

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

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15 (D) OF THE SECURITIES AND EXCHANGE ACT OF 1934

For the quarterly period ended March 31, 2023

or

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

For the transition period from _____ to _____

001-36555

(Commission File Number)

MARATHON DIGITAL HOLDINGS, INC.

(Exact Name of Registrant as Specified in Charter)

Nevada

(State or other jurisdiction
of incorporation)

01-0949984

(IRS Employer
Identification No.)

101 NE Third Avenue, Suite 1200, Fort Lauderdale, FL

(Address of principal executive offices)

33301

(Zip Code)

Registrant's telephone number, including area code: 702-945-2773

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

MARA

The Nasdaq Capital Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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

Accelerated Filer

Non-accelerated Filer

Smaller Reporting Company

Emerging growth company

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

Indicate by check mark whether the registrant 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: 167,399,935 shares of common stock are issued and outstanding as of May 9, 2023.

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OTHER PERTINENT INFORMATION

Unless specifically set forth to the contrary, "Marathon", "we", "us", "our", "Company" and similar terms refer to Marathon Digital Holdings, Inc., a Nevada corporation, and its subsidiaries.

Item 1. Financial Statements

MARATHON DIGITAL HOLDINGS, INC. AND SUBSIDIARIES
CONSOLIDATED CONDENSED BALANCE SHEET

	March 31, 2023 (unaudited)	December 31, 2022
<i>(in thousands, except share and per share data)</i>		
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 124,882	\$ 103,705
Restricted cash	—	8,800
Digital assets	189,087	121,842
Other receivable	172	18
Deposits	11,927	2,350
Prepaid expenses and other current assets	60,240	40,833
Total current assets	386,308	277,548
Other assets:		
Property and equipment (net of accumulated depreciation of \$34,356 and \$16,622, respectively)	714,916	273,026
Advances to vendors	57,511	488,299
Investments	80,194	37,000
Long term deposits	54,450	40,903
Long term prepaids	9,373	8,317
Right-of-use assets	1,180	1,276
Digital assets, restricted	—	68,875
Total other assets	917,624	917,696
TOTAL ASSETS	\$ 1,303,932	\$ 1,195,244
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 3,235	\$ 1,312
Accrued expenses	17,756	22,295
Legal reserve payable	—	1,171
Operating lease liabilities	336	326
Current portion of accrued interest	2,492	1,011
Total current liabilities	23,819	26,115
Long-term liabilities:		
Notes payable	733,260	732,289
Term loan	—	49,882
Operating lease liabilities	909	1,017
Deferred tax liabilities	75	—
Total long-term liabilities	734,244	783,188
Stockholders' Equity:		
Preferred stock, 0.0001 par value, 50,000,000 shares authorized, no shares issued and outstanding at March 31, 2023 and December 31, 2022, respectively	—	—
Common stock, 0.0001 par value, 200,000,000 shares authorized; 167,259,602 and 145,565,916 issued and outstanding at March 31, 2023 and December 31, 2022, respectively	17	15
Additional paid-in capital	1,393,428	1,226,267
Accumulated other comprehensive loss	—	—
Accumulated deficit	(847,576)	(840,341)
Total stockholders' equity	545,869	385,941
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ 1,303,932	\$ 1,195,244

The accompanying notes are an integral part to these unaudited consolidated condensed financial statements.

MARATHON DIGITAL HOLDINGS, INC. AND SUBSIDIARIES
CONSOLIDATED CONDENSED STATEMENTS OF OPERATIONS
(unaudited)

<i>(in thousands, except share and per share data)</i>	March 31,	
	2023	2022
Total revenues	\$ 51,132	\$ 51,723
Costs and expenses		
Cost of revenues		
Cost of revenues - energy, hosting and other	(33,377)	(12,522)
Cost of revenues - depreciation and amortization	(17,733)	(13,877)
Total cost of revenues	(51,110)	(26,399)
Operating expenses		
General and administrative expenses	(15,344)	(15,515)
Impairment of digital assets	(6,151)	(17,647)
Impairment of patents	—	(919)
Realized gains on digital assets and unrealized gains (losses) on digital assets loan receivable	17,615	(461)
Realized and unrealized gains (losses) on digital assets held within Investment Fund	—	(5,328)
Total operating expenses	(3,880)	(39,870)
Operating loss	(3,858)	(14,546)
Other non-operating income	791	247
Loss from extinguishment of debt	(333)	—
Interest expense	(3,760)	(2,814)
Loss before income taxes	(7,160)	(17,113)
Income tax benefit (expense)	(75)	4,262
Net loss	\$ (7,235)	\$ (12,851)
Net loss per share, basic and diluted:	\$ (0.05)	\$ (0.12)
Weighted average shares outstanding, basic and diluted:	159,186,506	103,102,596

The accompanying notes are an integral part to these unaudited consolidated condensed financial statements.

MARATHON DIGITAL HOLDINGS, INC. AND SUBSIDIARIES
CONSOLIDATED CONDENSED STATEMENTS OF STOCKHOLDERS' EQUITY
(unaudited)

For the Three Months Ended March 31, 2022

<i>(in thousands, except share and per share data)</i>	<u>Preferred Stock</u>		<u>Common Stock</u>		<u>Additional Paid-in Capital</u>	<u>Accumulated Deficit</u>	<u>Total Stockholders' Equity</u>
	<u>Number</u>	<u>Amount</u>	<u>Number</u>	<u>Amount</u>			
Balance as of December 31, 2021	—	—	102,733,273	\$ 10	\$ 835,694	\$ (153,603)	\$ 682,101
Stock-based compensation, net of tax withholding	—	—	118,796	—	9,275	—	9,275
Issuance of common stock, net of offering costs/At-the-market offering	—	—	2,999,644	1	90,193	—	90,194
Common stock issued for long term service contract	—	—	200,000	—	4,580	—	4,580
Net loss	—	—	—	—	—	(12,851)	(12,851)
Balance as of March 31, 2022	—	—	<u>106,051,713</u>	<u>\$ 11</u>	<u>\$ 939,742</u>	<u>\$ (166,454)</u>	<u>\$ 773,299</u>

For the Three Months Ended March 31, 2023

<i>(in thousands, except share and per share data)</i>	<u>Preferred Stock</u>		<u>Common Stock</u>		<u>Additional Paid-in Capital</u>	<u>Accumulated Deficit</u>	<u>Total Stockholders' Equity</u>
	<u>Number</u>	<u>Amount</u>	<u>Number</u>	<u>Amount</u>			
Balance as of December 31, 2022	—	—	145,565,916	\$ 15	\$ 1,226,267	\$ (840,341)	\$ 385,941
Stock-based compensation, net of tax withholding	—	—	336,511	—	3,868	—	3,868
Issuance of common stock, net of offering costs/At-the-market offering	—	—	21,357,175	2	163,293	—	163,295
Net loss	—	—	—	—	—	(7,235)	(7,235)
Balance as of March 31, 2023	—	—	<u>167,259,602</u>	<u>\$ 17</u>	<u>\$ 1,393,428</u>	<u>\$ (847,576)</u>	<u>\$ 545,869</u>

The accompanying notes are an integral part to these unaudited consolidated condensed financial statements.

MARATHON DIGITAL HOLDINGS, INC. AND SUBSIDIARIES
CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS
(unaudited)

<i>(in thousands)</i>	Three Months Ended March 31,	
	2023	2022
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	\$ (7,235)	\$ (12,851)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	17,733	13,877
Amortization of prepaid service contract	—	4,662
Deferred tax expense (benefit)	75	(4,262)
Realized and unrealized losses on digital assets held within Investment Fund	—	5,328
Realized (gains) on digital assets and unrealized losses on digital assets loan receivable	(17,615)	461
Impairment of digital assets	6,151	17,647
Stock-based compensation	3,945	9,275
Amortization of debt issuance costs	971	971
Impairment of patents	—	919
Loss from extinguishment of debt	333	—
Other adjustments from operations, net	1,290	(366)
Changes in operating assets and liabilities:		
Digital assets:		
Revenues from digital asset production	(50,941)	(51,723)
Proceeds from sale of digital assets	62,646	—
Deposits	(23,124)	(6,287)
Prepaid expenses and other assets	(20,738)	(4,889)
Accounts payable and accrued expenses	(3,784)	(667)
Accrued interest	1,481	1,843
Net cash used in operating activities	(28,812)	(26,062)
CASH FLOWS FROM INVESTING ACTIVITIES		
Advances to vendors	(11,565)	(192,391)
Purchase of property and equipment	(17,270)	(6,534)
Investments in Joint Venture	(43,194)	—
Purchase of equity investments	—	(10,500)
Net cash used in investing activities	(72,029)	(209,425)
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from issuance of common stock, net of issuance costs	163,295	85,473
Repayment of term loan borrowings	(50,000)	—
Value of shares withheld for taxes	(77)	—
Net cash provided by financing activities	113,218	85,473
Net (decrease) increase in cash, cash equivalents and restricted cash	12,377	(150,014)
Cash, cash equivalents and restricted cash — beginning of period	112,505	268,556
Cash, cash equivalents and restricted cash — end of period	\$ 124,882	\$ 118,542
Supplemental Information		
Cash paid during the year for:		
Interest	\$ 1,425	\$ —
Supplemental schedule of non-cash investing and financing activities:		
Receivable due to share issuance	—	4,720
Operating lease assets obtained in exchange for new operating lease liabilities	—	1,353
Reclassifications from advances to vendor to property and equipment upon receipt of equipment	442,353	64,405
Common stock issued for service and license agreements	—	4,580

The accompanying notes are an integral part to these unaudited consolidated condensed financial statements.

MARATHON DIGITAL HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

NOTE 1 – ORGANIZATION AND DESCRIPTION OF BUSINESS

We were incorporated in the State of Nevada on February 23, 2010 under the name Verve Ventures, Inc. In October 2012, we commenced our IP licensing operations, at which time the Company’s name was changed to Marathon Patent Group, Inc. We purchased digital asset mining machines and established a data center in Canada to mine digital assets in 2017. The Company ceased operating in Canada in 2020 and relocated all owned mining rigs to the U.S. The Company has since expanded bitcoin mining activities across the U.S. and internationally. The Company changed its name to Marathon Digital Holdings, Inc. on March 1, 2021. As of March 31, 2023, the Company is solely focused on the mining of bitcoin and ancillary opportunities within the Bitcoin ecosystem.

Ancillary businesses are those that relate to the Bitcoin ecosystem but may be above and beyond those directly related to the self-mining of bitcoin. The ancillary businesses most closely related to mining of bitcoin may include, but will not be limited to, management of bitcoin mining facilities for third party owners, advisory and consulting services to third parties seeking to set up and operate bitcoin mining facilities and joint ventures for bitcoin mining projects in domestic and international jurisdictions such as our project in Abu Dhabi, United Arab Emirates. We will also seek to be involved in Bitcoin related projects including, but not limited to, development of technologies in immersion, hardware, firmware, mining pools and side chains that use the bitcoin blockchain. We will also seek to be involved in the development of projects and technologies for generating electricity from renewable energy sources as well as methane gas capture to power bitcoin mining projects.

The term “Bitcoin” with a capital “B” is used to denote the Bitcoin protocol which implements a highly available, public, permanent, and decentralized ledger. The term “bitcoin” with a lower case “b” is used to denote the token, bitcoin.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The accompanying consolidated condensed financial statements are unaudited and have been prepared in accordance with the rules and regulations of the SEC. They include all adjustments that we consider necessary for a fair statement of the results for the interim periods presented. Such adjustments consisted only of normal recurring items unless otherwise disclosed. The consolidated condensed balance sheet was derived from audited financial statements but does not include all footnote disclosures from the annual financial statements.

Basis of Presentation and Principles of Consolidation

These financial statements should be read in conjunction with the financial statements and related notes included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2022 filed with the SEC on March 16, 2023.

The accompanying unaudited consolidated condensed financial statements include the accounts of the Company and its wholly owned and controlled subsidiaries. Intercompany balances and transactions have been eliminated in consolidation. The consolidated condensed financial statements have been prepared by the Company pursuant to the rules and regulations of the SEC. Certain information and disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”) have been condensed or omitted pursuant to such rules and regulations. These consolidated condensed financial statements reflect all adjustments (consisting only of normal recurring adjustments) which, in the opinion of management, are necessary to present fairly the financial position, the results of operations and cash flows of the Company for the periods presented. The results of operations for the interim periods are not necessarily indicative of the results to be expected for any future fiscal periods in 2023 or for the full year ended December 31, 2023.

Use of Estimates and Assumptions

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant estimates made by management include, but are not limited to, estimates of the useful lives of fixed assets, assumptions used to calculate fair value of options granted, realization of long-lived assets, deferred income taxes, unrealized tax positions and realization of digital assets.

Reclassifications

Certain prior period amounts have been reclassified to conform to the current period presentation. These reclassifications have no effect on the reported financial position, results of operations, or cash flows. Previously reported depreciation and amortization expense has now been reclassified to “Cost of revenues - depreciation and amortization.” Previously reported compensation and related taxes, consulting fees, and professional fees have now been reclassified within “General and administrative expenses.” In addition, previously reported interest income has now been reclassified to “Other non-operating income.”

Cash and Cash Equivalents and Restricted Cash

The Company considers all highly liquid debt instruments and other short-term investments with maturity of three months or less, when purchased, to be cash equivalents. The Company maintains cash and cash equivalent balances at financial institutions that are insured by the FDIC. As of March 31, 2023 and December 31, 2022, the Company’s bank balances with its primary cash management institutions exceeded the FDIC limit (\$250 thousand). In March 2023, the Company began to participate, to the extent practicable, in deposit programs which “sweep” its deposits across multiple FDIC insured accounts, each with deposits of no more than \$250 thousand.

Restricted cash principally represented those cash balances that support commercial letters of credit and are restricted from withdrawal. The following table provides a reconciliation of the total cash, cash equivalents and restricted cash reported on the consolidated condensed balance sheet to the corresponding amounts reported on the consolidated condensed statements of cash flows.

<i>(in thousands)</i>	March 31, 2023	December 31, 2022
Cash and cash equivalents	\$ 124,882	\$ 103,705
Restricted cash	—	8,800
Cash, cash equivalents and restricted cash	\$ 124,882	\$ 112,505

Digital assets and Digital assets, restricted

Digital assets are included in current and other assets in the consolidated condensed balance sheet. Digital assets are accounted for as indefinite-lived intangible assets, and are initially measured in accordance with FASB Accounting Standards Codification (“ASC”) Topic 350 – *Intangibles-Goodwill and Other* (“ASC 350”). Digital assets, restricted represent collateral for long-term loans and as such are classified as a non-current asset.

These digital assets are not amortized, but are assessed for impairment annually, or more frequently, when events or changes in circumstances occur indicating that it is more likely than not that the indefinite-lived intangible asset is impaired. Whenever the exchange-traded price of digital assets declines below its carrying value, the Company has determined that an impairment exists and records impairment equal to the amount by which the carrying value exceeds the fair value.

The following table presents the activities of the digital assets and digital assets, restricted for the three months ended March 31, 2023:

	<i>(in thousands)</i>
Digital assets and digital assets, restricted at December 31, 2022	\$ 190,717
Revenues from digital asset production	50,941
Impairment of digital assets	(6,151)
Proceeds from sale of digital assets	(62,646)
Gain on sale of digital assets	17,615
Payment of advisory fee	(1,389)
Digital assets and digital assets, restricted at March 31, 2023	\$ 189,087

As of March 31, 2023, the Company held approximately 11,466 bitcoin, classified on the consolidated condensed balance sheet as “Digital assets”, with a carrying value of \$189,087 thousand. At March 31, 2023, the fair market value of the Company’s bitcoin holdings was approximately \$326,487 thousand based on Level 1 inputs. Impairment of digital assets for the three months ended March 31, 2023 includes an out of period adjustment of \$1,221 thousand (refer to **NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - OUT OF PERIOD ADJUSTMENTS**, for further discussion). As of December 31, 2022, the Company held approximately 12,232 bitcoin, relating to digital assets and digital assets, restricted, with a carrying value of \$190,717 thousand and a fair value of \$202,409 thousand based on Level 1 inputs.

Digital assets held in fund

On January 25, 2021, the Company entered into a limited partnership agreement with NYDIG Digital Assets Fund III, LP (the “Fund”) pursuant to which the Fund purchased 4,813 bitcoin for an aggregate purchase price of \$150,000 thousand. The Company owned 100% of the limited partnership interests and consolidated the Fund under a voting interest model. The consolidated assets in the investment fund are included in current assets in the consolidated condensed balance sheet under the caption “Digital assets held in fund.”

