportable segments; financial ratios (e.g., accounts receivable turnover and inventory turnover rates); earnings before interest, taxes, depreciation and amortization; funds from operations and adjusted funds from operations; liquidity measures (e.g., working capital, operating cash flow); return measures (e.g., return on invested capital, return on assets); earnings measures (e.g., earnings per share); sales per square foot or same store sales, where sales is subject to an Accounting Restatement; revenue per user, or average revenue per user, where revenue is subject to an Accounting Restatement; cost per employee, where cost is subject to an Accounting Restatement; any of such financial reporting measures relative to a peer group, where the Company’s financial reporting measure is subject to an Accounting Restatement; and tax basis income. A Financial Reporting Measure need not be presented within the Company’s financial statements or included in a filing with the Securities and Exchange Commission to constitute a Financial Reporting Measure.
- “**Incentive-Based Compensation**” means any compensation that is granted, earned or vested based wholly or in part upon the attainment of a Financial Reporting Measure. Incentive-Based Compensation is “**received**” for purposes of this Policy in the Company’s fiscal period during which the Financial Reporting Measure specified in the Incentive-Based Compensation award is attained, even if the payment or grant of such Incentive-Based Compensation occurs after the end of that period.
- “**Nasdaq**” means The Nasdaq Stock Market LLC.

### 3. Covered Executives; Incentive-Based Compensation

This Policy applies to Incentive-Based Compensation received by a Covered Executive (a) after beginning services as a Covered Executive; (b) if that person served as a Covered Executive at any time during the performance period for such Incentive-Based Compensation; and (c) while the Company had a listed class of securities on a national securities exchange.

#### **4. Required Recoupment of Erroneously Awarded Compensation in the Event of an Accounting Restatement**

If the Company is required to prepare an Accounting Restatement, the Company shall promptly demand in writing and reasonably promptly recoup the amount of any Erroneously Awarded Compensation received by any Covered Executive, as calculated pursuant to Section 5 hereof, during the Applicable Period. Recovery under this Policy with respect to a Covered Executive shall not require a finding of any misconduct by such Covered Executive or that the Covered Executive was responsible for the accounting error leading to an Accounting Restatement. If a Covered Executive fails to repay Erroneously Awarded Compensation that is owed to the Company under this Policy, the Company shall take all appropriate action to recover such Erroneously Awarded Compensation from the Covered Executive, and the Covered Executive shall be required to reimburse the Company for all expenses (including legal expenses) incurred by the Company in recovering such Erroneously Awarded Compensation.

#### **5. Erroneously Awarded Compensation: Amount Subject to Recovery**

The amount of “**Erroneously Awarded Compensation**” subject to recovery under this Policy, as determined by the Administrator, is the amount of Incentive-Based Compensation received by the Covered Executive that exceeds the amount of Incentive-Based Compensation that otherwise would have been received by the Covered Executive had such compensation been determined based on the restated amounts in the Accounting Restatement.

Erroneously Awarded Compensation shall be determined by the Administrator without regard to any taxes paid by the Covered Executive in respect of the Erroneously Awarded Compensation.

For Incentive-Based Compensation based on stock price or TSR, where the amount of Erroneously Awarded Compensation is not subject to mathematical recalculation directly from the information in the Accounting Restatement: (a) the Administrator shall determine the amount of Erroneously Awarded Compensation based on a reasonable estimate of the effect of the Accounting Restatement on the stock price or TSR upon which the Incentive-Based Compensation was received; and (b) the Company shall maintain documentation of the determination of that reasonable estimate and provide such documentation to Nasdaq.

#### **6. Method of Recoupment**

The Administrator shall determine, in its sole discretion, the timing and method for promptly recouping Erroneously Awarded Compensation hereunder, which may include without limitation (a) seeking reimbursement of all or part of any cash or equity-based award, (b) cancelling prior cash or equity-based awards, whether vested or unvested or paid or unpaid, (c) cancelling or offsetting against any planned future cash or equity-based awards, (d) forfeiture of deferred compensation, subject to compliance with Section 409A of the Code and the regulations promulgated thereunder and (e) any other method authorized by applicable law or contract. Subject to compliance with any applicable law, the Administrator may effect recovery under this Policy from any amount otherwise payable to the Covered Executive, including amounts payable to such individual under any otherwise applicable Company plan or program, including base salary, bonuses or commissions and compensation previously deferred by the Covered Executive.

The Company is authorized and directed to recoup Erroneously Awarded Compensation in compliance with this Policy unless the Administrator determines that recovery would be impracticable for one or more of the following reasons only, and subject to the following procedural and disclosure requirements:

- The direct expense paid to a third party to assist in enforcing this Policy would exceed the amount to be recovered. Before concluding that the expense of recovery would exceed the recoverable amount, the Administrator must make a reasonable attempt to recover any Erroneously Awarded Compensation, document such reasonable attempt(s), and provide that documentation to Nasdaq;
- Recovery would violate home country law of the issuer where that law was adopted prior to November 28, 2022. Before concluding that it would be impracticable to recover any amount of Erroneously Awarded Compensation based on violation of home country law of the issuer, the Administrator must satisfy the applicable opinion and disclosure requirements of Rule 10D-1 and the Listing Standards; or
- Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations promulgated thereunder.

#### **7. No Indemnification of Covered Executives**

Notwithstanding the terms of any indemnification or insurance policy or any contractual arrangement with any Covered Executive, the Company shall not indemnify any Covered Executives against (a) the loss of any Erroneously Awarded Compensation, including any payment or reimbursement for the cost of third-party insurance purchased by any Covered Executives to fund potential clawback obligations under this Policy, or (b) any claims relating to the Company's enforcement of its rights under this Policy.

