inContact, Inc.
Form 10-Q
November 09, 2016

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10-Q

Quarterly Report Pursuant to Section 13 or 15(d) of the

Securities Exchange Act of 1934

For the Quarterly Period Ended September 30, 2016

Commission File No. 1-33762

inContact, Inc.

(Exact name of registrant as specified in its charter)

Delaware	87-0528557
(State or other jurisdiction of incorporation or organization)	(IRS Employer Identification No.)

75 West Towne Ridge Parkway, Tower 1, Sandy, UT 84070

(Address of principal executive offices and Zip Code)

(801) 320-3200

(Registrant’s telephone number, including area code)

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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes No

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

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date:

Class	Outstanding as of October 31, 2016
Common Stock, $0.0001 par value	62,622,908 shares

TABLE OF CONTENTS

ITEM NUMBER AND CAPTION

PART I – FINANCIAL INFORMATION

		Page
Item 1.	Financial Statements	
	Condensed Consolidated Balance Sheets as of September 30, 2016 and December 31, 2015 (unaudited)	3
	Condensed Consolidated Statements of Operations and Comprehensive Loss for the Three and Nine Months Ended September 30, 2016 and 2015 (unaudited)	4
	Condensed Consolidated Statement of Stockholders' Equity for the Nine Months Ended September 30, 2016 (unaudited)	5
	Condensed Consolidated Statements of Cash Flows for the Nine Months Ended September 30, 2016 and 2015 (unaudited)	6
	Notes to Condensed Consolidated Financial Statements (unaudited)	7
Item 2.	Management's Discussion and Analysis of Financial Condition and Results of Operations	22
Item 3.	Quantitative and Qualitative Disclosures About Market Risk	32
Item 4.	Controls and Procedures	32

PART II – OTHER INFORMATION

Item 1.	Legal Proceedings	33
Item 1A.	Risk Factors	33
Item 2.	Unregistered Sale of Equity Securities and Use of Proceeds	35
Item 6.	Exhibits	36
Signatures		37

2

INCONTACT, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS—(Unaudited)

(in thousands, except per share data)

	September 30, 2016	December 31, 2015
ASSETS		
Current assets:		
Cash and cash equivalents	$40,873	$29,050
Restricted cash	-	81
Investments	38,299	75,109
Accounts and other receivables, net of allowance for uncollectible accounts of $2,140 and $2,555, respectively	40,940	37,185
Other current assets	10,883	9,243
Total current assets	130,995	150,668
Property and equipment, net	53,336	42,569
Intangible assets, net	27,021	19,232
Goodwill	49,016	39,247
Other assets	3,866	2,421
Total assets	$264,234	$254,137
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Trade accounts payable	$13,748	$11,607
Accrued liabilities	12,221	12,828
Accrued commissions	5,187	4,615
Current portion of deferred revenue	14,254	11,530
Total current liabilities	45,410	40,580
Deferred revenue	7,567	6,082
Deferred rent and lease incentive obligation	6,657	3
Deferred tax liability, net	466	230
Long-term debt	85,215	81,985
Total liabilities	145,315	128,880
Commitments and contingencies (see Note 10)		
Stockholders' equity:		
Common stock, $0.0001 par value; 100,000 shares authorized; 62,612 and 61,826 shares issued and outstanding as of September 30, 2016 and December 31, 2015, respectively	6	6
Additional paid-in capital	264,616	253,986
Accumulated deficit	(145,702)	(128,654)

Accumulated other comprehensive loss	(1)	(81)
Total stockholders' equity	118,919	125,257
Total liabilities and stockholders' equity	$264,234	$254,137

See accompanying notes to Condensed Consolidated Financial Statements.

INCONTACT, INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS and COMPREHENSIVE LOSS

(Unaudited)

(in thousands, except per share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Net revenue:				
Software	$44,222	$36,709	$128,130	$103,227
Network connectivity	22,796	19,369	65,073	57,260
Total net revenue	67,018	56,078	193,203	160,487
Costs of revenue:				
Software	18,534	14,815	52,473	42,872
Network connectivity	12,805	12,278	39,727	36,072
Total costs of revenue	31,339	27,093	92,200	78,944
Gross profit	35,679	28,985	101,003	81,543
Operating expenses:				
Selling and marketing	19,025	17,810	55,352	49,549
Research and development	9,268	7,328	27,097	21,021
General and administrative	12,377	7,750	32,326	25,699
Total operating expenses	40,670	32,888	114,775	96,269
Loss from operations	(4,991)	(3,903)	(13,772)	(14,726)
Other income (expense):				
Interest expense	(1,816)	(1,738)	(5,400)	(3,940)
Interest income	151	125	478	183
Other income (expense)	(105)	1	(111)	1
Total other income (expense)	(1,770)	(1,612)	(5,033)	(3,756)
Loss before income taxes	(6,761)	(5,515)	(18,805)	(18,482)
Income tax benefit (expense)	(100)	(163)	2,296	(474)
Net loss	$(6,861)	$(5,678)	$(16,509)	$(18,956)
Other comprehensive loss, net of taxes:				
Net change in unrealized gain (loss) in available for sale investments	69	(15)	80	(35)
Comprehensive loss	$(6,792)	$(5,693)	$(16,429)	$(18,991)
Net loss per common share:				
Basic and diluted	$(0.11)	$(0.09)	$(0.26)	$(0.31)
Weighted average common shares outstanding:				
Basic and diluted	62,977	61,688	62,631	61,407

See accompanying notes to Condensed Consolidated Financial Statements.

INCONTACT, INC.

CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY—(Unaudited)

(in thousands)

	Common Stock		Additional Paid-in	Treasury Stock		Accumulated	Accumulated Other Comprehensive Income	
	Shares	Amount	Capital	Shares	Amount	Deficit	(Loss)	Total
Balance at December 31, 2015	61,826	$ 6	$ 253,986	-	$ -	$ (128,654)	$ (81)	$ 125,257
Common stock received for settlement of taxes and forfeited restricted stock	-	-	-	(153)	(1,347)	-	-	(1,347)
Common stock issued for options exercised	412	-	2,791	118	1,068	(461)	-	3,398
Common stock issued under the employee stock purchase plan	96	-	753	9	129	(56)	-	826
Issuance of common stock for acquisition of a business	64	-	344	-	-	-	-	344
Stock-based compensation		-	6,870	-	-	-	-	6,870
Vesting of restricted stock units	214	-	(122)	26	144	(22)	-	-
Other comprehensive income	-	-	-	-	-	-	80	80
Net loss	-	-	-	-	-	(16,509)	-	(16,509)
Balance at September 30, 2016	62,612	$ 6	$ 264,622	-	$ (6)	$ (145,702)	$ (1)	$ 118,919

See accompanying notes to Condensed Consolidated Financial Statements.

5

INCONTACT, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)

(in thousands)

	Nine Months Ended September 30,	
Cash flows from operating activities:	2016	2015
Net loss	$ (16,509)	$ (18,956)
Adjustments to reconcile net loss to net cash from operating activities:		
Depreciation of property and equipment	9,961	7,601
Amortization of software development costs	6,289	4,876
Amortization of intangible assets	3,837	3,776
Amortization of deferred debt issuance costs	290	391
Stock-based compensation	6,870	6,510
Loss on disposal of property and equipment	1,444	148
Interest accretion	2,940	1,843
Amortization of investment premium	670	148
Deferred income taxes	(2,429)	-
Changes in operating assets and liabilities, net of business acquisitions:		
Accounts and other receivables, net	(3,657)	(11,564)
Other current assets	(1,577)	(2,109)
Other non-current assets	(1,445)	11
Trade accounts payable	1,647	2,467
Accrued liabilities	(990)	1,021
Accrued commissions	572	787
Deferred rent and lease incentive obligation	6,988	-
Other long-term liabilities	-	(220)
Deferred revenue	3,954	4,246
Net cash provided by operating activities	18,855	976
Cash flows from investing activities:		
Decrease in restricted cash	81	-
Sales and maturities of available for sale investments	67,089	13,716
Purchases of available for sale investments	(30,868)	(89,879)
Capitalized software development costs	(10,924)	(7,457)
Purchases of property and equipment	(16,841)	(10,162)
Business acquisitions, net of cash acquired	(18,446)	-
Payments made on deposits	-	(19)
Net cash used in investing activities	(9,909)	(93,801)
Cash flows from financing activities:		
Proceeds from exercise of options	3,398	2,603
Proceeds from sale of stock under employee stock purchase plan	826	1,249
Principal payments under debt and capital lease obligations	-	(11,824)
Purchase of treasury stock	(1,347)	(643)
Payments under revolving credit agreement	-	(11,000)
Proceeds from issuance of convertible notes, net	-	111,190
Net cash provided by financing activities	2,877	91,575

Net (decrease) increase in cash and cash equivalents	11,823	(1,250)
Cash and cash equivalents at the beginning of the period	29,050	32,414
Cash and cash equivalents at the end of the period	$ 40,873	$ 31,164
Supplemental schedule of non-cash investing and financing activities:		
Payments due for property and equipment included in trade accounts payable	$ 760	$ 472
Unrealized gains (losses) on available for sale investments, net	$ 80	$ (34)
Issuance of common stock for acquisition of a business	$ 344	$ -

See accompanying notes to Condensed Consolidated Financial Statements.

INCONTACT, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

NOTE 1. ORGANIZATION AND BASIS OF PRESENTATION

Organization

inContact, Inc. ("inContact," "we," "us," "our," or the "Company") is incorporated in the state of Delaware. We provide cloud contact center software solutions through our inContact® Customer Interaction Cloud, an advanced contact handling and performance management software application. Our services also provide a variety of connectivity options for carrying inbound calls and linking agents to our inContact applications. We provide customers the ability to monitor agent effectiveness through our user survey tools and the ability to efficiently monitor their agent needs. We are also an aggregator and provider of network connectivity services. We contract with a number of third party providers for the right to resell the various telecommunication services and products they provide, and then offer all of these services to the customers. These services and products allow customers to buy only the network connectivity services they need, combine those services in a customized enhanced contact center package, receive one bill for those services, and call a single point of contact if a service problem or billing issue arises.

Proposed Merger by NICE-Systems Ltd.

On May 17, 2016, we entered into an Agreement and Plan of Merger (the "Merger Agreement") with NICE-Systems Ltd., a company organized under the laws of the State of Israel ("Parent" or "NICE"), and Victory Merger Sub Inc. ("Merger Sub"), a wholly owned indirect subsidiary of NICE, providing for the merger of Merger Sub with and into the Company (the "Merger"), with the Company surviving the Merger as a wholly owned indirect subsidiary of NICE.

In the Merger, each issued and outstanding share of our common stock will be cancelled and extinguished and automatically converted into the right to receive cash in an amount equal to $14.00, without interest thereon. Each outstanding and vested restricted stock unit or option to purchase Company's common stock will be cancelled and extinguished and automatically converted into the right to receive an amount in cash equal to $14.00 per share less, in the case of options, the exercise price per share underlying such option. Each outstanding and unvested restricted stock unit, share or restricted stock and option to purchase Company stock or other right to purchase or receive Company stock will be converted into an option to purchase or right to purchase or receive American Depositary Shares of Parent, with the same vesting schedule of such equity award continuing after the Merger, subject to existing vesting conditions and the exercise price of options adjusted in accordance with applicable tax law.

The transaction has received approval by the Company's stockholders and is subject to certain regulatory approvals and other customary closing conditions. The Merger Agreement contains certain termination rights for each of the Parent, Merger Sub and the Company and provides certain circumstances as described in the Merger Agreement under which we may be required to pay NICE a termination fee of $34.1 million.

See Note 8, "Long-Term Debt and Capital Lease Obligations" for discussion of the treatment of the Company's 2.5% Convertible Senior Notes due 2022 in connection with the pending acquisition of inContact by NICE.