The Fund qualified and operated as an investment company for accounting purposes pursuant to the accounting and reporting guidance under ASC 946 – *Financial Services – Investment Companies* (“ASC 946”), which requires fair value measurement of the Fund’s investments in digital assets. The Company retains the Fund’s investment company specific accounting principles under ASC 946 upon consolidation. We recorded any changes in the fair value of the assets in the consolidated condensed statements of operations under the caption “Realized and unrealized gains (losses) on digital assets held within Investment Fund.”

On June 10, 2022, the Company redeemed 100% of its limited partnership interest in the Fund in exchange for approximately 4,769 bitcoin with a fair market value of approximately \$137,844 thousand. This bitcoin was transferred from the Fund’s custodial wallet to the Company’s digital wallet. Upon redemption, the Company no longer had a majority voting interest in the Fund and therefore deconsolidated the Fund in accordance with ASC 810 – *Consolidation* (“ASC 810”). The Company did not record any gain or loss upon deconsolidation as the digital assets in the Fund were measured at fair value. Subsequent to the transfer, the bitcoin transferred to the Company’s digital wallet was accounted for at cost less impairment in line with its digital assets measurement policy as described under “Digital Assets and Digital assets, restricted.”

Embedded Derivatives

The Company evaluates its financing and service arrangements to determine whether certain arrangements contain features that qualify as embedded derivatives requiring bifurcation in accordance with ASC 815 - *Derivatives and Hedging* (“ASC 815”). Embedded derivatives that are required to be bifurcated from the host instrument or arrangements are accounted for and valued as separate financial instruments. For derivatives that are assets or liabilities, the derivative instrument is initially recorded at its fair value and is then remeasured at each reporting date with changes in the fair value reported in the statements of operations. The Company classifies derivative assets or liabilities in the consolidated condensed balance sheet as current or non-current based on whether settlement of the instrument could be required within 12 months of the consolidated condensed balance sheet date.

Deposits

The Company contracts with service providers for hosting of its equipment and operational support in data centers where the Company’s equipment is deployed. These arrangements also call for advance payments to be made to vendors in conjunction with the contractual obligations associated with these services. The Company classifies these payments as “Deposits” on the consolidated condensed balance sheet.

Property and Equipment

Property and equipment are stated at cost, net of accumulated depreciation and impairment, as applicable. Depreciation is computed using the straight-line method over the estimated useful lives of the assets. The Company’s property and equipment is primarily composed of bitcoin miners which are largely homogeneous and have approximately the same useful lives. Accordingly, the Company utilizes the group method of depreciation for its bitcoin miners. The Company will update the estimated useful lives of its bitcoin mining server group periodically as information on the operations of the mining equipment indicates changes are required. The Company will assess and adjust the estimated useful lives of its mining equipment when there are indicators that the productivity of the mining assets is higher or lower than the assigned estimated useful lives.

Investments

Investments, which may be made from time to time for strategic reasons (and not to engage in the business of investments), are included in non-current assets in the consolidated condensed balance sheet. Investments without a readily determinable fair value are recorded at cost minus impairment, plus or minus changes from observable price changes in orderly transactions for identical or similar investments of the same issuer, in accordance with the measurement alternative described in ASC 321 - *Investments – Equity Securities* (“ASC 321”). As part of the Company’s policy to maximize return on strategic investment opportunities, while preserving capital and limiting downside risk, the Company may at times enter into equity investments or Simple Agreements for Future Equity (“SAFE”) agreements. The nature and timing of the Company’s investments will depend on available capital at any particular time and the investment opportunities identified and available to the Company.

On February 3, 2022, the Company purchased approximately \$10,000 thousand of convertible preferred stock of Compute North Holdings, Inc. The acquisition of convertible preferred stock was accounted for as investments in equity securities without readily determinable fair value at cost minus impairment, as adjusted for observable price changes in orderly transactions for identical or similar investment of the same issuer, pursuant to ASC 321. This investment was subject to an impairment of \$10,000 thousand following Compute North’s Chapter 11 Bankruptcy filing in September 2022 (See **NOTE 8 – COMPUTE NORTH BANKRUPTCY**).

On May 3, 2022, the Company converted \$2,000 thousand from a SAFE investment into preferred stock while purchasing an additional \$3,500 thousand of preferred stock in Auradine, Inc. along with entering into a commitment to acquire \$30,000 thousand of additional shares of preferred stock. This forward contract was accounted for under ASC 321 as an equity security.

On September 27, 2022, the Company purchased an additional \$30,000 thousand of preferred stock, bringing its total carrying amount of investment in Auradine, Inc. preferred stock to \$35,500 thousand, with no noted impairments or other adjustments. The Company accounts for the preferred stock as investments in equity securities without a readily determinable fair value at cost minus impairment, as adjusted for observable price changes in orderly transactions for identical or similar investments from the same issuer, pursuant to ASC 321 (See **NOTE 13 – RELATED PARTY TRANSACTIONS**).

As of the three months ended March 31, 2023 and year ended December 31, 2022, the Company has one remaining SAFE investment with a carrying value of \$1,000 thousand, with no noted impairments or other adjustments.

Equity Method Investments

The Company accounts for investments in which it owns between 20% and 50% of the common stock or has the ability to exercise significant influence, but not control, over the investee using the equity method of accounting in accordance with ASC 323 - *Equity Method Investments and Joint Ventures* (“ASC 323”). Under the equity method, an investor initially records an investment in the stock of an investee at cost and adjusts the carrying amount of the investment to recognize the investor’s share of the earnings or losses of the investee after the date of acquisition.

On January 27, 2023, the Company and FS Innovation, LLC (“FSI”) entered into a Shareholders’ Agreement regarding the formation of an Abu Dhabi Global Markets company (the “ADGM Entity”). For the three months ended March 31, 2023, the ADGM Entity did not have any earnings or losses. As of March 31, 2023, the carrying value of the Company’s 20% ownership in the ADGM Entity was \$43,194 thousand. The equity method investment is included in non-current assets in the consolidated condensed balance sheet under “Investments.”

Stock-based Compensation

The Company expenses stock-based compensation to employees and non-employees over the requisite service period based on the grant-date fair value of the awards and forfeiture rates.

Impairment of Long-lived Assets

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

Revenues From Contracts with Customers

The Company recognizes revenue under ASC 606 – *Revenue from Contracts with Customers* (“ASC 606”). The core principle of the revenue standard is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services.

Income Taxes

Effective Tax Rate

Our effective tax rate (“ETR”) from continuing operations was (1.06)% for the three months ended March 31, 2023, and 24.91% for the three months ended March 31, 2022, respectively. The difference between the US statutory tax rate of 21% was primarily due to the change in valuation allowance as a result of current year activity. The following item caused the quarterly ETR to be significantly different from our historic annual ETR:

- During the year ended December 31, 2022, the Company concluded, based upon all available evidence, it was more likely than not that it would not have sufficient future taxable income to realize the Company’s federal and state deferred tax assets. As a result, the Company established a valuation allowance against deferred tax assets that were not supported by reversing deferred tax liabilities. No events occurred in the three months ended March 31, 2023 impacting this determination.

Income Tax in Interim Periods

The Company records its tax expense or benefit on an interim basis using an estimated annual effective tax rate. This rate is applied to the current period ordinary income or loss to determine the income tax provision or benefit allocated to the interim period. The income tax effects of unusual or infrequent items are excluded from the estimated annual effective tax rate and are recognized in the impacted interim period.

Adjustments to the estimated annual effective income tax rate are recognized in the period when such estimates are revised.

Uncertainties

The Company files federal and state income tax returns. The 2019-2021 tax years generally remain subject to examination by the IRS and various state taxing authorities, although the Company is not currently under examination in any jurisdiction.

The Company does not currently expect any of its remaining unrecognized tax benefits to be recognized in the next twelve months.

Out-of-Period Adjustment

During the three months ended March 31, 2023, the Company recorded an out-of-period adjustment as a result of applying the quoted price in an active market to the digital assets in accordance with ASC 820. The adjustment resulted in increased impairment of digital assets reflected in the current period consolidated condensed statement of operations of \$1,221 thousand. The Company evaluated the quantitative and qualitative aspects of this out of period adjustment and determined that the adjustment did not have a material impact to any previously reported quarterly or annual financial statements. Refer to **NOTE 6 - FAIR VALUE MEASUREMENT** for further discussion.

Recent Accounting Pronouncements

The Company continually assesses any new accounting pronouncements to determine their applicability. When it is determined that a new accounting pronouncement affects the Company’s financial reporting, the Company undertakes a study to determine the consequences of the change to its consolidated condensed financial statements and assures that there are proper controls in place to ascertain that the Company’s consolidated condensed financial statements properly reflect the change.

There have been no material changes to our recent accounting pronouncements that were disclosed in our Annual Report on Form 10-K, which was filed with the SEC on March 16, 2023.

NOTE 3 – REVENUE FROM CONTRACTS WITH CUSTOMERS

The Company recognizes revenue in accordance with ASC 606. The core principle of the revenue standard is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods or services. The following five steps are applied to achieve that core principle:

- Step 1: Identify the contract with the customer
- Step 2: Identify the performance obligations in the contract
- Step 3: Determine the transaction price
- Step 4: Allocate the transaction price to the performance obligations in the contract
- Step 5: Recognize revenue when the Company satisfies a performance obligation

In order to identify the performance obligations in a contract with a customer, an entity must assess the promised goods or services in the contract and identify each promised good or service that is distinct. A performance obligation meets ASC 606's definition of a "distinct" good or service (or bundle of goods or services) if both of the following criteria are met:

- The customer can benefit from the good or service either on its own or together with other resources that are readily available to the customer (i.e., the good or service is capable of being distinct); and
- The entity's promise to transfer the good or service to the customer is separately identifiable from other promises in the contract (i.e., the promise to transfer the good or service is distinct within the context of the contract).

If a good or service is not distinct, the good or service is combined with other promised goods or services until a bundle of goods or services is identified that is distinct.

The transaction price is the amount of consideration to which an entity expects to be entitled in exchange for transferring promised goods or services to a customer. The consideration promised in a contract with a customer may include fixed amounts, variable amounts, or both. When determining the transaction price, an entity must consider the effects of all of the following:

- Variable consideration
- Constraining estimates of variable consideration
- The existence of a significant financing component in the contract
- Noncash consideration
- Consideration payable to a customer

Variable consideration is included in the transaction price only to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved.

The transaction price is allocated to each performance obligation on a relative standalone selling price basis.

The transaction price allocated to each performance obligation is recognized when that performance obligation is satisfied, at a point in time or over time, as appropriate.

Application of the five-step model to the Company's mining operations

The Company's ongoing major or central operation is to provide bitcoin transaction verification services to the bitcoin network through a Company-operated mining pool as the operator and a participant in a private pool ("Operator") (such activity as Participant and Operator, collectively, "mining") and to provide computing power to collectives of third-party bitcoin miners (such collectives, "mining pools") as a participant ("Participant"). The Company currently mines in a self-operated pool, which was previously open to third-party pool participants from September 2021 until May 2022.

The following table presents revenue of the Company disaggregated for those arrangements in which the Company is the Operator and Participant:

<i>(in thousands)</i>	Three Months Ended March 31,	
	2023	2022
Revenues from contracts with customers		
Participant	\$ 17,876	\$ —
Operator - Transaction fees	1,051	517
Other revenue		
Operator - Block rewards	32,205	51,206
Total revenue	<u>\$ 51,132</u>	<u>\$ 51,723</u>

Operator

As Operator, the Company provides transaction verification services. Transaction verification services are an output of the Company's ordinary activities; therefore, the Company views the transaction requestor as a customer and accounts for the transaction fees it earns as revenue from a contract with a customer under ASC 606. The bitcoin network is not an entity such that it may not meet the definition of a customer; however, the Company has concluded it is appropriate to apply ASC 606 by analogy to block rewards earned from the network. A contract exists under ASC 606 at the point the Company successfully validates a transaction to the distributed ledger. At this point, the performance obligation to validate the requested transaction has been satisfied and a contract is deemed to exist as follows:

- The transaction requester, the bitcoin network, and the Company have approved the contract and have evidenced they are committed to the transaction at the point of successfully validating and adding the transaction to the distributed ledger. The parties' rights, the consideration to be transferred, and the payment terms are clear. The transaction has commercial substance and collection of the block reward and transaction fees to which the Company is entitled is probable because they are transferred to the Company as part of closing a successful block.
- By successfully mining a block, the Company satisfies its lone performance obligation of providing transaction verification services and, thus, earns revenue at that point in time. The amount to which the Company is entitled for successfully validating a block of transactions is fixed at the point in time the contract is deemed to exist and the performance obligation is satisfied. Thus, there is no variable consideration.

The Company engaged unrelated third-party mining enterprises ("pool participants") to contribute computing power, and in exchange, remitted transaction fees and block rewards to pool participants on a pro rata basis according to each respective pool participant's contributed computing power ("hash rate"). The MaraPool wallet (owned by the Company as Operator) is recorded on the distributed ledger as the winner of proof of work block rewards and assignee of all validations and, therefore, the transaction verifier of record. The pool participants entered into contracts with the Company as Operator; they did not directly enter into contracts with the network or the requester and were not known verifiers of the transactions assigned to the pool. As Operator, the Company delegated mining work to the pool participants utilizing software that algorithmically assigned work to each individual miner. By virtue of its selection and operation of the software, the Company as Operator controlled delegation of work to the pool participants. This indicated that the Company directed the mining pool participants to contribute their hash rate to solve in areas that the Company designates. Therefore, the Company determined that it controlled the service of providing transaction verification services to the network and requester. Accordingly, the Company recorded all of the transaction fees and block rewards earned from transactions assigned to MaraPool as revenue, and the portion of the transaction fees and block rewards remitted to MaraPool participants as cost of revenues. The Company operated a mining pool that engaged third-party pool participants from September 2021 until May 2022.

ASC 606-10-32-21 requires entities to measure the estimated fair value of noncash consideration at contract inception, which is the same time the block reward and transaction fee is earned and the performance obligation to the requester and the network is fulfilled by successfully validating the applicable block of transactions. For reasons of operational practicality, the Company applies an accounting convention to use the daily quoted closing U.S. dollar spot rate of bitcoin each day to determine the fair value of bitcoin earned as transaction fees and block rewards in the Company's wallet during that day. This accounting convention does not result in materially different revenue recognition from using the fair value of the bitcoin earned at contract inception (i.e., the moment a block is solved) and has been consistently applied in all periods presented.

Expenses associated with providing the bitcoin transaction verification services to the customers, such as rent, electricity cost, and transaction fees and block rewards are recorded as cost of revenues. Depreciation on digital asset mining equipment is recorded as a component of cost of revenues.

Participant

When the Company is a Participant in a third-party operated mining pool, the Company provides hash rate that is an output of the Company's ordinary activities in exchange for consideration. The Company considers the third-party mining pool operators its customers under Topic 606. These contracts are period-to-period contracts because they are terminable at any time by either party without compensation. A new contract is determined to exist each period (i.e., second, minute, hour) that neither the Company, nor the pool operator, terminates the arrangement.

The consideration to which the Company is entitled is a fractional share of the block award and transaction fees; the amount of which is based on the proportion of the Company's contributed hash rate to the total computing power contributed by all mining pool participants in solving the current algorithm as calculated and determined by the pool operator, usually through usage of a mining software, net of any pool fees due to the pool operator. The Company receives the consideration in aggregate typically within 24 hours of winning the block, and any disputes to the consideration to which the Company is entitled can be made by notifying and resolving the issues with the pool operators. However, there have not been any subsequent adjustments to the fees received, therefore the Company concludes that it is probable that a significant reversal of revenue recognized will not occur upon settlement.

Providing computing power on rigs to solve complex cryptographic algorithms in support of blockchain mining (in a process known as "solving a block") is the primary output of the Company's ordinary activities. The provision of computing power is the only performance obligation under our arrangements with third-party mining pool operators. The transaction consideration the Company receives is non-cash (i.e., bitcoin) and entirely variable as it is unknown at each contract inception whether the Company will earn any consideration during the period, and if it does become entitled to consideration, how much consideration to which it will be entitled.