#### **8. Administrator Indemnification**

Any members of the Administrator, and any other members of the Board who assist in the administration of this Policy, shall not be personally liable for any action, determination or interpretation made with respect to this Policy and shall be fully indemnified by the Company to the fullest extent under applicable law and Company policy with respect to any such action, determination or interpretation. The foregoing sentence shall not limit any other rights to indemnification of the members of the Board under applicable law or Company policy.

#### **9. Effective Date; Retroactive Application**

This Policy shall be effective as of October 2, 2023 (the "**Effective Date**"). The terms of this Policy shall apply to any Incentive-Based Compensation that is received by Covered Executives on or after the Effective Date, even if such Incentive-Based Compensation was approved, awarded, granted or paid to Covered Executives prior to the Effective Date. Without limiting the generality of Section 6 hereof, and subject to applicable law, the Administrator may effectuate recovery under this Policy from any amount of compensation approved, awarded, granted, payable or paid to a Covered Executive prior to, on or after the Effective Date.

#### **10. Amendment; Termination**

The Board or the Compensation Committee may amend, modify, supplement, rescind or replace all or any portion of this Policy at any time and from time to time in its discretion, and shall amend this Policy as it deems necessary to comply with applicable law or any rules or standards adopted by a national securities exchange on which the Company's securities are listed. Notwithstanding anything in this Section 10 to the contrary, no amendment or other modification of this Policy shall be effective if such amendment or other modification would (after taking into account any actions taken by the Company contemporaneously with such amendment or other modification) cause the Company to violate any federal securities laws, Securities and Exchange

Commission rule or the rules of any national securities exchange or national securities association on which the Company's securities are listed.

#### **11. Other Recoupment Rights; Company Claims**

The Board intends that this Policy be applied to the fullest extent of the law. Any right of recoupment under this Policy is in addition to, and not in lieu of, any other remedies or rights of recoupment that may be available to the Company under applicable law or pursuant to the terms of any similar policy in any employment agreement, equity award agreement or similar agreement and any other legal remedies available to the Company. This Policy is also in addition to (and not in lieu of) any right of repayment, forfeiture or right of offset against any employees that is required pursuant to any statutory repayment requirement (regardless of whether implemented at any time prior to or following the adoption or amendment of this Policy), including Section 304 of the Sarbanes-Oxley Act of 2002. Any amounts paid to the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 shall be considered in determining any amounts recovered under this Policy. The Compensation Committee may require that any employment agreement, equity award agreement or any other agreement entered into on or after the Effective Date shall, as a condition to the grant of any benefit thereunder, require a Covered Executive to agree to abide by the terms of this Policy. The application and enforcement of this Policy does not preclude the Company from taking any other action to enforce a Covered Executive's obligations to the Company, including termination of employment or the institution of legal proceedings.

Nothing contained in this Policy, and no recoupment or recovery as contemplated by this Policy, shall limit any claims, damages or other legal remedies the Company or any of its affiliates may have against a Covered Executive (including reimbursement of legal fees incurred by or on behalf of the Company or any of its affiliates) arising out of or resulting from any actions or omissions by the Covered Executive.

#### **12. Successors**

This Policy shall be binding and enforceable against all Covered Executives and their beneficiaries, heirs, executors, administrators or other legal representatives.

#### **13. Exhibit Filing Requirement**

A copy of this Policy and any amendments thereto shall be filed as an exhibit to the Company's annual report on Form 10-K.

#### **14. Governing Law; Venue**

This Policy and all rights and obligations hereunder shall be governed by and construed in accordance with the internal laws of the State of Delaware, excluding any choice of law rules or principles that may direct the application of the laws of another jurisdiction. All actions arising out of or relating to this Policy shall be heard and determined exclusively in the Court of Chancery of the State of Delaware or, if such court declines to exercise jurisdiction or if subject matter jurisdiction over the matter that is the subject of any such legal action or proceeding is vested exclusively in the U.S. federal courts, the U.S. District Court for the District of Delaware.

#### **15. Interpretation**

If any provision of this Policy or the application of such provision to any Covered Executive shall be adjudicated to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Policy, and the invalid,

illegal or unenforceable provisions shall be deemed amended to the minimum extent necessary to render any such provision (or the application of such provision) valid, legal or enforceable.



[TO BE SIGNED BY THE COMPANY'S SECTION 16/EXECUTIVE OFFICERS:]

**Clawback Policy Acknowledgment**

I, the undersigned, agree and acknowledge that I am fully bound by, and subject to, all of the terms and conditions of Mitek Systems, Inc.'s Clawback Policy (as may be amended, restated, supplemented or otherwise modified from time to time, the "**Policy**"). In the event of any inconsistency between the Policy and the terms of any employment or similar agreement to which I am a party, or the terms of any compensation plan, program or agreement under which any compensation has been granted, awarded, earned or paid, the terms of the Policy shall govern. The Policy will apply both during and after my employment with the Company. In the event it is determined by the Administrator that any amounts granted, awarded, earned or paid to me must be forfeited or reimbursed to the Company, I will promptly take any action necessary to effectuate such forfeiture and/or reimbursement. Any capitalized terms used in this Acknowledgment without definition shall have the meaning set forth in the Policy.

By: \_\_\_\_\_  
[Name]  
[Title]

\_\_\_\_\_ Date