The transaction is expected to close by December 31, 2016. The pending acquisition of inContact by NICE does not impact the basis of presentation in the accompanying financial statements. Following completion of the Merger, the Company will become a wholly-owned subsidiary of NICE, the Company's common stock will be delisted from The NASDAQ Stock Market and deregistered under the Securities Exchange Act of 1934, as amended, and as such, the Company will no longer file periodic reports with the SEC.

In connection with the proposed Merger, we have incurred certain costs related to professional services, regulatory fees and employee-related expenses.

Basis of Presentation

These unaudited Condensed Consolidated Financial Statements of inContact and its subsidiaries have been prepared in accordance with accounting principles generally accepted in the United States ("GAAP") and the rules and regulations of the United States Securities and Exchange Commission ("SEC"). Such rules and regulations allow the omission of certain information and footnote disclosures normally included in financial statements prepared in accordance with GAAP, so long as the statements are not misleading. In the opinion of management, these financial statements and accompanying notes contain all adjustments (consisting of normal recurring adjustments) necessary to present fairly the financial position and results of operations for the periods presented herein. These Condensed Consolidated Financial Statements should be read in conjunction with the consolidated audited financial

statements and notes thereto contained in the Annual Report on Form 10-K for the year ended December 31, 2015, filed with the SEC on March 4, 2016. The results of operations for the three and nine months ended September 30, 2016 are not necessarily indicative of the results to be expected for the year ending December 31, 2016. Our significant accounting policies are set forth in Note 1 to the Consolidated Financial Statements in the 2015 Annual Report on Form 10-K and changes, if any, are included below.

Revenue Recognition

Revenue is recognized when all of the following four criteria are met: (1) persuasive evidence of an arrangement exists, (2) the fee is fixed or determinable, (3) collection is reasonably assured, and (4) delivery has occurred or services have been rendered. Determining whether and when some of these criteria have been satisfied often involves assumptions and judgments that can have a significant impact on the timing and amount of revenue we report.

Our revenue is reported and recognized based on the type of services provided to the customer as follows:

Software Revenue. Software revenue includes two main sources of revenue:

(1) Software delivery and support of our inContact cloud software solutions that are provided on a monthly subscription basis and associated professional services. Because our customers purchasing software and support services on a monthly recurring basis do not have the right to take possession of the software, we consider these arrangements to be service contracts and are not within the scope of Industry Topic 985, Software. We generally bill monthly recurring subscription charges in arrears and recognize these charges in the period in which they are earned. In addition to the monthly recurring revenue, revenue is also received on a non-recurring basis for professional services or on a recurring basis related to improving a customer’s contact center efficiency and effectiveness as it relates to utilization of the inContact cloud software solutions.

For subscription service contracts with multiple elements (hosted software, training, installation and long distance services), we follow the guidance provided in Accounting Standards Codification (“ASC”) 605-25, Revenue Recognition for Multiple Element Arrangements. In addition to the monthly recurring subscription revenue, we also derive revenue on a non-recurring basis for professional services included in implementing or improving a customer’s inContact cloud software solutions experience. Because our professional services, such as training and implementation, are not considered to have standalone value, we defer revenue for upfront fees received for professional services in multiple element arrangements and recognize such fees as revenue over the estimated life of the customer. Fees for network connectivity services in multiple element arrangements within the inContact cloud software solutions are based on usage and recognize as revenue in the same manner as fees for telecommunication services discussed in the “Network Connectivity Services Revenue” below.

(2) Perpetual product and services revenues are primarily derived from the sale of licenses to our Workforce Optimization on-premise software products and services. For software license arrangements that do not require significant modification or customization of the underlying software, revenue is recognized when all revenue recognition criteria are met.

Many of our customers purchase a combination of software, service, hardware, post contract customer support (“PCS”) and hosting. For software and software related multiple element arrangements that fall within the scope of the software revenue guidance in Topic 985, Software, we allocate revenue to the delivered elements of the arrangement

using the residual method, whereby revenue is allocated to the undelivered elements based on vendor-specific objective evidence of fair value ("VSOE") of the undelivered elements with the remaining arrangement fee allocated to the delivered elements and is recognized as revenue assuming all other revenue recognition criteria are met. If we are unable to establish VSOE for the undelivered elements of the arrangement, including PCS, revenue recognition is deferred for the entire arrangement until all elements of the arrangement are delivered. PCS provided to our customers includes technical software support services and unspecified software upgrades to customers on a when-and-if available basis. PCS revenue is recognized ratably over the term of the maintenance period, which is typically 15 months. When PCS is included within a multiple element arrangement, we utilize the bell-shaped curve approach to establish VSOE for the PCS. Under the bell-shaped curve approach of establishing VSOE, we perform a VSOE compliance test on a quarterly basis to ensure that a substantial majority of our actual PCS renewals are within a sufficiently narrow range.

Product revenue from customers who purchase our products for resale is generally recognized when such products are released (on a "sell-through" basis). Periodically we review our reseller arrangements as our business and products change.

Network Connectivity Service Revenue. Network Connectivity Services revenue is derived from network connectivity, such as dedicated transport, switched long distance and data services. These services are provided over our network or through third party network connectivity providers. Our network is the backbone of our subscription software and allows us to provide the all-in-one inContact cloud software solutions. Revenue for network connectivity usage is derived based on customer specific rate plans and the customer's call usage and is recognized in the period the call is initiated. Customers are also billed monthly charges in arrears and revenue is recognized for such charges over the billing period. If the billing period spans more than one month, earned but unbilled revenues are recognized as revenue for incurred usage to date.

Long-term Debt

We record debt issuance costs as a direct deduction from the carrying amount of our long-term borrowings, as well as costs incurred for subsequent modification of debt, incurred in connection with our long-term borrowings and credit facilities. We amortize these costs as an adjustment to interest expense over the remaining contractual life of the associated long-term borrowing or credit facility using the effective interest method for term loans and convertible debt borrowings, and the straight-line method for revolving credit facilities. When unscheduled principal payments are made, we adjust the amortization of our deferred debt-related costs to reflect the expected remaining terms of the borrowing.