The Company satisfies its performance obligation to provide computing power to the pool operator over time as described in FASB ASC 606-10-25-27(a) as the pool operator simultaneously consumes and receives benefits from the Company's provision of computing power, which it uses continuously as an input to the pool's efforts to solve a block.

In accordance with FASB ASC 606-10-32-11 and 32-12, the Company constrains the variable consideration to which it is entitled and does not recognize revenue for such amounts until it receives confirmation of the amount, usually via the settlement of the fractional share of block reward and transaction fees in the Company's digital wallet. Since the Company does not have visibility on its contributed computing power relative to the pool's total computing power, which is one of the key inputs that determine the fractional block reward and transaction fees share to which it is entitled; therefore, it only knows the amount of non-cash consideration to which it is entitled upon settlement of the Company's earned fractional share into its digital wallet. Because of this and the fact that the Company's fractional share substantively varies from block to block, it is not probable that a significant reversal of revenue will not occur until the uncertainty related to the Bitcoin to which the Company is entitled ultimately resolves at settlement. At settlement, the total block reward and transaction fees consideration earned by the pool operator are allocated and distributed (with no provision for, or risk of, clawback) by the pool operator to each participant based on each participant's contribution of computing power. Consequently, at that point in time, the risk of significant revenue reversal abates such that consideration should be added to the transaction price (and revenue recognized accordingly). Settlement of consideration typically occurs within 24 hours of when a block is won unless such block is won over a weekend or holiday, in which case settlement can take up to 72 hours.

The Company uses its accounting convention to measure revenue based upon the daily quoted closing U.S. dollar spot rate of bitcoin on the day the transaction fees and block rewards are settled in the Company's wallet. This accounting convention does not result in materially different revenue recognition from using the fair value of the bitcoin earned at contract inception and has been consistently applied in all periods presented.

Expenses associated with providing computing power services to third-party operated mining pools, such as rent and electricity costs, are recorded as cost of revenues. Depreciation on digital asset mining equipment is also recorded as a component of cost of revenues.

NOTE 4 – ADVANCES TO VENDORS AND DEPOSITS

The Company contracts with bitcoin mining equipment manufacturers in procuring equipment necessary for the operation of its bitcoin mining operations. A typical agreement calls for a certain percentage of the total order to be paid in advance at specific intervals, usually within several days of execution of a specific contract and periodically thereafter with final payments due prior to each shipment date. The Company accounts for these payments as "Advances to vendors" on the consolidated condensed balance sheet.

As of March 31, 2023 and December 31, 2022, such advances totaled approximately \$57,511 thousand and \$488,299 thousand, respectively.

In addition, the Company contracts with other service providers for the hosting of its equipment and operational support in data centers where the Company's equipment is deployed. These arrangements also call for advance payments to be made to vendors in conjunction with the contractual obligations associated with these services. We classify these payments as "Deposits" on the consolidated condensed balance sheet.

NOTE 5 – PROPERTY AND EQUIPMENT

The components of property and equipment as of March 31, 2023 and December 31, 2022 are:

<i>(in thousands, except useful life)</i>	Useful life (Years)	March 31, 2023	December 31, 2022
Mining rigs	3	\$ 326,951	\$ 116,634
Containers	10	3,112	1,614
Website and leasehold improvements	7	206	206
Construction in progress	N/A	419,003	171,194
Gross property, equipment		749,272	289,648
Less: Accumulated depreciation		(34,356)	(16,622)
Property and equipment, net		\$ 714,916	\$ 273,026

The Company's depreciation expense related to property and equipment for the three months ended March 31, 2023 and 2022 was \$17,733 thousand and \$13,877 thousand, respectively.

NOTE 6 – FAIR VALUE MEASUREMENT

The Company measures certain financial and non-financial assets and liabilities at fair value on a recurring or non-recurring basis. The Company uses a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, essentially an exit price, based on the highest and best use of the asset or liability. The levels of the fair value hierarchy are:

- Level 1: Observable inputs such as quoted market prices in active markets for identical assets or liabilities
- Level 2: Observable market-based inputs or unobservable inputs that are corroborated by market data
- Level 3: Unobservable inputs for which there is little or no market data, which require the use of the reporting entity's own assumptions

The carrying amounts reported in the consolidated condensed balance sheet for cash and cash equivalents, other receivable, deposits, prepaid expenses and other current assets, property and equipment, advances to vendors, accounts payable, accrued expenses, and legal reserve payable, approximate their estimated fair market value based on the short-term maturity of these instruments.

Financial assets and liabilities are classified in their entirety within the fair value hierarchy based on the lowest level of input that is significant to their fair value measurement. The Company measures the fair value of its marketable securities and investments by taking into consideration valuations obtained from third-party pricing sources. The pricing services utilize industry standard valuation models, including both income and market-based approaches, for which all significant inputs are observable, either directly or indirectly, to estimate fair value. These inputs included reported trades and broker-dealer quotes on the same or similar securities, issuer credit spreads, benchmark securities and other observable inputs.

Recurring measurement of fair value

The following tables present information about the Company's assets and liabilities measured at fair value on a recurring basis and the Company's estimated level within the fair value hierarchy of those assets and liabilities as of March 31, 2023 and December 31, 2022, respectively:

Recurring fair value measured at March 31, 2023				
<i>(in thousands)</i>	Total carrying value at March 31, 2023	Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Assets				
Cash and cash equivalents ⁽¹⁾	\$ 153	\$ 153	\$ —	\$ —
Recurring fair value measured at December 31, 2022				
<i>(in thousands)</i>	Total carrying value at December 31, 2022	Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Assets				
Cash and cash equivalents ⁽¹⁾	\$ 92,044	\$ 92,044	\$ —	\$ —

(1) Represents money market accounts. Excludes \$124,729 thousand and \$11,661 thousand of cash and cash equivalents.

There were no transfers among Levels 1, 2 or 3 during the three months ended March 31, 2023.

Non-recurring measurement of fair value

The following tables present information about the Company's assets and liabilities measured at fair value on a non-recurring basis and therefore, not included in the tables above. These assets include (a) digital assets and digital assets, restricted that are initially recorded at cost and subsequently impaired as the fair value falls below its carrying value; (b) mining rigs and advances to vendors that are written down to fair value due to the decrease in the cost of bitcoin mining rigs that was driven by the drop in bitcoin prices during the fourth quarter ended December 31, 2022. These assets are not measured at fair value on an ongoing basis but are subject to fair value adjustments in certain circumstances (e.g., impairment). The Company's estimated level within the fair value hierarchy of those assets and liabilities as of March 31, 2023 and December 31, 2022, respectively:

Non-recurring fair value measured at March 31, 2023				
<i>(in thousands)</i>	Total carrying value at March 31, 2023	Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Assets				
Digital assets	\$ 189,087	\$ 326,487	\$ —	\$ —
Non-recurring fair value measured at December 31, 2022				
<i>(in thousands)</i>	Total carrying value at December 31, 2022	Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Assets				
Digital assets	121,842	—	129,335	—
Property and equipment, net ⁽¹⁾	271,280	—	271,280	—
Advances to vendors	488,299	—	488,299	—
Digital assets, restricted	68,875	—	73,074	—

(1) Represents mining rigs. Excludes \$1,746 thousand of Property and equipment relating to containers and website and leasehold improvements.

During the three months ended March 31, 2023, the fair value of digital assets and digital assets, restricted were transferred from Level 2 to Level 1, as a result of using the quoted price in the active market in accordance with ASC 820. There were no other transfers among Levels 1, 2 or 3 during the three months ended March 31, 2023. As of March 31, 2023 and December 31, 2022, there were no other assets and liabilities measured at fair value on a non-recurring basis.

NOTE 7 – NET LOSS PER SHARE

Net income per common share is calculated in accordance with ASC Topic 260 – “Earnings Per Share” (“ASC 260”). Basic income per share is computed by dividing net income (loss) by the weighted-average number of shares of common stock outstanding during the period. For the three months ended March 31, 2023 and 2022, respectively, the Company incurred a loss position and as such, the computation of diluted net loss per share does not include dilutive common stock equivalents in the weighted average shares outstanding, as they would be anti-dilutive.

Securities that could potentially dilute loss per share in the future that were not included in the computation of diluted loss per share at March 31, 2023 and 2022 are as follows:

	Three months ended March 31,	
	2023	2022
Warrants to purchase common stock	324,375	324,375
Restricted stock units	1,500,254	1,188,478
Convertible notes to exchange common stock	9,812,955	9,812,955
Total dilutive shares	11,637,584	11,325,808

The following table sets forth the computation of basic and diluted loss per share:

	Three months ended March 31,	
	2023	2022
Net loss attributable to common shareholders	\$ (7,235)	\$ (12,851)
Denominator:		
Weighted average common shares - basic and diluted	159,186,506	103,102,596
Loss per common share - basic and diluted	\$ (0.05)	\$ (0.12)

NOTE 8 – COMPUTE NORTH BANKRUPTCY

On September 22, 2022, Compute North Holdings, Inc. (along with its affiliated debtors, collectively, “Compute North”, filed for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court for the Southern District of Texas under Chapter 11 of the U.S. Bankruptcy Code (11 U.S. Code section 101 et seq.). Marathon’s financial exposure to Compute North at the time of the bankruptcy filing included:

- Approximately \$10,000 thousand in Convertible Preferred Stock of Compute North Holdings, Inc.
- Approximately \$21,000 thousand related to an unsecured Senior Promissory note with Compute North LLC.
- Approximately \$50,000 thousand in operating deposits with Compute North primarily related to the King Mountain and Wolf Hollow hosting facilities.

The Company recorded an impairment charge of \$55,674 thousand during 2022. On February 16, 2023, the Bankruptcy Court approved the Debtors Plan of Reorganization, pursuant to which Marathon’s claim has been fixed at \$40,000 thousand as an unsecured claim to be paid out according to the timing and percentages within the approved Debtor’s plan.

NOTE 9 – STOCKHOLDERS’ EQUITY

Common Stock

Shelf Registration Statements on Form S-3 and At-The-Market Offering Agreements

On February 11, 2022, the Company entered into an At-The-Market Offering Agreement, or sales agreement, with H.C. Wainwright & Co., LLC relating to shares of its common stock. In accordance with the terms of the sales agreement, the Company may offer and sell shares of its common stock having an aggregate offering price of up to \$750,000 thousand from time to time through Wainwright acting as its sales agent. As of March 31, 2023, the Company has sold 63,498,908 shares of common stock for an aggregate purchase price of \$524,781 thousand, net of offering costs, pursuant to this At-The-Market Offering Agreement.

Common Stock Warrants

As of March 31, 2023 and December 31, 2022, the Company had 324,375 issued and outstanding stock warrants.

Restricted Stock

A summary of the restricted stock award activity (represented by restricted stock units (RSUs) for the three months ended March 31, 2023 is as follows:

	Number of Units	Weighted Average Grant Date Fair Value
	Nonvested at December 31, 2022	1,255,648
Granted	662,865	6.86
Vested	(418,259)	17.56
Nonvested at March 31, 2023	1,500,254	\$ 17.05

NOTE 10 – DEBT

On November 18, 2021, the Company issued \$650,000 thousand principal of its 1.0% Convertible Senior Notes due 2026 (the “Notes”). The Notes were issued pursuant to, and are governed by, an indenture (the “Indenture”), dated as of November 18, 2021, between the Company and U.S. Bank National Association, as trustee (the “Trustee”). Pursuant to the purchase agreement between the Company and the initial purchasers of the Notes, the Company also granted the initial purchasers an option, for settlement within a period of 13 days from, and including, November 18, 2021 to purchase up to an additional \$97,500 thousand principal of Notes, which additional Notes were purchased on November 23, 2021, for an aggregate principal amount of Notes purchased of \$747,500 thousand. All references in this disclosure to “Notes” includes the Notes issued on both November 18, 2021 and November 23, 2021. As of March 31, 2023 and December 31, 2022, notes outstanding, net of unamortized discounts of approximately \$14,240 thousand and \$15,211 thousand, respectively, were \$733,260 thousand and \$732,289 thousand, respectively.

The Notes accrue interest at a rate of 1.00% per annum, payable semi-annually in arrears on June 1 and December 1 of each year, beginning on June 1, 2022. The Notes will mature on December 1, 2026, unless earlier repurchased, redeemed or converted. Before the close of business on the business day immediately before September 1, 2026, noteholders will have the right to convert their Notes only upon the occurrence of certain events. From and after September 1, 2026, noteholders may convert their Notes at any time at their election until the close of business on the second scheduled trading day immediately before the maturity date. The Company will settle conversions by paying or delivering, as applicable, cash, shares of its common stock or a combination of cash and shares of its common stock, at the Company’s election. The initial conversion rate is 13.1277 shares of common stock per \$1 thousand principal amount of Notes, which represents an initial conversion price of approximately \$76.17 per share of common stock. The conversion rate and conversion price will be subject to customary adjustments upon the occurrence of certain events. In addition, if certain corporate events that constitute a “Make-Whole Fundamental Change” (as defined in the Indenture) occur, then the conversion rate will, in certain circumstances, be increased for a specified period of time.

On July 28, 2022, the Company entered into a Revolving Credit and Security Agreement (the “Agreement”) with Silvergate Bank (the “Bank”) pursuant to which Silvergate had agreed to loan the Company up to \$100,000 thousand on a revolving basis pursuant to the terms of the Agreement. This facility refinanced and replaced an existing \$100,000 thousand facility the Company had in place with the Bank. On the same date, the Company also entered into a \$100,000 thousand principal term loan facility (the “Term Loan”) with Silvergate. See Form 10-K for the year ended December 31, 2022 for the terms of the facilities set forth in the Agreement and the Term Loan.

On February 6, 2023, the Company provided Silvergate Bank with the required 30-day notice stating the Company’s intent to prepay the outstanding balance on its term loan facility as well as the Company’s intent to terminate the term loan facility. The Company and Silvergate subsequently agreed to also terminate the revolving line of credit (“RLOC”) facility. On March 8, 2023, the term loan prepayment was completed, and the Company’s term loan and RLOC facilities with Silvergate Bank were terminated.

NOTE 11 – LEASES

Leases

The Company leases office space in the United States under operating lease agreements. The Company also entered into an arrangement with Applied Blockchain for the use of energized cryptocurrency mining facilities under which the Company pays for electricity per megawatt based on usage. The Company has determined that it has embedded operating leases at two of the facilities governed by this arrangement that commenced in January and March 2023, and has elected not to separate lease and non-lease components. Payments made for these two operating leases are therefore entirely variable and are based on usage of electricity, and the Company therefore does not record a right-of-use asset or lease liability associated with the leases. Variable lease cost during the three months ended March 31, 2023 are disclosed in the table below. Office space and mining facilities comprise the Company’s material underlying asset classes under operating lease agreements. The Company has no material finance leases.

As of March 31, 2023, the Company’s right-of-use (“ROU”) assets and total lease liabilities were \$1,180 thousand and \$1,245 thousand, respectively, for leases in the United States. As of December 31, 2022, the Company’s ROU assets and total lease liabilities were \$1,276 thousand and \$1,343 thousand, respectively. The Company has amortized right-of-use assets totaling \$84 thousand and \$110 thousand for the three months ended March 31, 2023, and year ended December 31, 2022, respectively.

Operating lease costs are recorded on a straight-line basis within operating expenses. The Company's total lease expense is comprised of the following:

<i>(in thousands)</i>	For the Three Months Ended March 31,	
	2023	2022
Operating leases		
Operating lease cost	\$ 112	\$ 26
Operating lease expense	112	26
Short-term lease rent expense	9	7
Variable lease cost	2,773	—
Total rent expense	\$ 2,894	\$ 33

Additional information regarding the Company's leasing activities as a lessee is as follows:

<i>(in thousands, except term and discount rate data)</i>	For the Three Months Ended March 31,	
	2023	2022
Operating cash flows from operating leases	\$ (2)	\$ 17
Weighted-average remaining lease term – operating leases	3.5	4.7
Weighted-average discount rate – operating leases	5%	5%

Year	Amount <i>(in thousands)</i>	
2023 (remaining)	\$	346
2024		362
2025		312
2026		241
2027		102
Thereafter		—
Total	\$	1,363

NOTE 12 – LEGAL PROCEEDINGS

Compute North Bankruptcy

On September 22, 2022, Compute North Holdings, Inc. (currently d/b/a Mining Project Wind Down Holdings, Inc.) and certain of its affiliates (collectively, "Compute North") filed for chapter 11 bankruptcy protection. Compute North provided operating services to the Company and hosted our mining rigs at multiple facilities. We delivered miners to Compute North, which then installed the mining rigs at those facilities, operated and maintained the mining rigs, and provided energy to keep the miners operating. During the course of the chapter 11 cases, Compute North sold substantially all of their assets in a series of 363 sale transactions, including Compute North's ownership interests in non-debtor entities that own or partially-own facilities that house our miners.

On November 23, 2022, the Company and certain of its affiliates timely filed proofs of claim asserting various claims against Compute North, including: (i) claims arising under hosting agreements between the Company and Compute North LLC; (ii) claims arising under that certain Senior Promissory Note, dated as of July 1, 2022, by and between the Company, as Lender, and Compute North LLC, as Borrower; (iii) claims arising from the breach of a letter of intent between us and Compute North LLC; and (iv) claims for daily lost revenue, profits and other damages against Compute North.

On February 9, 2023, the Bankruptcy Court approved a settlement stipulation between the Company and Compute North, pursuant to which the proofs of claim filed by the Company and certain of its affiliates were resolved, and the Company received a single allowed unsecured claim against Compute North LLC in the amount of \$40,000,000 and its Preferred Equity Interests in Compute North Holdings, Inc. in the amount of 39,597 shares of Series C Preferred Stock was confirmed. In exchange, the Company agreed to vote in favor of Compute North's chapter 11 plan.

On February 16, 2023, the Bankruptcy Court confirmed Compute North's chapter 11 plan (the "Plan"), pursuant to which Compute North will liquidate its remaining assets and distribute proceeds arising therefrom in accordance with the waterfall set forth in the Plan. In its disclosure statement filed on December 19, 2022, the Compute North Debtors projected that holders of allowed general unsecured claims could recover anywhere between 8% to 65% on their claims, while holders of preferred equity interests are expected to recover nothing on their interests. The Plan became effective on March 31, 2023. At this time, the Company cannot predict the quantum of its potential recovery on account of its allowed general unsecured claim and preferred equity interests or the timing of when it would receive any distributions under the Plan on account of its claims and interests.

Derivative Complaints

On February 18, 2022, a shareholder derivative complaint was filed in the United States District Court for the District of Nevada, against current and former members of the Company's board of directors and senior management. The complaint is based on allegations substantially similar to the allegations in the December 2021 putative class action complaint, related to the Company's disclosure of an SEC investigation previously made by the Company on November 15, 2021. On March 4, 2022, the complaint was served on the Company. On April 4, 2022, the defendants moved to dismiss the complaint.

On May 5, 2022, a second shareholder derivative complaint was filed in the United States District Court for the District of Nevada, against current and former members of the Company's board of directors and senior management. The second shareholder derivative complaint is based on allegations substantially similar to the allegations in the February 18, 2022 derivative complaint. On May 11, 2022, the defendants moved to dismiss the second shareholder derivative complaint.

On June 1, 2022, the Court entered an order consolidating the two derivative actions. A June 13, 2022 scheduling order provided for plaintiffs to file a consolidated complaint and for renewed motions to dismiss the consolidated shareholder derivative complaint. On November 22, 2022, before a consolidated complaint was due, plaintiffs voluntarily dismissed both actions without prejudice. On November 23, 2022, both actions were closed.

Putative Class Action Complaint

On December 17, 2021, a putative class action complaint was filed in the United States District Court for the District of Nevada, against the Company and present and former senior management. The complaint alleges securities fraud related to the disclosure of an SEC investigation previously made by the Company on November 15, 2021. Plaintiff Tad Schlatre served the complaint on the Company on March 1, 2022. On September 12, 2022, the court appointed Carlos Marina as lead plaintiff. On October 21, 2022, lead plaintiff voluntarily dismissed the complaint without prejudice. On December 7, 2022, the action was closed.

On March 30, 2023, a putative class action complaint was filed in the United States District Court for the District of Nevada, against the Company and present and former senior management. The complaint alleges securities fraud related to the Company's announcement of accounting restatements on February 28, 2023. Plaintiff has not served the complaint on the Company.

Information Subpoenas

On October 6, 2020, the Company entered into a series of agreements with multiple parties to design and build a data center for up to 100-megawatts in Hardin, MT. In conjunction therewith, the Company filed a Current Report on Form 8-K on October 13, 2020. The 8-K discloses that, pursuant to a Data Facility Services Agreement, the Company issued 6,000,000 shares of restricted Common Stock, in transactions exempt from registration under Section 4(a)(2) of the Securities Act of 1933, as amended. During the quarter ended September 30, 2021, the Company and certain of its executives received a subpoena to produce documents and communications concerning the Hardin, Montana data center facility described in our Form 8-K dated October 13, 2020. The Company received an additional subpoena from the SEC on April 10, 2023, relating to, among other things, transactions with related parties. We understand that the SEC may be investigating whether or not there may have been any violations of the federal securities law. We are cooperating with the SEC.

On January 14, 2021, Plaintiff Michael Ho (“Plaintiff” or “Ho”) filed a Civil Complaint for Damages and Restitution (“Complaint”) against the Company. The Complaint alleges six causes of action against the Company, (1) Breach of Written Contract; (2) Breach of Implied Contract; (3) Quasi-Contract; (4) Services Rendered; (5) Intentional Interference with Prospective Economic Relations; and (6) Negligent Interference with Prospective Economic Relations. The claims arise from the same set of facts. Ho alleges that the Company profited from commercially-sensitive information he shared with the Company and then it refused to compensate him for his role in securing the acquisition of a supplier of energy for the Company. On February 22, 2021, the Company responded to Mr. Ho’s Complaint with a general denial and the assertion of applicable affirmative defenses. Then, on February 25, 2021, the Company removed the action to the United States District Court in the Central District of California, where the action remains pending. The Company filed a motion for summary judgment/adjudication of all causes of action. On February 11, 2022, the Court granted the motion and dismissed Ho’s 2nd, 5th and 6th causes of action. Discovery is substantially closed. The Court held a pre-trial conference on February 24, 2022, where it vacated the March 3, 2022 trial date and ordered the parties to meet and confer on a new trial date. The Court discussed the various theories of damages maintained by the parties. In its ruling on the summary judgment motion and at the pre-trial conference on February 24, 2022, the Court noted that a jury is more likely to accept \$150,000 as an appropriate damages amount if liability is found, as opposed to the various theories espoused by Ho that result in multi-million-dollar recoveries. Due to outstanding issues of fact and law, it is impossible to predict the outcome at this time; however, after consulting legal counsel, the Company is confident that it will prevail in this litigation, since it did not have a contract with Mr. Ho and he did not disclose any commercially-sensitive information under any mutual nondisclosure agreement that was used to structure any joint venture with energy providers. The trial has been rescheduled for January 29, 2024, and is scheduled for four days, including jury selection.

NOTE 13 – RELATED PARTY TRANSACTIONS

On September 23, 2022, the Company made an incremental \$30,000 thousand investment in Auradine, Inc., bringing its total holdings in Auradine to \$35,500 thousand based upon a previously issued and disclosed SAFE instrument. Said Ouissal, a director of the Company, currently owns approximately 5% of the issued and outstanding shares of Auradine, and Fred Thiel, the Company’s Chairman and CEO, sits on Auradine’s Board of Directors. On November 3, 2022, the Company’s Board met and determined that Said Ouissal was no longer deemed to be an independent director of the Company. As a result, Mr. Ouissal stepped down from all Board Committees.

NOTE 14 – SUBSEQUENT EVENTS

The Company has evaluated other subsequent events through the date the consolidated financial statements were available to be issued and has concluded that no such events or transactions took place that would require disclosure.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

This report on Form 10-Q ("Report") and other written and oral statements made from time to time by us may contain so-called "forward-looking statements," all of which are subject to risks and uncertainties. Forward-looking statements can be identified by the use of words such as "expects," "plans," "will," "forecasts," "projects," "intends," "estimates," and other words of similar meaning. One can identify them by the fact that they do not relate strictly to historical or current facts. These statements are likely to address our growth strategy, financial results and product and development programs. One must carefully consider any such statement and should understand that many factors could cause actual results to differ from our forward-looking statements. These factors may include inaccurate assumptions and a broad variety of other risks and uncertainties, including some that are known and some that are not. No forward-looking statement can be guaranteed, and actual future results may vary materially.

Information regarding market and industry statistics contained in this Report is included based on information available to us that we believe is accurate. It is generally based on industry and other publications that are not produced for purposes of securities offerings or economic analysis. We have not reviewed or included data from all sources and cannot assure investors of the accuracy or completeness of the data included in this Report. Forecasts and other forward-looking information obtained from these sources are subject to the same qualifications and the additional uncertainties accompanying any estimates of future market size, revenue and market acceptance of products and services. We do not assume any obligation to update any forward-looking statement. As a result, investors should not place undue reliance on these forward-looking statements.

The following discussion and analysis are intended as a review of significant factors affecting our financial condition and results of operations for the periods indicated. The discussion should be read in conjunction with our consolidated financial statements and the notes presented herein. In addition to historical information, the following Management's Discussion and Analysis of Financial Condition and Results of Operations contains forward-looking statements that involve risks and uncertainties. Our actual results could differ significantly from those expressed, implied or anticipated in these forward-looking statements as a result of certain factors discussed herein and any other periodic reports filed and to be filed with the Securities and Exchange Commission.

Cautionary Note Regarding Forward-Looking Statements

This report and other documents that we file with the Securities and Exchange Commission contain forward-looking statements that are based on current expectations, estimates, forecasts and projections about our future performance, our business, our beliefs and our management's assumptions. Statements that are not historical facts are forward-looking statements. Words such as "expect," "outlook," "forecast," "would," "could," "should," "project," "intend," "plan," "continue," "sustain", "on track", "believe," "seek," "estimate," "anticipate," "may," "assume," and variations of such words and similar expressions are often used to identify such forward-looking statements, which are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are not guarantees of future performance and involve risks, assumptions and uncertainties, including, but not limited to, those described in our reports that we file or furnish with the Securities and Exchange Commission. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those indicated or anticipated by such forward-looking statements. Accordingly, you are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date they are made. Except to the extent required by law, we undertake no obligation to update publicly any forward-looking statements after the date they are made, whether as a result of new information, future events, changes in assumptions or otherwise.

Business Overview

The Company was incorporated in the State of Nevada on February 23, 2010 under the name Verve Ventures, Inc. In October 2012, the Company commenced IP licensing operations, at which time the Company's name was changed to Marathon Patent Group, Inc. The Company commenced mining bitcoin in 2018 and changed its name to Marathon Digital Holdings, Inc. on March 1, 2021. As of March 31, 2023, the Company is solely focused on the mining of bitcoin and ancillary opportunities within the Bitcoin ecosystem under the name Marathon Digital Holdings, Inc. and operates primarily in the United States and with certain strategic joint ventures in the Middle East under development.

Developments during the three months ended March 31, 2023

The Company has continued its focus on expanding its operational capabilities during the period both domestically and internationally.

On January 27, 2023, the Company and FS Innovation, LLC ("FSI") entered into a Shareholders' Agreement (the "Agreement") regarding formation of an Abu Dhabi Global Markets company (the "ADGM Entity"), whose purpose shall be to jointly (a) establish and operate one or more mining facilities for digital assets; and (b) mine digital assets (collectively, the "Business"). The initial project by the ADGM Entity shall consist of two digital asset mining sites comprising 250 MW in Abu Dhabi, and the initial equity ownership in the ADGM Entity shall be 80% FSI and 20% the Company, and capital contributions will be made, subject to the satisfaction or waiver of certain conditions, during the 2023 development period in those proportions, consisting of both cash and in kind, in amounts of approximately \$406 million in aggregate. FSI will appoint four directors to the board of the ADGM Entity, and the Company will appoint one director.

Unless otherwise not permitted by applicable law, the digital assets mined by the ADGM Entity will be distributed to the Company and FSI twice a month in proportion to their respective equity interests in the ADGM Entity. There are market provisions in the Agreement with respect to financial and tax matters.

The Agreement shall terminate at the earlier of the mutual written agreement of the parties, winding up of the ADGM Entity or the ownership by a shareholder of all of the outstanding equity interests in the ADGM Entity. The Agreement contains market terms on transfer of shares by a shareholder, pre-emptive rights and certain tag along and drag along rights upon a sale of the ADGM Entity. Furthermore, there are five year restrictive covenants which, inter alia, prevent Marathon from competing in the UAE with the Business or with the business of FSI or any of certain related parties and prevent FSI from competing in the U.S. with the business of Marathon.

The Company also made progress in installing and energizing its operations at various locations throughout the US, and in particular its two North Dakota sites. The Garden City, TX site is fully installed but is pending regulatory approval and was therefore not yet operational at March 31, 2023. Bitcoin production increased to 2,195 bitcoin during the three months ended March 31, 2023, an average of 24.4 bitcoin per day. During the three months ended March 31, 2022, we produced 1,259 bitcoin, an average of 14.0 bitcoin per day. The 74% increase in production was a result of increasing the scale of our operations, primarily from the commencement and ramp up of operations at our North Dakota sites.

Bitcoin prices also rebounded significantly during the 2023 period, increasing from \$16,548 per bitcoin at December 31, 2022 to \$28,474 per bitcoin at March 31, 2023. This increase in the market value of bitcoin resulted in lower levels of impairment recorded during the period, and a higher market value of our bitcoin holdings at March 31, 2023 compared with December 31, 2022.

The Company also commenced a program to sell some of its bitcoin as a means of offsetting monthly cash operating costs. We sold 2,900 bitcoin for total proceeds of \$62,646 thousand, realizing gains on sales of bitcoin of \$17,615 thousand during the three months ended March 31, 2023. There were no such sales in the prior-year period.

The Company terminated its credit facilities with Silvergate Bank and responded to the closure of Signature Bank by diversifying its cash management services among several institutions. Key activities during the period related to these efforts included the following:

- On February 6, 2023, the Company provided Silvergate Bank with the required 30-day notice stating the Company's intent to prepay the outstanding balance on its term loan facility as well as the Company's intent to terminate the term loan facility. The Company and Silvergate Bank subsequently agreed to terminate the RLOC facility. On March 8, 2023, the Company prepaid the term loan and terminated the RLOC facility with Silvergate Bank.
- On March 12, 2023, Signature Bank was closed by the New York State Department of Financial Services. On that same date the FDIC was appointed as receiver and transferred all the deposits and substantially all of the assets of Signature Bank to Signature Bridge Bank, N.A., a full-service bank that was being operated by the FDIC. The Company held approximately \$142,000 thousand cash deposits at Signature Bridge Bank, N.A. when normal banking activities resumed on March 13, 2023. The Company reduced its balances at Signature Bridge Bank and its successor institution by transferring funds to other financial institutions and through other treasury management activities. The Company no longer has any deposits at Signature Bank or its successors.

Critical Accounting Policies and Estimates

The following accounting policies relate to the significant areas involving management's judgments and estimates in the preparation of our financial statements, and are those that we believe are the most critical to aid your understanding and evaluation of this management discussion and analysis:

- Digital assets
- Revenue from contracts with customers
- Long-lived assets
- Income taxes

Digital assets

Digital assets (bitcoin) are included in current and other assets in the accompanying consolidated condensed balance sheet. Digital assets awarded to the Company through its mining activities are accounted for in accordance with the Company's revenue recognition policy below.

Digital assets are accounted for as intangible assets with indefinite useful lives and are recorded at cost less impairment in accordance with ASC 350 – "Intangibles-Goodwill and Other" ("ASC 350"). An intangible asset with an indefinite useful life is not amortized but assessed for impairment annually, or more frequently, when events or changes in circumstances occur indicating that it is more likely than not that the indefinite-lived asset is impaired. Whenever the exchange-traded price of digital assets declines below its carrying value, the Company has determined that it is more likely than not that an impairment exists and records impairment equal to the amount by which the carrying value exceeds the fair value at that point in time. The Company has deemed the price of digital assets to be a Level 1 input under the ASC 820 - "Fair Value Measurement" ("ASC 820") hierarchy as these were based on observable quoted prices in the Company's principal market for identical assets. Subsequent reversal of impairment losses is not permitted.

Purchases of digital assets by the Company are included within investing activities in the accompanying consolidated condensed statements of cash flows, while digital assets awarded to the Company through its mining activities are included as a reconciling item within operating activities on the accompanying consolidated condensed statements of cash flows. The sales of digital assets are included within investing activities in the accompanying consolidated condensed statements of cash flows and any realized gains or losses from such sales are included in operating expenses in the consolidated condensed statements of operations.