Operating Leases

Rent expense and lease incentives, including landlord construction allowances, are recognized on a straight-line basis over the lease term, commencing generally on the date the Company takes possession of the leased property. The unamortized portion of deferred rent is included in deferred rent and lease incentive obligation.

Self-Funded Health Insurance

In September 2016, the Company elected to partially self-fund its health insurance plan. The Company contracts with a third-party broker to facilitate, administer the plan and obtain individual and aggregate stop-loss insurance policies. The Company estimates its exposure for claims incurred but not paid at the end of each reporting period and uses historical claims data supplied by the Company's broker to estimate its self-funded insurance liability. To reduce its risk related to high dollar claims, the Company maintains individual and aggregate stop-loss insurance policies.

Recently Issued Accounting Standards

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2014-09, "Revenue from Contracts with Customers." The guidance in the ASU supersedes existing revenue recognition guidance and the core principle behind ASU 2014-09 is that an entity should recognize revenue to depict the transfer of promised goods and services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for delivering those goods and services. This model involves a five-step process that includes identifying the contract with the customer, identifying the performance obligations in the contract, determining the transaction price, allocating the transaction prices to the performance obligations in the contract and recognizing revenue when (or as) the entity satisfies the performance obligations. In July 2015, the FASB ratified a one-year delay in the effective date of ASU 2014-09, which makes the effective date for the Company the first quarter of 2018. The ASU allows two methods of adoption; a full retrospective approach where three years of financial information are presented in accordance with the new standard, and a modified retrospective approach where the ASU is applied to the most current period presented in the financial statements with a cumulative effect recognized as of the date of initial application. This update could impact the timing and amounts of revenue recognized. In May 2016, the FASB issued

ASU No. 2016-12, Revenue from Contracts with Customers (Topic 606): Narrow-Scope Improvements and Practical Expedients. The amendment provides clarifying guidance in certain narrow areas and adds some practical expedients. We are currently evaluating which transition approach to use and assessing the impact of adopting the new revenue standard on our consolidated financial statements and related disclosures.

In March 2016, the FASB issued ASU No. 2016-08, “Principal versus Agent Considerations (Reporting Revenue Gross versus Net)” that amends the principal versus agent guidance in ASU 2014-09. The guidance in this ASU clarifies that the analysis must focus on whether the entity has control of the goods or services before they are transferred to the customer. Additional guidance is also provided about how to apply the control principle when services are provided and when goods or services are combined with other goods or services. The effective date for the Company is the first quarter of fiscal 2018. We are currently assessing the impact the updated standard will have on our consolidated financial statements and related disclosures.

In April 2016, the FASB issued ASU No. 2016-10, “Identifying Performance Obligations and Licensing” that amends the revenue guidance in ASU 2014-09 on identifying performance obligations and accounting for licenses of intellectual property. The update allows an entity to exclude immaterial promised good and services from the assessment of performance obligations and also permits certain treatment of shipping and handling costs related to providing goods and services to a customer. Additionally, this ASU provides guidance on determining if promised goods or services are separately identifiable or whether the promise is to transfer a combined item to which promised goods and/or services are inputs. This ASU includes implementation guidance on determining whether an entity’s promise to grant a license provides a customer with either a right to use the entity’s intellectual property (which is satisfied at a point in time) or a right to access the entity’s intellectual property (which is satisfied over time). The effective date of the standard for the Company will coincide with ASU 2014-09 during the first quarter 2018. The Company is currently evaluating the effect that the updated standard will have on its consolidated financial statements and related disclosures.

In January 2016, the FASB issued ASU 2016-01, “Recognition and Measurement of Financial Assets and Liabilities.” This pronouncement will change the income statement impact of equity investments held by an entity, financial liabilities under the fair value option and the presentation and disclosure requirements for financial instruments. This ASU is effective in fiscal years beginning after December 15, 2017 and early adoption of some provisions are permitted. The Company is currently assessing the impact of this new standard on our consolidated financial statements and related disclosures.

In February 2016, the FASB issued ASU 2016-02, “Leases (Topic 842),” which requires recognition on the balance sheet of assets and liabilities related to the rights and obligations created by leases with a term of more than 12 months. Consistent with current GAAP, the recognition, measurement and presentation of expenses and cash flows arising from a lease will depend on its classification as a finance or operating lease. However, the new guidance differs from current GAAP in that it requires both types of leases to be recognized on the balance sheet. Related disclosures will include both qualitative and quantitative requirements to help investors better understand the amounts recorded in the financial statements. This ASU is effective in fiscal years beginning after December 15, 2018 and early adoption is permitted. The Company is currently assessing the impact of this new standard on our consolidated financial statements and related disclosures.

In March 2016, the FASB issued ASU No. 2016-09, “Improvements to Employee Share-Based Payment Accounting.” The objective of this update is to simplify several aspects of accounting for employee share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. This update is effective in fiscal years beginning after December 15, 2016 and early adoption is permitted. The Company is currently evaluating the effect that the updated standard will have on its consolidated financial statements and related disclosures.

In June 2016, the FASB issued ASU No. 2016-13: Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments. This update adds to U.S. GAAP a current expected credit loss impairment model that is based on expected losses rather than incurred losses, requiring consideration of a broader range of reasonable and supportable information to inform credit loss estimates. Under the new guidance, an entity recognizes as an allowance its estimate of expected credit losses, which the FASB believes will result in more timely recognition of such losses. This update is also intended to reduce the complexity of U.S. GAAP by decreasing the number of credit impairment models that entities use to account for debt instruments. This ASU is effective in fiscal years beginning after December 15, 2019 and early adoption is permitted after December 15, 2018. The Company is currently evaluating the impact of this update on the consolidated financial statements and related disclosures.

In October 2016, the FASB issued ASU No. 2016-16, Intra-Entity Transfers of Assets Other Than Inventory. This update requires that income tax consequences are recognized on an intra-entity transfer of an asset other than inventory when the transfer occurs. The standard is effective in fiscal year beginning after December 15, 2017 and early adoption is permitted. The Company is currently evaluating the impact of this update on the consolidated financial statements and related disclosures.

We reviewed all other recently issued accounting standards to determine their effects, if any, on the consolidated financial statements. Based on that review, we believe that none of these standards will have a significant effect on current or future results of operations.

NOTE 2. BASIC AND DILUTED NET LOSS PER COMMON SHARE

Basic earnings per common share is computed by dividing the net loss applicable to common shareholders by the weighted-average number of common shares outstanding during the period. Diluted earnings per common share is computed by dividing the net loss by the sum of the weighted-average number of common shares outstanding plus the weighted average common stock equivalents, which would have been outstanding if the potentially dilutive securities had been issued. Potentially dilutive securities include outstanding options, unvested restricted stock awards, and potential shares from Convertible Notes. The dilutive effect of potentially dilutive securities is reflected in diluted earnings per common share by application of the treasury method.

As a result of incurring a net loss for the three and nine months ended September 30, 2016 and 2015, no potentially dilutive securities are included in the calculation of diluted earnings per share because such effect would be anti-dilutive. The following table summarizes potentially dilutive securities, using the above security classifications (in thousands):

	September 30,	
	2016	2015
Stock options	2,418	2,765
Restricted stock awards	1,727	1,317
Potential shares from Convertible Notes	8,082	8,082
Total potentially dilutive shares	12,226	12,164

NOTE 3. FAIR VALUE OF FINANCIAL INSTRUMENTS

The accounting guidance for fair value measurements defines fair value, establishes a market-based framework or hierarchy for measuring fair value and expands disclosures about fair value measurements. The guidance is applicable whenever assets and liabilities are measured and included in the Condensed Consolidated Financial Statements at fair value. The fair value of a financial instrument is the amount that could be received upon the sale of an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Financial assets are marked to bid prices and financial liabilities are marked to offer prices. Fair value measurements do not include transaction costs. The fair value hierarchy prioritizes the quality and reliability of the information used to determine fair values. Categorization within the fair value hierarchy is based on the lowest level of input that is significant to the fair value measurement. The fair value hierarchy is defined into the following three categories:

Level 1: Quoted market prices in active markets for identical assets or liabilities.

Level 2: Inputs that reflect quoted prices for identical assets or liabilities in less active markets; quoted prices for similar assets or liabilities in active markets; benchmark yields, reported trades, broker/dealer quotes, inputs other than quoted prices that are observable for the assets or liabilities; or inputs that are derived principally from or corroborated by observable market data by correlation or other means.

Level 3: Unobservable inputs that reflect our own assumptions incorporated in valuation techniques used to measure fair value. These assumptions are required to be consistent with market participant assumptions that are reasonably available.

Assets Measured at Fair Value on a Recurring Basis:

The following table summarizes our investments measured at fair value on a recurring basis using the above input categories. As of September 30, 2016 and December 31, 2015, we did not hold any Level 3 assets, and our Level 1 and Level 2 holdings were as follows (in thousands):

September 30, 2016	December 31, 2015

	Level 1	Level 2	Total	Level 1	Level 2	Total
Cash equivalents:						
Money market funds	$28,382	$-	$28,382	$4,071	$-	$4,071
Commercial paper	-	-	-	-	999	999
Total cash equivalents	28,382	-	28,382	4,071	999	5,070
Investments:						
Commercial paper	-	17,852	17,852	-	27,846	27,846
Corporate debt securities	-	17,936	17,936	-	45,830	45,830
Municipal bonds	-	2,511	2,511	-	1,433	1,433
Total investments	-	38,299	38,299	-	75,109	75,109
Total assets measured at fair value	$28,382	$38,299	$66,681	$4,071	$76,108	$80,179

Fair Value Measurements

Money Market Funds – We value our money market funds using quoted active market prices for such funds.

Commercial paper, Corporate debt securities, and Municipal bonds – The fair value of these securities are estimated using observable market prices for identical securities that may be traded in less-active markets, if available. When observable market prices for

identical securities are not available, we value these securities using non-binding market price quotes from brokers which we review for reasonableness using observable market data; quoted prices for similar instruments; or pricing models, such as a discounted cash flows.

Other Financial Instruments

The carrying amounts of cash and cash equivalents (other than investments recorded on a fair value basis disclosed above), accounts and other receivables, and trade accounts payable approximate fair value because of the immediate or short-term maturities of these financial instruments.

The fair value of the Convertible Notes is considered to be a Level 2 measurement because it is based on a recent bid price quote for the Convertible Notes, reflecting activity in a less than active market. The carrying value and estimated fair value of our Convertible Notes are as follows (in thousands):

	September 30, 2016		December 31, 2015	
	Carrying Value	Estimated Fair Value	Carrying Value	Estimated Fair Value
Convertible notes	$85,215	$138,792	$81,985	$108,330

NOTE 4. INVESTMENTS – AVAILABLE FOR SALE

Our investments generally consist of money market funds, commercial paper, corporate debt securities and municipal bonds. All of our investments have original maturities (maturity at the purchase date) of less than 12 months. Investments with original maturities of three months or less are classified as cash equivalents.

We classify our investments as available for sale at the time of purchase and we reevaluate such classification as of each balance sheet date. These short-term investments are carried at fair value with unrealized gains or losses classified as a component of accumulated other comprehensive income (loss). Amortization of premiums and accretion of discounts to maturity are computed under the effective interest method and is included in interest income. Interest on securities is included in interest income when earned. Realized gains and losses on the sale of investments are determined using the specific identification method and recorded in "Other income (expense)" in the Condensed Consolidated Statements of Operations and Comprehensive Loss.