Revenues from contracts with customers

The Company recognizes revenue in accordance with FASB ASC Topic 606 – “Revenue from Contracts with Customers” (“ASC 606”). The core principle of the revenue standard is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods or services. The following five steps are applied to achieve that core principle:

- Step 1: Identify the contract with the customer
- Step 2: Identify the performance obligations in the contract
- Step 3: Determine the transaction price
- Step 4: Allocate the transaction price to the performance obligations in the contract
- Step 5: Recognize the revenue when the Company satisfies a performance obligation

In order to identify the performance obligations in a contract with a customer, an entity must assess the promised goods or services in the contract and identify each promised good or service that is distinct. A performance obligation meets ASC 606’s definition of a “distinct” good or service (or bundle of goods or services) if both of the following criteria are met: The customer can benefit from the good or service either on its own or together with other resources that are readily available to the customer (i.e., the good or service is capable of being distinct), and the entity’s promise to transfer the good or service to the customer is separately identifiable from other promises in the contract (i.e., the promise to transfer the good or service is distinct within the context of the contract).

If a good or service is not distinct, the good or service is combined with other promised goods or services until a bundle of goods or services is identified that is distinct.

The transaction price is the amount of consideration to which an entity expects to be entitled in exchange for transferring promised goods or services to a customer. The consideration promised in a contract with a customer may include fixed amounts, variable amounts, or both. When determining the transaction price, an entity must consider the effects of all of the following:

- Variable consideration
- Constraining estimates of variable consideration
- The existence of a significant financing component in the contract
- Noncash consideration
- Consideration payable to a customer

Variable consideration is included in the transaction price only to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved. The transaction price is allocated to each performance obligation on a relative standalone selling price basis. The transaction price allocated to each performance obligation is recognized when that performance obligation is satisfied, at a point in time or over time, as appropriate.

The Company’s ongoing major or central operation is to provide bitcoin transaction verification services to the bitcoin network through a Company-operated mining pool as the operator and a participant in a private pool (“Operator”) (such activity as Participant and Operator, collectively, “mining”) and to provide computing power to collectives of third-party bitcoin miners (such collectives, “mining pools”) as a participant (“Participant”). The Company currently mines in a self-operated pool, which was previously open to third-party pool participants from September 2021 until May 2022.

Operator

As Operator, the Company provides transaction verification services. Transaction verification services are an output of the Company's ordinary activities; therefore, the Company views the transaction requestor as a customer and accounts for the transaction fees it earns as revenue from a contract with a customer under ASC 606. The bitcoin network is not an entity such that it may not meet the definition of a customer; however, the Company has concluded it is appropriate to apply ASC 606 by analogy to block rewards earned from the network. A contract exists under ASC 606 at the point the Company successfully validates a transaction to the distributed ledger. At this point, the performance obligation to validate the requested transaction has been satisfied and a contract is deemed to exist.

The Company engaged unrelated third-party mining enterprises ("pool participants") to contribute computing power, and in exchange, remitted transaction fees and block rewards to pool participants on a pro rata basis according to each respective pool participant's contributed computing power ("hash rate"). The Company determined that it controlled the service of providing transaction verification services to the network and requester as the Company's wallet as Operator was recorded on the distributed ledger as the transaction verifier of record, the pool participants entered into contracts with the Company and not the network or requester, and the Company delegated mining work to pool participants. Therefore, the Company recorded all of the transaction fees and block rewards earned from transactions assigned to MaraPool as revenue, and the portion of the transaction fees and block rewards remitted to MaraPool participants as cost of revenues.

ASC 606-10-32-21 requires entities to measure the estimated fair value of noncash consideration at contract inception, which is the same time the block reward and transaction fee is earned and the performance obligation to the requester and the network is fulfilled by successfully validating the applicable block of transactions. For reasons of operational practicality, the Company applies an accounting convention to use the daily quoted closing U.S. dollar spot rate of bitcoin each day to determine the fair value of bitcoin earned as transaction fees and block rewards in the Company's wallet during that day. This accounting convention does not result in materially different revenue recognition from using the fair value of the bitcoin earned at contract inception (i.e., the moment a block is solved) and has been consistently applied in all periods presented.

Participant

When the Company is a Participant in a third-party operated mining pool, the Company provides hash rate that is an output of the Company's ordinary activities in exchange for consideration. The Company considers the third-party mining pool operators its customers under Topic 606. These contracts are period-to-period contracts because they are terminable at any time by either party without compensation. A new contract is determined to exist each period (i.e., second, minute, hour) that neither the Company, nor the pool operator, terminates the arrangement.

The consideration to which the Company is entitled is a fractional share of the block award and transaction fees; the amount of which is based on the proportion of the Company's contributed hash rate to the total computing power contributed by all mining pool participants in solving the current algorithm as calculated and determined by the pool operator, usually through usage of a mining software, net of any pool fees due to the pool operator. The Company receives the consideration in aggregate typically within 24 hours of winning the block, and any disputes to the consideration to which the Company is entitled can be made by notifying and resolving the issues with the pool operators. However, there have not been any subsequent adjustments to the fees received, therefore the Company concludes that it is probable that a significant reversal of revenue recognized will not occur upon settlement.

Providing computing power on rigs to solve complex cryptographic algorithms in support of blockchain mining (in a process known as "solving a block") is the primary output of the Company's ordinary activities. The provision of computing power is the only performance obligation under our arrangements with third-party mining pool operators. The transaction consideration the Company receives is non-cash (i.e., bitcoin) and entirely variable as it is unknown at each contract inception whether the Company will earn any consideration during the period, and if it does become entitled to consideration, how much consideration it will be entitled to.

In accordance with FASB ASC 606-10-32-11 and 32-12, the Company constrains the variable consideration to which it is entitled and does not recognize revenue for such amounts until it receives confirmation of the amount, usually via the settlement of the fractional share of block reward and transaction fees in the Company's digital wallet. Since the Company does not have visibility on its contributed computing power relative to the pool's total computing power, which is one of the key inputs that determine the fractional block reward and transaction fees share to which it is entitled to; therefore, it only knows the amount of non-cash consideration to which it is entitled upon settlement of the Company's earned fractional share into its digital wallet. Because of this and the fact that the Company's fractional share substantively varies from block to block, it is not probable that a significant reversal of revenue will not occur until the uncertainty related to the Bitcoin to which the Company is entitled ultimately resolves at settlement. At settlement, the total block reward and transaction fees consideration earned by the pool operator are allocated and distributed (with no provision for, or risk of, clawback) by the pool operator to each participant based on each participant's contribution of computing power. Consequently, at that point in time, the risk of significant revenue reversal abates such that consideration should be added to the transaction price (and revenue recognized accordingly). Settlement of consideration typically occurs within 24 hours of when a block is won unless such block is won over a weekend or holiday, in which case settlement can take up to 72 hours.

The Company uses its accounting convention to measure revenue based upon the daily quoted closing U.S. dollar spot rate of bitcoin on the day the transaction fees and block rewards are settled in the Company's wallet. This accounting convention does not result in materially different revenue recognition from using the fair value of the bitcoin earned at contract inception and has been consistently applied in all periods presented.

Long-lived assets

The Company has long-lived assets that consist primarily of property and equipment stated at cost, net of accumulated depreciation and impairment, as applicable. The depreciation charge is calculated on a straight-line basis and depends on the estimated useful lives of each type of asset and, in certain circumstances, estimates of fair values and residual values. The Company's property and equipment is primarily composed of bitcoin miners, which are largely homogeneous and have approximately the same useful lives. Accordingly, the Company utilizes the group method of depreciation for its bitcoin miners. The Company updates the estimated useful lives of its asset group of bitcoin mining rigs periodically as information on the operations of the mining rigs indicates changes are required. The Company assesses and adjusts the estimated useful lives of its mining rigs when there are indicators that the productivity of the mining assets are higher or lower than the assigned estimated useful lives.

Management reviews the Company's long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset (asset group) may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of their carrying amount to the undiscounted future cash flows expected to be generated thereby. If such assets are not recoverable based on that test, impairment is recorded in the amount by which the carrying amount of the assets exceeds their fair value as determined in accordance with ASC 820.

Income taxes

The primary objectives of accounting for income taxes are (i) to recognize the amount of income taxes payable or refundable for the current year, and (ii) to recognize deferred tax liabilities and assets for the future tax consequences of events that have been recognized in our financial statements or tax returns. The Company accounts for income taxes in accordance with ASC 740 - "Income Taxes" ("ASC 740"), using the asset and liability method. Under this method, deferred tax assets and liabilities are calculated based on enacted tax rates and are recognized for the expected future tax consequences of temporary differences between the financial reporting and tax basis of assets and liabilities and for operating losses and tax credit carryforwards. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in operations in the period that includes the enactment date. Management must make assumptions, judgments and estimates to determine our income tax benefit or expense and our deferred tax assets and liabilities. We recognize tax positions when they are more likely than not of being sustained. Recognized tax positions are measured at the largest amount of benefit greater than 50% likely of being realized. Each period, the Company evaluates tax positions and adjust related tax assets and liabilities in light of changing facts and circumstances.

The Company records a valuation allowance to reduce our deferred tax assets to the net amount that we believe is more likely than not to be realized. Accordingly, the need to establish such allowance is assessed periodically by considering matters such as future reversals of existing taxable temporary differences, projected future taxable income, tax planning strategies and results of recent operations.

Recent Issued Accounting Standards

See **NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES** to our consolidated condensed financial statements for a discussion of recent accounting standards and pronouncements.

Non-GAAP Financial Measures

We provide investors with a reconciliation from net loss to the non-GAAP measure known as adjusted EBITDA as a component of Management's Discussion and Analysis. For each period in question, we define adjusted EBITDA as (a) GAAP net income (loss) plus (b) adjustments to add back the impacts of (1) depreciation and amortization, (2) interest expense, (3) income tax expense (benefit) and (4) adjustments for non-cash and non-recurring items which currently include (i) stock compensation expense, (ii) impairments of patents and (iii) losses on extinguishment of debt.

Adjusted EBITDA is not a measurement of financial performance under GAAP and, as a result, this measure may not be comparable to similarly titled measures of other companies. Non-GAAP financial measures are subject to material limitations as they are not in accordance with, or a substitute for, measurements prepared in accordance with GAAP. Adjusted EBITDA is not meant to be considered in isolation and should be read only in conjunction with our Interim Reports on Form 10-Q and our Annual Reports on Form 10-K as filed with the Securities and Exchange Commission. Management uses both adjusted EBITDA and the supplemental information provided herein as a means of understanding, managing, and evaluating business performance and to help inform operating decision making. We rely primarily on our consolidated condensed financial statements to understand, manage, and evaluate our financial performance and use the non-GAAP financial measures only supplementally.

Results of Operations – Three months ended March 31, 2023 compared to the three months ended March 31, 2022

Financial Summary Table:

<i>(in thousands)</i>	Three Months Ended March 31,		Favorable (Unfavorable)
	2023	2022	
Total revenues	\$ 51,132	\$ 51,723	\$ (591)
Costs and expenses			
Cost of revenues			
Cost of revenues - energy, hosting and other	(33,377)	(12,522)	(20,855)
Cost of revenues - depreciation and amortization	(17,733)	(13,877)	(3,856)
Total cost of revenues	(51,110)	(26,399)	(24,711)
Operating expenses			
General and administrative expenses	(15,344)	(15,515)	171
Impairment of digital assets	(6,151)	(17,647)	11,496
Impairment of patents	—	(919)	919
Realized gains on digital assets and unrealized gains (losses) on digital assets loan receivable	17,615	(461)	18,076
Realized and unrealized gains (losses) on digital assets held within Investment Fund	—	(5,328)	5,328
Total operating expenses	(3,880)	(39,870)	35,990
Operating loss	(3,858)	(14,546)	10,688
Other non-operating income	791	247	544
Loss from extinguishment of debt	(333)	—	(333)
Interest expense	(3,760)	(2,814)	(946)
Loss before income taxes	(7,160)	(17,113)	9,953
Income tax benefit (expense)	(75)	4,262	(4,337)
Net loss	\$ (7,235)	\$ (12,851)	\$ 5,616

Supplemental information:

Bitcoin (“BTC”) production during the period, in whole BTC	2,195	1,259	936
Average BTC per day, in whole BTC	24.4	14.0	10.4
Total margin (total revenues less total cost of revenues)	\$ 22	\$ 25,324	\$ (25,302)
Total margin excluding depreciation and amortization	\$ 17,755	\$ 39,201	\$ (21,446)
General and administrative expenses excluding stock-based compensation	\$ (11,399)	\$ (6,240)	\$ (5,159)
Installed Hash Rate (Exahashes per second) - at end of period (1)	15.4	3.9	11.5
Energized Hash Rate (Exahashes per second) - at end of period (1)	11.5	3.9	7.6

Reconciliation to Adjusted EBITDA:

Net (loss)	\$ (7,235)	\$ (12,851)	\$ 5,616
Exclude: Interest expense	3,760	2,814	946
Exclude: Income tax expense (benefit)	75	(4,262)	4,337
EBIT	(3,400)	(14,299)	10,899
Exclude: Depreciation and amortization	17,733	13,877	3,856
EBITDA	14,333	(422)	14,755
Stock compensation expense	3,945	9,275	(5,330)
Loss from extinguishment of debt	333	—	333
Impairment of patents	—	919	(919)
Adjusted EBITDA	\$ 18,611	\$ 9,772	\$ 8,839

- (1) The Company defines Energized Hash Rate as the total hash rate that could theoretically be generated if all mining rigs that have been operational / energized are currently in operation and running at 100% of the manufacturers’ specifications (includes mining servers that are offline for maintenance or similar reasons). The Company uses this metric as an indicator of progress in bringing rigs on-line. The Company defines Installed Hash Rate as the sum of Energized Hash Rate and hash rate that has been installed but is not yet operational (e.g. mining rigs that have been installed, but are not yet energized and in operation). The Company uses this metric as an indicator of progress in deploying mining rigs at its production sites. Hash rates are estimates based on the manufacturers’ specifications. All figures are rounded.

The Company believes that these metrics are useful as an indicator of potential bitcoin production. However, these metrics cannot be tied directly to any production level expected to be actually achieved as (a) there may be delays in the energization of Installed Hash Rate (b) the Company cannot predict when installed and energized rigs may be offline for any reason, including curtailment or machine failure and (c) the Company cannot predict Global Hash Rate (and therefore the Company’s share of the Global Hash Rate), which has significant impact on the Company’s ability to generate bitcoin in any given period.

Revenues: We generated revenues of \$51,132 thousand for the three months ended March 31, 2023 compared with \$51,723 thousand in the prior-year period. The \$591 thousand decrease in revenue was primarily driven by a \$39,044 thousand decrease in revenue resulting from lower bitcoin prices in the current year period, partially offset by increased revenues of \$38,453 thousand related to a 74% increase in production year-over-year. Average daily bitcoin production was 24.4 bitcoin in the current year period compared with 14.0 in the prior-year period, reflecting the increasing scale of our operations.

Cost of revenues: Cost of revenues – energy, hosting and other during the three months ended March 31, 2023, totaled \$33,377 thousand compared with \$12,522 thousand in the prior-year period. The \$20,855 thousand increase was driven by higher production costs of \$17,022 thousand, and the impact of increased bitcoin production of \$6,974 thousand partially offset by the absence of accelerated costs associated with the exit of the Hardin facility in the prior-year period of \$3,141 thousand. Cost of revenues – depreciation and amortization during the three months ended March 31, 2023, totaled \$17,733 thousand compared with \$13,877 thousand in the prior-year period. The increase in depreciation was primarily related to an increase in mining rigs in operation related to the increased scale of the business partially offset by the absence of accelerated depreciation of \$4,629 thousand recorded in the prior-year period related to the exit from Hardin.