Our investments as of September 30, 2016 and December 31, 2015 were as follows (in thousands):

	September 30, 2016				
	Amortized Cost	Net Unrealized Gains (Losses)	Fair Value/Net Carrying Value	Cash and Cash Equivalents	Investments
Commercial paper	$17,852	$ -	$ 17,852	$ -	$ 17,852

Corporate debt securities	17,935	1	17,936	-	17,936
Money market funds	28,382	-	28,382	28,382	-
Municipal bonds	2,513	(2)	2,511	-	2,511
Total	$66,682	$ (1)	$ 66,681	$ 28,382	$ 38,299

	December 31, 2015				
	Amortized Cost	Net Unrealized Gains (Losses)	Fair Value/Net Carrying Value	Cash and Cash Equivalents	Investments
Commercial paper	$28,845	$ -	$ 28,845	$ 999	$ 27,846
Corporate debt securities	45,911	(81)	45,830	-	45,830
Money market funds	4,071	-	4,071	4,071	-
Municipal bonds	1,433	-	1,433	-	1,433
Total	$80,260	$ (81)	$ 80,179	$ 5,070	$ 75,109

As of September 30, 2016 all our investments had contractual maturities of less than one year.

At September 30, 2016 and December 31, 2015, we had $5,000 and $81,000 of gross unrealized losses on certain investments, respectively. We regularly review our investment portfolio to identify and evaluate investments that have indications of possible impairment that is other-than-temporary. Factors considered in determining whether a loss is temporary include:

- the length of time and extent to which fair value has been lower than the cost basis;
- the financial condition, credit quality and near-term prospects of the investee; and
- whether it is more likely than not that the Company will be required to sell the security prior to recovery.

We believe that there were no investments held at September 30, 2016 that were other-than-temporarily impaired. For the nine months ended September 30, 2016, proceeds from maturities of investments were $65.3 million for an immaterial realized gain, $1.0 million of these maturities were securities included in cash equivalents. We sold $2.8 million of investments for the nine months ended September 30, 2016.

NOTE 5. ACQUISITIONS

AC2 Acquisition

On January 13, 2016, we acquired 100% of the outstanding shares of AC2 Solutions, Inc. ("AC2"), a Delaware corporation. AC2 provides Workforce Optimization products and services to call centers. inContact acquired AC2 for an aggregate purchase price of approximately $12.3 million, which was paid with cash in the amount of $12.0 million and 40,456 restricted shares of the Company's common stock valued at $344,000. An additional 505,700 restricted shares of our common stock were issued, but not included in the purchase considerations as the shares will vest as services are provided over a two year period. The acquisition of AC2 was accounted for under the purchase method of accounting in accordance with ASC 805, Business Combinations. Under the purchase method of accounting, the total purchase price is allocated to the preliminary tangible and identifiable intangible assets acquired and liabilities assumed based on their estimated fair values, as determined by management. The total purchase price was allocated using information currently available. The purchase price allocation for the AC2 acquisition will be finalized during calendar year 2016. As a result, we may continue to adjust the preliminary estimated purchase price allocation after obtaining more information regarding asset valuations, liabilities assumed, and revision of preliminary estimates. The following is the total preliminary purchase price allocation on estimated purchase consideration based on information available as of September 30, 2016 (in thousands):

	Amount
Assets acquired:	
Cash and cash equivalents	$78
Accounts receivable	100
Other current assets	63
Intangible assets	6,710
Goodwill	8,243
Total assets acquired	15,194

Liabilities assumed:	
Accrued liabilities	136
Current portion of deferred revenue	74
Deferred tax liability	2,666
Total liabilities assumed	2,876
Net assets acquired	$12,318

In connection with the acquisition, we incurred professional fees of $188,000, including transaction costs such as legal and valuation services, which were expensed as incurred. These costs are included within general and administrative expenses in the Condensed Consolidated Statements of Operations and Comprehensive Loss. The premium paid over the fair value of the net assets acquired in the purchase, or goodwill, represents future economic benefits expected to arise from deploying cutting edge technology to enhance our competitive differentiation. All of the goodwill was assigned to the Software segment. The entire amount allocated to goodwill is not expected to be deductible for tax purposes.

Intangible assets acquired from the acquisition include customer relationships, which are amortized on a double-declining basis, technologies, patents and a non-competition agreement, which are amortized on a straight-line basis and in-process research and

development which has an initial indefinite life and is expected to be amortized once technical feasibility is established. The fair values of the intangible assets were determined primarily using the income approach and the discount rates range from 20% to 25%. The following sets forth the intangible assets purchased as part of the AC2 acquisition and their respective preliminary estimated economic useful life at the date of the acquisition (in thousands, except useful life):

	Amount	Economic Useful Life (in years)
Customer relationships	$ 710	8
Technology	321	5
In-process research and development	3,014	Indefinite
Patents	2,641	12
Non-competition agreement	24	2
Total intangible assets	$ 6,710	

The Company recorded a deferred tax benefit of $2.7 million at the time of the acquisition. The tax benefit related to recording a deferred tax liability upon acquisition of AC2 related to acquisition of intangibles for which no tax benefit will be derived. The reduction of carrying value resulted in a partial reversal of the deferred tax asset valuation allowance upon consolidation.

Attensity Acquisition

On February 8, 2016, we acquired certain intangible assets from Attensity Group, Inc., a Delaware corporation, Biz360, Inc., a California corporation, and Attensity Americas, Inc., a Delaware corporation (collectively "Attensity"). The purchase consideration was approximately $6.6 million in cash. The patents purchased from Attensity provide advanced analytics technology to corporate customers. The acquisition of Attensity technology was accounted for under the purchase method of accounting in accordance with ASC 805, Business Combinations. Under the purchase method of accounting, the total purchase price is allocated to the tangible and identifiable intangible assets acquired and liabilities assumed based on their estimated fair values, as determined by management. The following is the total purchase price allocation as of September 30, 2016 (in thousands):

	Amount
Assets acquired:	
Property, plant and equipment and other assets	$ 290
Intangible assets	4,917
Goodwill	1,525
Total assets acquired	6,732
Liabilities assumed:	
Current portion of deferred revenue	157
Long-term portion of deferred revenue	25
Total liabilities assumed	182
Net assets acquired	$ 6,550

In connection with the acquisition, we incurred professional fees of $27,000, including transaction costs such as legal and valuation services, which were expensed as incurred. These costs are included within general and administrative expenses in the Condensed Consolidated Statements of Operations and Comprehensive Loss.

The premium paid over the fair value of the net assets acquired in the purchase, or goodwill, represents future economic benefits expected to arise from synergies from enhancing our product offerings through the addition of text analysis technology. All of the goodwill was assigned to the Software segment. The entire amount allocated to goodwill is not expected to be deductible for tax purposes.

Intangible assets acquired from the acquisition include customer relationships, which are amortized on a double-declining basis, technologies and patents, which are amortized on a straight-line basis and in-process research and development which has an initial indefinite life and is expected to be amortized once technical feasibility is established. The fair values of the intangible assets were determined primarily using the income approach and the discount rates range from 25% - 30%. The following sets forth the intangible

assets purchased as part of the Attensity acquisition and their respective preliminary estimated economic useful life at the date of the acquisition (in thousands, except useful life):

	Amount	Economic Useful Life (in years)
Customer relationships	$ 140	5
Technology	141	5
In-process research and development	3,193	Indefinite
Patents	1,443	8
Total intangible assets	$ 4,917	

NOTE 6. INTANGIBLE ASSETS

Intangible assets consisted of the following (in thousands):

	September 30, 2016			December 31, 2015		
	Gross Assets	Accumulated Amortization	Intangible Assets, Net	Gross Assets	Accumulated Amortization	Intangible Assets, Net
Customer lists acquired	$28,973	$ (22,412)	$ 6,561	$28,123	$ (20,859)	$ 7,264
Technology and patents	35,112	(16,148)	18,964	24,358	(14,222)	10,136
Trade names and trademarks	3,546	(2,050)	1,496	3,190	(1,358)	1,832
Total intangible assets	$67,631	$ (40,610)	$ 27,021	$55,671	$ (36,439)	$ 19,232

Amortization expense was $3.8 million for both the nine months ended September 30, 2016 and 2015.

Based on the recorded intangibles at September 30, 2016, estimated amortization expense is expected to be $1.3 million during the remainder of 2016, $5.0 million in 2017, $4.5 million in 2018, $4.1 million in 2019, $3.9 million in 2020 and $5.2 million thereafter.

NOTE 7. ACCRUED LIABILITIES

Accrued liabilities consisted of the following (in thousands):

	September 30, 2016	December 31, 2015
Accrued payroll and other compensation	$ 5,775	$ 4,726
Accrued state sales taxes	3,215	3,939
Accrued vendor charges	236	1,281
Accrued interest	-	717
Other	2,995	2,165
Total accrued liabilities	$ 12,221	$ 12,828

NOTE 8. LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS

Convertible Notes

On March 30, 2015, we issued $115.0 million in aggregate principal amount of 2.50% Convertible Senior Notes (the “Convertible Notes”) due April 1, 2022, unless earlier converted by the holder pursuant to their terms. Net proceeds from the Convertible Notes were approximately $111.2 million, net of transaction fees. The Convertible Notes pay interest in cash semiannually in arrears at a rate of 2.50% per annum.

The Convertible Notes are unsecured and will be senior in right of payment to any future debt that is expressly subordinated to the Convertible Notes. The Convertible Notes will be structurally subordinated to all debt and other liabilities and commitments of our subsidiaries, including trade payables and any guarantees that they may provide with respect to any of our existing or future debt, and will be effectively subordinated to any secured debt that we may incur to the extent of the assets securing such indebtedness.

The Convertible Notes are convertible by the holders under certain circumstances. The conversion price of the Convertible Notes at any time is equal to $1,000 divided by the then-applicable conversion rate. The Convertible Notes have a conversion rate of 70.2790 shares of common stock per $1,000 principal amount of Convertible Notes, which represents an effective conversion price of approximately $14.23 per share of common stock and would result in the issuance of approximately 8.1 million shares if all of the Convertible Notes were converted. The conversion rate has not changed since issuance of the Convertible Notes, although throughout the term of the Convertible Notes, the conversion rate may be adjusted upon the occurrence of certain events, including a merger. Upon conversion, the Company has the option of satisfying the conversion obligation with cash, shares of Company common stock, or a combination of cash and common shares.

Holders may tender their Convertible Notes for conversion at any time prior to the close of business on the business day immediately preceding October 1, 2021, only under the following circumstances:

- during any calendar quarter commencing after the calendar quarter which ended on March 31, 2015, if the closing sale price of our common stock, for at least 20 trading days (whether or not consecutive) in the period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter, is more than 130% of the conversion price of the Convertible Notes in effect on each applicable trading day;
- during the ten consecutive business day period immediately after any five consecutive trading-day period in which the trading price for the Convertible Notes for each such trading day was less than 98% of the closing sale price of our common stock on such date multiplied by the then-current conversion rate;
- upon the occurrence of specified corporate events, as described in the indenture governing the Convertible Notes, such as a consolidation, merger, or binding share exchange (a “Fundamental Change” as defined in the indenture); or
- we have called the Convertible Notes for redemption.

On or after October 1, 2021, until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may tender their Convertible Notes for conversion regardless of whether any of the foregoing conditions have been satisfied. As of September 30, 2016, the Convertible Notes were not convertible.

Under the terms of the Convertible Notes, the consummation of the proposed acquisition by NICE described in Note 1 will constitute a Fundamental Change, as defined in the indenture. As a result, holders of the Convertible Notes will be permitted to choose (i) to convert their Convertible Notes at a temporarily increased conversion rate, (ii) to require the Company to repurchase their Convertible Notes for a price equal to their principal amount plus accrued but unpaid interest up to but excluding the repurchase date, or (iii) to continue holding their Convertible Notes. If the Merger closes, the holders of the Convertible Notes would be expected to exercise the right to convert their Convertible Notes in accordance with their terms at a temporarily increased conversion rate shortly following the closing of the merger (although the holders’ actual decisions will depend upon their judgments based on the then prevailing market conditions) in which case the Convertible Notes will be converted into cash for the principal amount and the merger consideration with respect to the excess thereof.