Total Margin: Total margin was a loss of \$22 thousand in the current three months ended March 31, 2023 compared with income of \$25,324 thousand in the prior-year period, a decline of \$25,302 thousand. This decline was driven by the factors discussed above, which are summarized in the table below:

<u>Revenues:</u>	(in thousands)
<ul style="list-style-type: none"> ● Impact of higher production activity 	\$ 38,453
<ul style="list-style-type: none"> ● Impact of lower bitcoin market prices 	(39,044)
<u>Cost of revenues – energy, hosting and other:</u>	
<ul style="list-style-type: none"> ● Impact of higher unit costs 	(17,022)
<ul style="list-style-type: none"> ● Impact of accelerated cost recognition from Hardin exit 	3,141
<ul style="list-style-type: none"> ● Impact of higher production activity 	(6,974)
<u>Cost of revenues – depreciation and amortization:</u>	
<ul style="list-style-type: none"> ● Impact of accelerated cost recognition from Hardin exit 	4,629
<ul style="list-style-type: none"> ● Other, primarily increased mining rigs in operation 	(8,485)
	<u>\$ (25,302)</u>

General and administrative expenses: General and administrative expenses were \$15,344 thousand for the three months ended March 31, 2023, compared with expenses of \$15,515 thousand in the prior-year period. Our general and administrative expenses included stock-based (non-cash) compensation expense of \$3,945 thousand in the current period and \$9,275 thousand in the prior-year period. The decrease in stock-based compensation is primarily related to generally lower value of the Company’s stock when compared to the prior year partially offset by additional restricted stock unit issuances associated with increases in headcount. General and administrative expenses excluding stock-based compensation was \$11,399 thousand in the current period compared with \$6,240 thousand in the prior-year period. This \$5,159 thousand increase in expense was primarily due to the increases associated with the larger scale of the business, including higher cash compensation and benefits costs of \$2,080 thousand (resulting primarily from an increase in headcount from 13 employees in the prior-year period to over 30 employees in 2023), increased professional fees of \$2,358 thousand and increased insurance costs of \$1,158 thousand.

Impairment of digital assets: We incurred impairments of digital assets during the three months ended March 31, 2023 of \$6,151 thousand compared with impairments of \$17,647 thousand in the prior-year period. This decrease in impairment is primarily related to bitcoin prices that have generally been increasing during the current year period compared with prices that were generally decreasing during the prior-year period.

Impairment of patents: The Company recorded an impairment of \$919 thousand in the prior-year period related to certain patents no longer utilized in its business operations.

Realized gains on digital assets and unrealized gains (losses) digital assets loan receivable: The Company recognized realized gains of \$17,615 thousand on the sale of approximately 2,900 bitcoin during the three months ended March 31, 2023. There were no such sales in the prior-year period.

We incurred a loss of \$461 thousand during the three months ended March 31, 2022 primarily a result of the decline in fair value of digital asset loan receivable prior to the repayment of the loan in June, 2022.

Realized and unrealized gains (losses) on digital assets held within Investment Fund: The Company exited the fund in June 2022 and as such, there were no such gains or losses in the current year period. Total changes in the fair value of the Company's investment fund during the three months ended March 31, 2022 resulted in an unrealized loss of \$5,328 thousand.

Other non-operating income (loss): Other non-operating income was \$791 thousand during the three months ended March 31, 2023 compared with \$247 thousand in the prior-year period. The \$544 favorable variance was primarily due to increased interest income.

Loss on extinguishment of debt: On March 8, 2023 the Company paid \$50,000 thousand to Silvergate Bank and terminated its term loan facility. On that same date, the Company and Silvergate Bank also agreed to terminate the Company's revolving credit facility ("RLOC"). Although there were no prepayment penalties associated with these actions, the Company incurred a loss on extinguishment of debt of \$333 thousand related to the write-off of the unamortized balance of debt issuance costs associated with the facilities.

Interest expense: Interest expense increased \$946 thousand from the prior-year period as a result of higher interest costs associated with the company's term loan facility. The Company incurred interest costs on the \$50,000 thousand outstanding balance on the term loan facility from January 1 through March 8, 2023. There were no borrowings on the term loan facility in the prior-year period.

Income tax (expense) benefit: The Company recorded income tax expense of \$75 thousand for the three months ended March 31, 2023 compared with an income tax benefit of \$4,262 thousand in the prior-year period. The unfavorable tax variance of \$4,337 thousand was primarily due to the establishment of a valuation allowance in the year ended December 31, 2022, as the Company determined it was more likely than not that they would not have sufficient future taxable income to realize the Company's federal and state deferred tax assets.

Net income (loss): The Company recorded a net loss of \$7,235 thousand for the three months ended March 31, 2023 compared with net loss of \$12,851 thousand in the prior-year period. This \$5,616 thousand improvement in net loss was primarily driven by the impact of the realized gain on sale of digital assets and favorable variances related to the impairment of digital assets and realized gains and losses on digital assets held within the investment fund partially offset by lower total margin.

Adjusted EBITDA: Adjusted EBITDA was \$18,611 thousand in the three months ended March 31, 2023 compared with \$9,772 thousand in the prior-year period. The \$8,839 thousand increase in adjusted EBITDA was primarily driven by positive impacts of realized gains on digital assets sold of \$17,615 thousand and lower impairment of digital assets of \$11,496 thousand. Adjusted EBITDA also benefited from the absence of several expenses recorded in the prior-year period, including realized and unrealized losses on digital assets held within the investment fund of \$5,328 thousand and realized gains on digital assets and unrealized gains (losses) on digital assets loan receivable of \$461 thousand. These favorable variances were partially offset by lower total margin excluding depreciation and amortization of \$21,446 thousand and higher general and administrative expenses excluding stock-based compensation of \$5,159 thousand.

Financial Condition and Liquidity

<i>(in thousands)</i>	Three Months Ended March 31,	
	2023	2022
Net cash used in operating activities	\$ (28,812)	\$ (26,062)
Net cash used in investing activities	(72,029)	(209,425)
Net cash provided by financing activities	113,218	85,473
Net (decrease) increase in cash, cash equivalents and restricted cash	12,377	(150,014)
Cash, cash equivalents and restricted cash — beginning of period	112,505	268,556
Cash, cash equivalents and restricted cash — end of period	\$ 124,882	\$ 118,542

Cash flows: Cash and cash equivalents totaled \$124,882 thousand at March 31, 2023, an increase of \$12,377 thousand from December 31, 2022. Restricted cash was zero at March 31, 2023, a decrease of \$8,800 thousand as the Company replaced cash-collateralized letters of credit with cash deposits during the quarter as a result of the closure of Signature Bank.

Cash flows from operating activities resulted in a use of funds of \$28,812 thousand, as cash provided from operating activities before changes in operating assets and liabilities of \$5,648 thousand was more than offset by a use of cash of \$34,460 thousand from changes in operating assets and liabilities. Changes in cash flow from operating assets and liabilities were driven by uses of funds associated with bitcoin production revenues of \$50,941 thousand and increases in deposits of \$23,124 thousand resulting from deposits associated with hosting agreements and deposits made as replacements for letters of credit. Prepaid expenses also increased, resulting in a use of cash of \$20,738 thousand as the Company prepaid certain expenses due in early April as a means of ensuring a smooth transition from Signature Bank in March 2023. These uses of funds were partially offset by proceeds from the sale of bitcoin of \$62,646 thousand.

Cash flows from investing activities resulted in a use of funds of \$72,029 thousand, primarily resulting from investments made as part of the establishment of the ADGM Entity (a \$43,194 thousand use of funds), advances to vendors of \$11,565 thousand, and capital expenditures of \$17,270 thousand.

Cash flows from financing activities resulted in a source of cash of \$113,218 thousand, primarily from proceeds from the issuance of common stock under the Company's At-The-Market facility of \$163,295 thousand partially offset by the repayment of the Company's term loan facility of \$50,000 thousand. There were no borrowings outstanding under the Company's revolving credit facility during the three months ended March 31, 2023. On March 8, 2023, the Company terminated both its term loan and its RLOC facilities with Silvergate Bank.

Bitcoin holdings as of March 31, 2023: At March 31, 2023, the Company held approximately 11,466 bitcoin on its balance sheet with a carrying value of \$189,087 thousand. The fair value of a single bitcoin was approximately \$28,474. As a result, the fair market value of our bitcoin holdings at March 31, 2023 was approximately \$326,487 thousand. We expect that our future bitcoin holdings will generally increase but will fluctuate from time-to-time, both in number of bitcoin held and fair value in US dollars, depending upon operating and market conditions. We intend to add to our bitcoin holdings primarily through our production activities and we also will continue to sell bitcoin as a means of generating cash to fund monthly operating costs and for general corporate purposes. We do not intend to make any significant purchases of bitcoin on the open market as means of increasing our bitcoin holdings, although we may buy and sell bitcoin from time-to-time (separately from what is outlined above) for treasury management purposes.

Liquidity outlook: Cash and cash equivalents totaled \$124,882 thousand at March 31, 2023. The Company expects to have sufficient liquidity, including cash on hand, cash received from sales of our bitcoin holdings, and access to public capital markets, to support ongoing operations. We will continue to seek to fund our business activities, and especially our growth opportunities, through the public capital markets, primarily through periodic equity issuances using our At-The-Market facility.

The risks to our liquidity outlook would include events that materially diminish our access to capital markets and/or the value of our bitcoin holdings and production capabilities, including:

- Failure to effectively execute our growth strategies.
- Challenges in the bitcoin mining space and/or additional contagion events (like the FTX collapse) that would damage the credibility of, and therefore investor confidence in, companies engaged in the digital assets space.
- Declines in bitcoin prices and/or production, which would impact both the value of our bitcoin holdings and our ongoing profitability.
- Significant increases in electricity costs if these cost increases were not accompanied by increases in the price of bitcoin, as this would also reduce profitability.
- Deteriorating macroeconomic conditions (for example a recession in 2023 that is deeper or longer than current expectations).

Off-balance Sheet Arrangements

None.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

The following discussion about our market risk exposures involves forward-looking statements. Actual results could differ materially from those discussed in the forward-looking statements.

Market Price Risk of Bitcoin. The Company holds a significant amount of bitcoin; therefore, it is exposed to the impact of market price changes in bitcoin on its bitcoin holdings. This exposure would generally manifest itself in the following areas:

- We account for our bitcoin holdings as indefinite lived intangible assets and we record impairment charges whenever the carrying value of our bitcoin holdings on the balance sheet exceeds their fair market value. Subsequent recovery of bitcoin prices would not impact the carrying value of bitcoin on the balance sheet, as recovery of previously recorded impairment charges are not allowed under US GAAP.
- Declines in the fair market value of bitcoin also impact the cash value that would be realized if we were to sell our bitcoin for cash, therefore having a negative impact on our liquidity.

At March 31, 2023, the Company held approximately 11,466 bitcoin and the fair value of a single bitcoin was approximately \$28,474, meaning that the fair value of our bitcoin holdings on that date was approximately \$326,487 thousand.

Interest rate risk. Prior to the termination of its credit facilities on March 8, 2023, the Company was exposed to interest rate risk as both our Term Loan and RLOC facilities called for interest at a variable rate tied to the Wall Street Journal Prime Rate, which was 7.75% as of March 8, 2023. Our Term Loan facility called for interest rates at the WSJ Prime rate plus a margin of 1.75% or 9.50% as of March 8, 2023. Our RLOC facility called for interest rates at the WSJ Prime rate plus a margin that varies based on the collateral posted as follows:

- 1.25% margin (9.00% currently) if the RLOC LTV Ratio is less than 40%
- 2.00% margin (9.75% currently) if the RLOC LTV Ratio is greater than 40% but less than 55%
- 2.75% margin (10.50% currently) if the RLOC LTV Ratio is greater than 55%

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Interim Report to ensure that the information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that information required to be disclosed in the reports we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosures. Based on this evaluation, our management concluded that our disclosure controls and procedures were not effective at the reasonable assurance level as of March 31, 2023 due to the following material weaknesses.

Material Weaknesses in Internal Control and Plan for Remediation

Based on its evaluation, management identified material weaknesses in internal control over financial reporting. These material weaknesses included:

- a material weakness related to the application and interpretation of generally accepted accounting principles (“GAAP”) that resulted in errors in four specific accounting areas, including consolidation, impairment of digital assets, disposal of property and equipment and principal versus agent considerations in revenue recognition.
- a material weakness related to the design and implementation of user access controls to ensure appropriate segregation of duties, or program change management controls for certain financially relevant systems impacting the Company’s processes around revenue recognition and digital assets to ensure that IT program and data changes affecting the Company’s (i) financial IT applications, (ii) digital currency mining equipment, and (iii) underlying accounting records, are identified, tested, authorized and implemented appropriately to validate that data produced by its relevant IT system(s) were complete and accurate. Automated process-level controls and manual controls that are dependent upon the information derived from such financially relevant systems were also determined to be ineffective as a result of such deficiency.
- a material weakness related to the ineffective design of a key manual control to detect material misstatements in revenue.

These material weaknesses create a reasonable possibility that a material misstatement to our consolidated financial statements or disclosures would not be prevented or detected on a timely basis.

Remediation

Our Board of Directors and management take internal control over financial reporting and the integrity of our financial statements seriously. Management continues to work to improve its controls related to the material weaknesses described above. Management will continue to implement measures to remediate the material weaknesses, such that these controls are designed, implemented, and operating effectively. In order to achieve the timely implementation of the above, Management has commenced the following actions and will continue to assess additional opportunities for remediation on an ongoing basis:

- Continue the process we started during 2022 of adding to our internal resources to enhance our capabilities in the areas of technical accounting, financial reporting, and internal controls, including a full time person dedicated to internal controls
- Continue the process started during 2022 of utilizing external third-party technical accounting resources to supplement our ability to interpret and apply GAAP as we continue to build our internal capabilities in these areas

- Continue to utilize external third-party audit and SOX 404 implementation firms to enable the Company to improve the Company's controls related to our material weaknesses.
- Continue to evaluate existing processes and implement new processes and controls where necessary in connection with remediating our material weaknesses, such that these controls are designed, implemented, and operating effectively

We recognize that the material weaknesses in our internal control over financial reporting will not be considered remediated until the remediated controls operate for a sufficient period of time and can be tested and concluded by management to be designed and operating effectively. Because our remediation efforts are ongoing, we cannot provide any assurance that these remediation efforts will be successful or that our internal control over financial reporting will be effective as a result of these efforts.

We continue to evaluate and work to improve our internal control over financial reporting related to the identified material weaknesses, and management may determine to take additional measures to address control deficiencies or determine to modify the remediation plan described above. In addition, we will report the progress and status of the above remediation efforts to the Audit Committee on a periodic basis.

As part of our ongoing program to implement changes and further improve our internal controls and in conjunction with our Code of Ethics, our independent directors have been working with management to include protocols and measures aimed at ensuring quality of our internal controls. Among those measures is the implementation of a whistle blower hotline, which allows third parties to anonymously report noncompliant activity. The hotline may be accessed as follows:

To file a report, use the Client Code "MarathonPG" and pick one of the following options:

- Call: 1-877-647-3335
- Click: <http://www.RedFlagReporting.com>

Changes in Internal Controls.

There have been no changes in our internal control over financial reporting during the quarter ended March 31, 2023 that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting other than the ongoing remediation efforts undertaken by management.

We have engaged accounting consultants to aid us in remediating the issues identified in our Form 10-K for 2022 to ensure consistent and appropriate financial reporting in those areas identified.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

Compute North Bankruptcy

On September 22, 2022, Compute North Holdings, Inc. (currently d/b/a Mining Project Wind Down Holdings, Inc.) and certain of its affiliates (collectively, "Compute North") filed for chapter 11 bankruptcy protection. Compute North provided operating services to the Company and hosted our mining rigs at multiple facilities. We delivered miners to Compute North, which then installed the mining rigs at those facilities, operated and maintained the mining rigs, and provided energy to keep the miners operating. During the course of the chapter 11 cases, Compute North sold substantially all of their assets in a series of 363 sale transactions, including Compute North's ownership interests in non-debtor entities that own or partially-own facilities that house our miners.

On November 23, 2022, the Company and certain of its affiliates timely filed proofs of claim asserting various claims against Compute North, including: (i) claims arising under hosting agreements between the Company and Compute North LLC; (ii) claims arising under that certain Senior Promissory Note, dated as of July 1, 2022, by and between the Company, as Lender, and Compute North LLC, as Borrower; (iii) claims arising from the breach of a letter of intent between us and Compute North LLC; and (iv) claims for daily lost revenue, profits and other damages against Compute North.

On February 9, 2023, the Bankruptcy Court approved a settlement stipulation between the Company and Compute North, pursuant to which the proofs of claim filed by the Company and certain of its affiliates were resolved, and the Company received a single allowed unsecured claim against Compute North LLC in the amount of \$40,000,000 and its Preferred Equity Interests in Compute North Holdings, Inc. in the amount of 39,597 shares of Series C Preferred Stock was confirmed. In exchange, the Company agreed to vote in favor of Compute North's chapter 11 plan.