In accordance with accounting guidance for convertible debt with a cash conversion option, we separately accounted for the debt and equity components of the Convertible Notes in a manner that reflected our estimated nonconvertible debt borrowing rate. We estimated the carrying amount of the debt component of the Convertible Notes to be $81.6 million at the issuance date by measuring the fair value of a similar liability that does not have a convertible feature. The carrying amount of the equity component was determined to be approximately $33.4 million by deducting the carrying amount of the debt component from the principal amount of the Convertible Notes, and was recorded as an increase to additional paid-in capital. The excess of the principal amount of the debt component over its carrying amount (the “debt discount”) is being amortized as interest expense over the term of the Convertible Notes using the effective interest method. The equity component is not remeasured as long as it continues to meet the conditions for equity classification.

We allocated transaction costs related to the issuance of the Convertible Notes, including underwriting discounts of $2.7 million and other transaction related fees of $1.1 million to the debt and equity components, respectively. Issuance costs attributable to the debt component were recorded as a direct deduction to the related debt liability and are being amortized as interest expense over the term of the Convertible Notes, and issuance costs attributable to the equity component were netted with the equity component in additional paid-in capital. The carrying amount of the equity component, net of issuance costs, was $32.3 million. Including the impact of the debt discount and related deferred debt issuance costs, the effective interest rate on the Convertible Notes is approximately 8.29%.

Based on the closing market price of our common stock on September 30, 2016, the if-converted value of the Convertible Notes was less than the aggregate principal amount of the Convertible Notes.

The Convertible Notes at September 30, 2016 consisted of the following (in thousands):

	September 30, 2016
2.50% Convertible Notes, bearing interest at 2.50% payable semi-annually with final principal payment to be made April 1, 2022	$ 115,000
Unamortized debt issuance costs	(2,124)
Unamortized debt discounts	(27,661)
Net carrying value of Convertible Notes	$ 85,215

Revolving Credit Agreement

On July 16, 2009, we entered into a revolving credit loan agreement ("Revolving Credit Agreement") with Zions First National Bank ("Zions"), which was subsequently amended in June 2013 and August 2014. As of July 1, 2016, the Revolving Credit Agreement expired by its terms and was not renewed.

Under the terms of the Revolving Credit Agreement, Zions agreed to loan up to $15.0 million. The Revolving Credit Agreement was collateralized by substantially all the assets of inContact. The balance outstanding under the Revolving Credit Agreement could not exceed the lesser of (a) $15.0 million or (b) the sum of 85% of eligible billed receivables, and 65% of eligible earned, but unbilled receivables as calculated on the 5th and 20th of each month. The interest rate on the Revolving Credit Agreement with Zions was 4.0% per annum above the ninety day LIBOR. We drew $11.0 million on the Revolving Credit Agreement in December 2014, which was repaid in March 2015. Interest under the Revolving Credit Agreement was paid monthly in arrears. In August 2014, we amended certain terms of the Revolving Credit Agreement, including, extending the term to July 2016, adding the Uptivity subsidiary as a guarantor, pledging Uptivity's assets to Zions as additional security, and modifying certain financial covenants. There was no balance on the Revolving Credit Agreement at December 31, 2015.

Term Loans

We entered into three term loan agreements ("Term Loans") with Zions. We drew $4.0 million, $3.0 million, $1.0 million and $5.0 million from the Term Loans in April 2013, December 2013, June 2014 and December 2014, respectively. Interest on the Term Loans was due monthly in arrears and the principal was payable in 36 equal monthly installments. The interest rate on the Term Loans was between 4.0% and 4.5% per annum above the ninety day LIBOR rate, adjusted as of the date of any change in the ninety day LIBOR.

The financial covenants of the Term Loans were the same as the Revolving Credit Agreement, were collateralized by the same assets as the Revolving Credit Agreement and could be prepaid without penalty or premium. During the nine months ended September 30, 2015, we paid $10.4 million of total term loan principal to Zions. There was no balance on the term loans at September 30, 2016 and December 31, 2015.

Capital Leases

During the nine months ended September 30, 2015, we paid $1.4 million of capital lease obligations. There was no capital lease obligation as of September 30, 2016 and December 31, 2015.

Interest Expense:

The following table presents the components of interest expense incurred on the Convertible Notes and on other borrowings (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
2.50% Convertible Notes:				
Interest expense at 2.50% coupon rate	$725	$725	$2,166	$1,449
Amortization of debt discount	995	921	2,940	1,843
Amortization of deferred debt issuance costs	96	92	290	193
Total interest from 2.50% convertible notes	1,816	1,738	5,396	3,485
Other Borrowings:				
Interest from other borrowings	-	-	4	455
Total interest expense	$1,816	$1,738	$5,400	$3,940

NOTE 9. CAPITAL TRANSACTIONS

During the nine months ended September 30, 2016, we received 153,000 shares of our common stock from cancelled restricted stock awards from separated employees and for the settlement of $1.3 million in payroll taxes, associated with the lapsing of the selling restriction of restricted stock units.

From the exercise of stock options, we issued 412,000 shares of common stock and 118,000 shares of treasury stock for proceeds of $3.4 million during the nine months ended September 30, 2016. We issued 214,000 shares of common stock and 26,000 shares of treasury stock as a result of the vesting of restricted stock units. We issued 96,000 shares of common stock and 9,000 shares of treasury stock for proceeds of $0.8 million under the employee stock purchase plan during the nine months ended September 30, 2016.

NOTE 10. COMMITMENTS AND CONTINGENCIES

Litigation

In May 2009, inContact was served in a lawsuit titled California College, Inc., et al., v. UCN, Inc., et al. In the lawsuit, California College alleges that (1) inContact made fraudulent and/or negligent misrepresentations in connection with the sale of its services with those of Insidesales.com, Inc., another defendant in the lawsuit, (2) that inContact breached its service contract with California College and an alleged oral contract between the parties by failing to deliver contracted services and product and failing to abide by implied covenants of good faith and fair dealing, and (3) the conduct of inContact interfered with prospective economic business relations of California

College with respect to enrolling students. California College filed an amended complaint that has been answered by Insidesales.com and inContact. California College originall