On February 16, 2023, the Bankruptcy Court confirmed Compute North's chapter 11 plan (the "Plan"), pursuant to which Compute North will liquidate its remaining assets and distribute proceeds arising therefrom in accordance with the waterfall set forth in the Plan. In its disclosure statement filed on December 19, 2022, the Compute North Debtors projected that holders of allowed general unsecured claims could recover anywhere between 8% to 65% on their claims, while holders of preferred equity interests are expected to recover nothing on their interests. The Plan became effective on March 31, 2023. At this time, the Company cannot predict the quantum of its potential recovery on account of its allowed general unsecured claim and preferred equity interests or the timing of when it would receive any distributions under the Plan on account of its claims and interests.

Derivative Complaints

On February 18, 2022, a shareholder derivative complaint was filed in the United States District Court for the District of Nevada, against current and former members of the Company's board of directors and senior management. The complaint is based on allegations substantially similar to the allegations in the December 2021 putative class action complaint, related to the Company's disclosure of an SEC investigation previously made by the Company on November 15, 2021. On March 4, 2022, the complaint was served on the Company. On April 4, 2022, the defendants moved to dismiss the complaint.

On May 5, 2022, a second shareholder derivative complaint was filed in the United States District Court for the District of Nevada, against current and former members of the Company's board of directors and senior management. The second shareholder derivative complaint is based on allegations substantially similar to the allegations in the February 18, 2022 derivative complaint. On May 11, 2022, the defendants moved to dismiss the second shareholder derivative complaint.

On June 1, 2022, the Court entered an order consolidating the two derivative actions. A June 13, 2022 scheduling order provided for plaintiffs to file a consolidated complaint and for renewed motions to dismiss the consolidated shareholder derivative complaint. On November 22, 2022, before a consolidated complaint was due, plaintiffs voluntarily dismissed both actions without prejudice. On November 23, 2022, both actions were closed.

Putative Class Action Complaint

On December 17, 2021, a putative class action complaint was filed in the United States District Court for the District of Nevada, against the Company and present and former senior management. The complaint alleges securities fraud related to the disclosure of an SEC investigation previously made by the Company on November 15, 2021. Plaintiff Tad Schlatre served the complaint on the Company on March 1, 2022. On September 12, 2022, the court appointed Carlos Marina as lead plaintiff. On October 21, 2022, lead plaintiff voluntarily dismissed the complaint without prejudice. On December 7, 2022, the action was closed.

On March 30, 2023, a putative class action complaint was filed in the United States District Court for the District of Nevada, against the Company and present and former senior management. The complaint alleges securities fraud related to the Company's announcement of accounting restatements on February 28, 2023. Plaintiff has not served the complaint on the Company.

Information Subpoenas

On October 6, 2020, the Company entered into a series of agreements with multiple parties to design and build a data center for up to 100-megawatts in Hardin, MT. In conjunction therewith, the Company filed a Current Report on Form 8-K on October 13, 2020. The 8-K discloses that, pursuant to a Data Facility Services Agreement, the Company issued 6,000,000 shares of restricted Common Stock, in transactions exempt from registration under Section 4(a)(2) of the Securities Act of 1933, as amended. During the quarter ended September 30, 2021, the Company and certain of its executives received a subpoena to produce documents and communications concerning the Hardin, Montana data center facility described in our Form 8-K dated October 13, 2020. The Company received an additional subpoena from the SEC on April 10, 2023, relating to, among other things, transactions with related parties. We understand that the SEC may be investigating whether or not there may have been any violations of the federal securities law. We are cooperating with the SEC.

On January 14, 2021, Plaintiff Michael Ho (“Plaintiff” or “Ho”) filed a Civil Complaint for Damages and Restitution (“Complaint”) against the Company. The Complaint alleges six causes of action against the Company, (1) Breach of Written Contract; (2) Breach of Implied Contract; (3) Quasi-Contract; (4) Services Rendered; (5) Intentional Interference with Prospective Economic Relations; and (6) Negligent Interference with Prospective Economic Relations. The claims arise from the same set of facts. Ho alleges that the Company profited from commercially-sensitive information he shared with the Company and then it refused to compensate him for his role in securing the acquisition of a supplier of energy for the Company. On February 22, 2021, the Company responded to Mr. Ho’s Complaint with a general denial and the assertion of applicable affirmative defenses. Then, on February 25, 2021, the Company removed the action to the United States District Court in the Central District of California, where the action remains pending. The Company filed a motion for summary judgment/adjudication of all causes of action. On February 11, 2022, the Court granted the motion and dismissed Ho’s 2nd, 5th and 6th causes of action. Discovery is substantially closed. The Court held a pre-trial conference on February 24, 2022, where it vacated the March 3, 2022 trial date and ordered the parties to meet and confer on a new trial date. The Court discussed the various theories of damages maintained by the parties. In its ruling on the summary judgment motion and at the pre-trial conference on February 24, 2022, the Court noted that a jury is more likely to accept \$150,000 as an appropriate damages amount if liability is found, as opposed to the various theories espoused by Ho that result in multi-million-dollar recoveries. Due to outstanding issues of fact and law, it is impossible to predict the outcome at this time; however, after consulting legal counsel, the Company is confident that it will prevail in this litigation, since it did not have a contract with Mr. Ho and he did not disclose any commercially-sensitive information under any mutual nondisclosure agreement that was used to structure any joint venture with energy providers. The trial has been rescheduled for January 29, 2024, and is scheduled for four days, including jury selection.

Item 1A. Risk Factors.

There are no updates or changes to the risk factors set forth in our Annual Report on Form 10-K for the year ended December 31, 2022 except as set forth below.

Further significant disruptions in the crypto asset markets, such as those experienced in the second half of 2022, may cause further material impairment of the value and use of our mining rigs.

During the fourth quarter of 2022, the per coin price of bitcoin reached a low of approximately \$15,500 from a high of almost \$21,500 earlier in the quarter. This decrease in the price of bitcoin combined with the general market sentiment caused in large part by the FTX collapse and various bitcoin company related bankruptcies and restructurings led to a material decline in the fair value of our mining rigs and deposits for future mining rig purchases. As a result, we recorded an impairment charge of \$332,933 thousand on these assets during that period, although operations were unaffected and continued throughout. Furthermore, future decreases in the value of bitcoin could cause us to record additional impairments in the value of these and future mining rig assets.

In addition, if bitcoin prices dropped to levels below that experienced in 2022 and held at those levels for a significant period of time, it could impact our profitability to the point that we would have to consider whether there would be less diminution of value if we were to leave certain of our miners to idle until the price of bitcoin recovered.

Theoretically, there is a minimum bitcoin price that is so low that Marathon would want to turn off its miners. However, this is a complex projection involving multiple ever-changing, dynamic variables. Marathon has multiple mining sites and hosting partners, all with different hosting prices, electricity prices, and contract structures. These costs, some fixed and some variable, would need to be compared to the current revenue being produced by the miners.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

None.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

Not applicable.

Item 6. Exhibits.

10.1 [NYDIG Custodial Agreement](#)
31.1 [Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*](#)
31.2 [Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*](#)
32.1 [Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*](#)
32.2 [Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*](#)
101.ins Inline XBRL Instance Document**
101.sch Inline XBRL Taxonomy Schema Document**
101.cal Inline XBRL Taxonomy Calculation Document**
101.def Inline XBRL Taxonomy Linkbase Document**
101.lab Inline XBRL Taxonomy Label Linkbase Document**
101.pre Inline XBRL Taxonomy Presentation Linkbase Document**

104 Inline XBRL

* Furnished herewith

** Filed herein

SIGNATURES

Pursuant to the requirements 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.

Date: May 10, 2023

MARATHON DIGITAL HOLDINGS, INC.

By: /s/ Fred Thiel
Name: Fred Thiel
Title: Chief Executive Officer
(Principal Executive Officer)

By: /s/ Hugh Gallagher
Name: Hugh Gallagher
Title: Chief Financial Officer
(Principal Financial Officer)



Digital Asset Custodial Term Sheet

Effective Date	July 27, 2021
Custodian	NYDIG Execution LLC, a Delaware LLC registered as a Money Services Business with the Financial Crimes Enforcement Network and licensed with a BitLicense by the New York State Department of Financial Services.
Client	Marathon Digital Holdings, Inc.
Client Contact Info	<p>Jim Crawford - jim@marathondh.com Fred Thiel - fred@marathondh.com</p> <p>1180 North Town Center Drive Suite 100 Las Vegas, NV 89144</p>
Eligible Assets	Bitcoin, Bitcoin Cash, Ether, Litecoin, and any other assets Custodian may support in the future
Digital Assets	Digital assets in Client's Account will be held in cold storage by Custodian.
Cash	US dollars in Client's Account will be deposited with one or more U.S. insured depository institutions.
Fee	<p>0.25% per annum of the amount of Custodied Digital Assets up to \$100,000,000 USD. 0.20% per annum of the amount of Custodied Digital Assets from \$100,000,000 to \$250,000,000 USD. 0.15% per annum of the amount of Custodied Digital Assets from \$250,000,000 to \$500,000,000 USD. 0.10% per annum of the amount of Custodied Digital Assets greater than \$500,000,000 USD.</p>
Fee Calculation	The per annum fee is based on the daily average USD value of Custodied Digital Assets held in the Account for the previous calendar month (measured each day at 4pm ET). Partial months will be pro-rated. USD value of Custodied Digital Assets will be determined using NYDIG's valuation policy.
Invoicing	Monthly, in arrears. Unless Client pays amounts due to Custodian by cash via wire or other method agreed with Custodian in advance, Client hereby authorizes and Custodian will act as Client's agent to instruct NYDIG Execution, pursuant to the execution agreement between Client and Custodian, to liquidate Custodied Digital Assets on the 30th day following the issuance of a monthly invoice to Client in order to remit to Custodian the proceeds of the sales to the extent necessary to cover accrued expenses and fees due to Custodian under this Agreement (or on the Business Day that follows such day if such day is not a Business Day).
Statements	Monthly

CONFIDENTIAL

- Deposits¹** Deposits may be made only by Client unless otherwise agreed with Custodian in writing. Please pre-authorize each deposit with Custodian. Custodian will provide a deposit address for each deposit. **Do not rely on previously-provided addresses for deposits.**
- Withdrawals** Withdrawals of Custodied Digital Assets can be made only to pre-authorized addresses controlled by Client unless otherwise agreed with Custodian in writing.
- As described in more detail in the SLA in Appendix A:
- *Digital Asset Withdrawals:* If a withdrawal request for Custodied Digital Assets is received before 4:00 pm Eastern on a Business Day, such assets will generally be delivered on the same day, but may be delivered on the next Business Day.
 - *Cash Withdrawals:* If a client requests a withdrawal of Custodied Cash, such withdrawal will be made within a Business Day.

This Digital Asset Custodial Term Sheet ("**Term Sheet**"), together with the attached DIGITAL ASSET TERMS AND CONDITIONS ("**Terms and Conditions**"), form a DIGITAL ASSET CUSTODIAL AGREEMENT between the Custodian and Client as of the Effective Date (the "**Agreement**"). This Term Sheet provides only a summary of certain terms and more details are in the Terms and Conditions; however, to the extent of any conflict between the Term Sheet and the Terms and Conditions, the Term Sheet controls. Capitalized terms not defined in this Term Sheet have the meaning ascribed to them in the Terms and Conditions.

¹ For purposes of this Agreement, the term "deposit" does not refer to a deposit within the meaning of the U.S. federal and state banking laws. **Custodied digital asset accounts held by the Custodian are not insured by the FDIC or SIPC.**

CONFIDENTIAL



DIGITAL ASSET CUSTODIAL TERMS AND CONDITIONS

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These DIGITAL ASSET CUSTODIAL TERMS AND CONDITIONS (“**Terms and Conditions**”), together with the attached DIGITAL ASSET CUSTODIAL TERM SHEET (“**Term Sheet**”), form a DIGITAL ASSET CUSTODIAL AGREEMENT between the Custodian and Client as of the Effective Date (the “**Agreement**”). The Term Sheet provides only a summary of certain terms and more details are in these Terms and Conditions; however, to the extent of any conflict between the Term Sheet and the Terms and Conditions, the Term Sheet controls.

This Agreement sets forth the terms and conditions pursuant to which Custodian is to act as a custodian for digital assets for Client.

RECITALS

WHEREAS, Client wishes to appoint Custodian to act as custodian for, and to hold Custodied Assets for the benefit of, Client and to provide related services, all as provided herein, and Custodian is willing to accept that appointment, subject to the terms and conditions herein set forth;

NOW THEREFORE, in consideration of the mutual promises herein contained, Client and Custodian hereby agree:

1. Definitions.

The following defined terms will have the respective meanings set forth below.

- (a) “**Account**” means the Cash Account and the Digital Asset Account.
- (b) “**Applicable Law**” means, with respect to any Person, any transnational, domestic or foreign federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to that Person, as amended unless expressly specified otherwise.
- (c) “**Approved Withdrawal Address**” means a withdrawal address that Client has provided to Custodian and that Custodian has approved in accordance with Section 4(d) and has not subsequently rejected.
- (d) “**Authorized Person**” means Client (if Client is a natural person), an employee or officer of Client (if applicable), a third-party service provider (including an affiliate of Custodian) or any other individual who has been designated by Client in writing as authorized by Client to give Instructions to Custodian for or on behalf of Client.
- (e) “**Business Day**” means any day that the New York Stock Exchange is open for trading.

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- (f) “**Cash Account**” has the meaning set forth in Section 2(f).
- (g) “**Cash Withdrawal Timeframes**” means the times set forth in the SLA that Custodian has to take a corresponding action after a Client has made a request to withdraw cash from its Cash Account.
- (h) “**Change of Control**” means:
 - (i) the merger or consolidation of Custodian with or into another Person or the merger of another Person with or into Custodian, or the sale of all or substantially all the assets of Custodian to another Person, unless holders of a majority of the aggregate voting power of the outstanding membership interests of Custodian, immediately prior to that transaction, hold membership interests of the surviving or transferee Person that represent, immediately after the transaction, at least a majority of the aggregate voting power of the outstanding membership interests of the surviving or transferee Person; or
 - (ii) any “person” or “group” (as those terms are used for purposes of Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) is or becomes the “beneficial owner” (as that term is used in Rule 13d-3 under the Securities Exchange Act of 1934, as amended), directly or indirectly, of more than 50% of the total voting power of the outstanding membership interests of Custodian.
- (i) “**Client**” has the meaning set forth in the Term Sheet.
- (j) “**Client Contact Info**” has the meaning set forth in the Term Sheet.
- (k) “**Client Designated Security Procedures**” means the Security Procedures for transmitting Instructions that are elected by Client (or by an Authorized Person entitled to give Instructions) and acknowledged and accepted by Custodian in accordance with Section 8(c) hereof.
- (l) “**Client Tax**” has the meaning set forth in Section 16 hereof.
- (m) “**Cold Storage Withdrawal Timeframes**” means the times set forth in the SLA that Custodian has to take a corresponding action after a Client has made a request to withdraw digital assets from its Digital Asset Account.
- (n) “**Custodied Assets**” means Custodied Digital Assets and Custodied Cash.
- (o) “**Custodied Cash**” means cash properly sent to Custodian in accordance with Section 4(g) of this Agreement and held by Custodian in custody for the benefit of Client in the Cash Account pursuant to this Agreement.
- (p) “**Custodied Digital Assets**” means

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- (i) Eligible Assets properly sent to Custodian in accordance with Section 4(g) of this Agreement and held by Custodian in custody for the benefit of Client in the Digital Asset Account pursuant to this Agreement; and
- (ii) any digital assets received and held by the Custodian on behalf of and for the benefit of Client through air drops, forks or other similar mechanisms, but only to the extent and in the amount such assets have been deemed to be included in Client's Digital Asset Account as shown on at least one customer account statement sent to Client. For the avoidance of doubt, forked or air dropped assets shown as potentially being included in the Digital Asset Account are not Custodied Digital Assets.
- (q) "**Custodian**" has the meaning set forth in the Term Sheet.
- (r) "**Custodian Designated Security Procedures**" means the Security Procedures that Custodian will make available to Client from time to time for purposes of transmitting Instructions.
- (s) "**Digital Asset Account**" has the meaning set forth in Section 2(c) hereof.
- (t) "**Digital Asset Network**" means a decentralized peer-to-peer network used to transfer a particular type of digital asset.
- (u) "**Eastern Time**" means local time in New York, New York.
- (v) "**Effective Date**" has the meaning set forth in the Term Sheet.
- (w) "**Eligible Assets**" means digital assets with respect to which Custodian provides Services, as specified in writing by Custodian.
- (x) "**Fiat Currency**" has the meaning set forth in Section 17 hereof.
- (y) "**Governmental Authority**" means any transnational, domestic or foreign federal, state or local governmental, regulatory or administrative authority, department, court, agency or official, including any political subdivision thereof.
- (z) "**Instruction**" means a directive initiated by Client, acting through an Authorized Person, which directive conforms to the requirements of Section 8 hereof.
- (aa) "**Lien**" means, with respect to any property or asset, any mortgage, deed of trust, lien, pledge, charge, security interest, encumbrance or other adverse claim of any kind in respect of that property or asset. For the purposes of this Agreement, a Person will be deemed to own subject to a Lien any property or asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to that property or asset.

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- (bb) “**Location**” means, with respect to any Custodied Digital Assets, the physical location of the private keys required to transfer those Custodied Digital Assets as stored on one or more servers, hard drives, or other media physically present in that location (including in the case of any digital asset secured by more than one private key (a “multi-sig protected digital asset”), the physical location of any private key for all the multi-sig protected digital asset as stored on one or more servers, hard drives or other media physically present in that location).
- (cc) “**Material Adverse Effect**” means a material adverse effect on:
- (i) the financial condition, business, assets, results of operations or prospects of, as context requires, Custodian or Client;
 - (ii) Custodian’s safekeeping of the Custodied Assets; or
 - (iii) Custodian’s ability to provide the Services.
- (dd) “**Person**” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.
- (ee) “**PRI**” has the meaning set forth in Section 8(o) hereof.
- (ff) “**Security Procedure**” means a security procedure set forth in operating procedures documentation in effect from time to time with respect to the Services, or otherwise agreed in writing by the parties, to be followed:
- (i) by Client, upon the issuance of an instruction to that effect by Custodian; or
 - (ii) with reasonable care by Custodian, upon the receipt of an instruction to that effect from Client, provided that the security procedure in question is intended to enable Custodian to verify that the individual providing an Instruction to deposit or withdraw Custodied Assets is an Authorized Person.
- A Security Procedure may involve, without limitation, the use of algorithms, codes, passwords, encryption or telephone call-backs. For the avoidance of doubt, a Security Procedure includes an applicable Custodian Designated Security Procedure or Client Designated Security Procedure.
- (gg) “**Services**” means the custodial services to be provided by Custodian to Client under this Agreement, including the services provided through use of the Account.
- (hh) “**SLA**” means the Service Level Agreement in Appendix A, which the Custodian may update with 30 days’ notice.
- (ii) “**Taxes**” means all taxes, levies, imposts, duties, charges, assessments or fees of any nature (including such amounts that are collected by deduction or withholding) and

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including interest, penalties and additions thereto that are imposed by any taxing authority.

- (jj) “**UCC 4A**” means Article 4A of the Uniform Commercial Code as currently in effect in the State of New York.
- (kk) “**Virtual Currency**” has the meaning set forth in Section 17 hereof.

2. *Custodial Relationship.*

- (a) Client hereby appoints Custodian as its custodian, and Custodian hereby accepts that appointment. All Custodied Assets of Client delivered to Custodian or its agents will be held by Custodian as agent for the benefit of Client, as provided in this Agreement. The duties of Custodian with respect to Client’s Custodied Assets will only be as set forth expressly in this Agreement, which duties are generally comprised of receiving and holding Custodied Assets for safekeeping for the benefit of Client, delivering Custodied Assets to Client in accordance with Instructions, and performing various administrative duties in accordance with Instructions and as reasonably required to effect Instructions. For the avoidance of doubt, Custodian may not transfer Client’s Custodied Assets except as directed by Client in accordance with Instructions and as reasonably required to effect Instructions, or as otherwise set forth in this Agreement.
- (b) Custodian hereby acknowledges and agrees that it is a custodian of the Custodied Assets stored in the Account, such Custodied Assets are held by Custodian as agent for the benefit of Client, and that Custodian has no right, interest, or title in those Custodied Assets. Custodian hereby confirms that the Custodied Assets do not constitute an asset on the balance sheet of Custodian and that the Custodied Assets will at all times be identifiable in Custodian’s database as being stored in the Account for the benefit of Client.
- (c) Custodian will establish and maintain an account for digital assets (the “**Digital Asset Account**”) in the name of Client.
- (d) With respect to Services for digital assets, Custodian will provide Services to Client only for digital assets deemed to be Eligible Assets by Custodian according to its Digital Asset Framework Policy, as updated from time to time by the Custodian in its sole discretion. A list of Eligible Assets as of the date of this Agreement can be found in the Term Sheet. Custodian will notify Client of any changes to the list of Eligible Assets.
- (e) Custodian will use its commercially reasonable judgment to determine which post-fork digital asset is the same as the pre-fork digital asset. Custodian is under no obligation to provide Services for digital assets that have been created as a result of a fork or airdrop related to Eligible Assets, and Client acknowledges that it may not immediately or ever have the ability to withdraw a forked or airdropped digital asset

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that is not an Eligible Asset, and Custodian has no obligation to safeguard any such forked or airdropped assets.

- (f) Custodian will hold Client's cash in one or more omnibus "for benefit of customers" accounts at one or more U.S. insured depository institutions (together, the "**Cash Account**"). Custodian intends for Client to benefit from Federal Deposit Insurance Corporation deposit insurance on a pass-through basis on any portion of the Cash Account held at U.S. insured depository institutions.
- (g) Custodian may rely on an affiliate that is U.S.-located and appropriately licensed and regulated as a digital asset custodian as a service provider, including as a sub-custodian, in providing the Services without approval from Client.

3. Duties and Obligations of Custodian.

The duties and obligations of Custodian include the following:

- (a) Safekeeping of Custodied Assets.
 - (i) Custodian will use reasonable care to keep in safe custody for the benefit and on behalf of Client all Custodied Assets.
 - (ii) All Custodied Digital Assets credited to the Digital Asset Account will:
 - (A) be held in the Digital Asset Account at all times, and the Digital Asset Account will be controlled by Custodian at all times;
 - (B) be labeled or otherwise appropriately identified as being held for the benefit of Client;
 - (C) not be commingled with other digital assets held by Custodian, whether held for Custodian's own account or the account of other Persons other than Client, except temporarily (typically for no longer than 12 hours, but in no case longer than 72 hours) as an operational matter, if required, to effect a transfer Instruction into or out of a Digital Asset Account; and
 - (D) not without the prior written consent of Client be deposited or held with any third-party depository, custodian, clearance system or digital asset wallet.
 - (iii) All Custodied Cash credited to the Cash Account will:
 - (A) be held in the Cash Account at all times;
 - (B) be labeled or otherwise appropriately identified as being held for the benefit of Client;

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- (C) not be commingled with cash of any Person, including cash of Custodian, except that such Custodied Cash may be commingled with cash of other customers of Custodian that is being held by Custodian for the benefit of its customers; and
 - (D) not constitute liabilities of Custodian.
- (b) *Record Keeping.* Custodian will keep appropriate records regarding the Services. All records maintained pursuant to this Section 3(b) will be retained by Custodian for such period as required by Applicable Law, but in no event for less than seven years, after which retention of the records will be at Custodian's discretion.
- (c) *Annual Certificate and Report.*
- (i) Upon request of Client, which request may occur no more than once per calendar year, Custodian will deliver to Client a certificate signed by a duly authorized officer, which certificate will:
 - (A) certify that Custodian has complied, and is in compliance currently, with the provisions of this Agreement during the preceding calendar year; and
 - (B) certify that the representations and warranties of Custodian contained in this Agreement are true and correct on and as of the date of the certificate and have been true and correct throughout the preceding year.
- (d) *Inspection and Auditing.*
- (i) *Inspection and Auditing of Custodian.* To the extent Custodian may legally do so, it will permit Client's auditors or third-party accountants, upon reasonable notice, to inspect, take extracts from and audit the records maintained pursuant to Section 3(b) containing information relevant to the safekeeping of Client's Custodied Assets as provided in this Agreement and take necessary steps to verify that satisfactory internal control systems and procedures are in place, all at such times as Client may reasonably request. If Custodian determines in good faith that an auditing procedure proposed by Client or its auditors or third-party accountants may diminish the safety or security of any Custodied Assets, Custodian may deny access to those records to auditors or third-party accountants; however, Custodian and Client will work in good faith to find a reasonable alternative approach. Client will reimburse Custodian (A) for all reasonable expenses incurred in connection with this Section 3(d)(i) and (B) for reasonable time spent by Custodian's employees or consultants in connection with this Section 3(d)(i) at reasonable hourly rates to be agreed upon by Client and Custodian.
 - (ii) *Custodian Audit Reports.* In the event that any material deficiencies or objections are identified as part of the annual audit of Custodian that are

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relevant to the safekeeping of Client's Custodied Assets as provided in this Agreement, a report will be provided to Client stating the nature of those deficiencies or objections, and describing the steps taken or to be taken to remedy the same. Any audit report furnished pursuant to this Section 3(d)(ii) will be deemed confidential information of Custodian.

- (e) Attachment.
 - (i) Custodian will, and will cause any agent acting on its behalf to, use reasonable care to:
 - (A) refuse to consent to any attachment of Custodied Assets or to any similar order or to any claim that would encumber the Custodied Assets in any manner;
 - (B) resist any writ of attachment, similar order or claim that would encumber or affect the free transferability of any Custodied Assets in any relevant market; and
 - (C) deny any request by a third party to transfer any Custodied Assets without the prior consent of Client.
 - (ii) Custodian will give Client immediate notice of the occurrence of any request, consent, writ, order or claim referred to in Section 3(e)(i) (unless such notice is prohibited by Applicable Law). Client will pay the reasonable expenses (including reasonable attorney's fees or expenses) incurred by Custodian in connection with any action taken by it in accordance with this Section 3(e).
- (f) All Locations of Custodied Digital Assets will be in the United States.
- (g) Custodian agrees not to consummate a transaction that would constitute a Change of Control without providing at least 30 days written notice to Client.
- (h) Custodian will give Client prompt notice if there has been a Material Adverse Effect. That notice will reasonably describe the change in business conduct, event, occurrence, development, or state of circumstances or facts.

4. *Account Service.*

- (a) Client and Authorized Persons will be able to provide Instructions with respect to the Account at all times in order to deposit or initiate withdrawal of digital assets or cash, subject to the Cold Storage Withdrawal Timeframes or the Cash Withdrawal Timeframes, as relevant, except as otherwise provided in this Section 4.
- (b) Custodian will send Client account statements on the frequency specified in the Term Sheet and upon request, or as Custodian and Client may separately agree. Custodian

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may send Client account statements, tax forms, and other documentation to Client via a web-based interface located at <https://portal.nydig.com> or such other website as Custodian may direct Client to from time to time (the “**Portal**”).

- (c) Client must provide one or more proposed withdrawal addresses for each Eligible Asset that it elects to deliver to Custodian using procedures provided by Custodian. Client agrees to provide Custodian with any additional information that may be requested in connection with the withdrawal addresses (e.g., the identity of any custodian that controls such address). Custodian will timely review the proposed withdrawal addresses under its relevant programs and policies and will timely approve or reject the addresses. Any rejection will be accompanied by an explanation of the basis for the rejection unless Custodian is legally prohibited from providing such an explanation or it would be imprudent under the circumstances to do so. Custodian’s review of a proposed withdrawal address may include, for example, a review under its cybersecurity, anti-money laundering, anti-fraud, and anti-market manipulation programs and policies. Custodian will not deliver Custodied Digital Assets to any addresses that have not been approved by Custodian. Custodian reserves the right to limit Client to withdrawals solely to addresses owned and controlled by Client.
- (d) Custodian will provide Client with procedures that detail how to provide Instructions to Custodian to deposit cash in the Cash Account and digital assets to the Digital Asset Account. Custodian may from time to time update the requirements of these procedures for operational or security reasons, as appropriate. Client acknowledges that Custodian may not credit to the Digital Asset Account digital assets that are sent to Custodian in a manner different from that described in the procedures provided by Custodian. Client acknowledges that cash and digital assets that are sent inconsistently with Custodian’s procedures (for example, to the wrong addresses) may be irretrievable.
- (e) Except as set forth in Section 7(b) of this Agreement, Custodian will not suspend Client’s ability to provide Instructions with respect to the Account, and any such suspension will constitute a breach of this Agreement. However, Custodian may restrict the ability to provide Instructions with respect to or use of the Account by any Authorized Person if, in Custodian’s good faith belief, the restriction is reasonably necessary to comply with Custodian’s anti-money laundering and sanctions programs and policies or any requirements under Applicable Law or if Custodian believes in good faith that Client’s or Authorized Person’s cybersecurity has been or will be compromised (for example, because someone is impersonating an Authorized Person).
- (f) All Instructions to withdraw, deposit or otherwise move digital assets or cash to or from an Account must be provided by an Authorized Person in accordance with Section 8.
- (g) Custodian will credit to the Account all Eligible Assets and cash properly sent to Custodian by Authorized Persons to be held in the Account for the benefit of Client

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pursuant to this Agreement within the timeframes set forth in the SLA. Custodian will notify Client and the relevant Authorized Person(s) of its receipt of Custodied Assets and of the related credit to the Account, including the amounts allocated to the Digital Asset Account and the Cash Account, as relevant.

- (h) With respect to digital assets or cash, processing of a credit may be delayed or rejected if, in Custodian's good faith belief, that delay or rejection is reasonably necessary to comply with Custodian's anti-money laundering and sanctions programs and policies or any requirements of Applicable Law, or if Client did not send Custodian an Instruction before effecting a transfer on a Digital Asset Network.
- (i) Custodian will debit from the Account all Custodied Assets withdrawn by Authorized Persons from the Account within the timeframes set forth in the SLA. Custodian will notify Client and the relevant Authorized Person(s) of any withdrawal and of the related debit from the Account.
- (j) Custodian will promptly provide Client with a written confirmation of withdrawals from or deposits to the Account.

5. Access to Services.

- (a) To the extent known to Client or Custodian, Client will promptly notify Custodian and Custodian shall promptly notify Client of any unauthorized access, use or disclosure of Client's Account credentials, unauthorized access or use of the Account, which notification will reasonably describe the issue at hand including the date and type of problem.
- (b) Custodian may verify the identity and authority of each Authorized Person every calendar quarter, or more often as necessary, to ensure that the Authorized Person is still employed and in good standing with Client (if applicable) or otherwise authorized to act on Client's behalf.

6. Representations, Warranties and Covenants.

- (a) Custodian represents, warrants and covenants that:
 - (i) it is duly organized and existing under the laws of New York, validly existing and in good standing under the laws of its jurisdiction of organization, has all corporate powers required to carry on its business as now conducted, and is duly qualified to do business and is in good standing in each jurisdiction where such qualification is necessary;
 - (ii) it has full power to execute and deliver this Agreement and to perform all the duties and obligations to be performed by it under this Agreement;

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- (iii) the execution, delivery and performance by Custodian of this Agreement and the provision of the Services are within Custodian's corporate powers and have been duly authorized by all necessary corporate action on the part of Custodian. This Agreement constitutes a valid and binding agreement of Custodian enforceable against Custodian in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditors' rights generally and general principles of equity) and does not contravene, or constitute a default under, any provision of Applicable Law or regulation or of the articles of organization or other documents under which Custodian is organized or of any agreement, judgment, injunction, order, decree or other similar instrument binding upon Custodian;
 - (iv) none of the Custodied Assets will be used by Custodian in connection with any loan, hypothecation, Lien or claim of (or by) Custodian or otherwise transferred or pledged to any third party unless otherwise agreed in writing by Custodian and Client;
 - (v) it has and will maintain any material necessary consents, permits, licenses, approvals, authorizations or exemptions of any government or other regulatory authority or agency in the United States or any other country required to fully and timely provide the Services to Client;
 - (vi) beneficial and legal ownership of all Custodied Assets is, and will remain, freely transferable without the payment of money or value and that Custodian has no ownership interest in the Custodied Assets;
 - (vii) it waives any right of Lien, pledge, retention or set-off or similar right it may have under any provision of law, regulation or contract with respect to the Custodied Assets; and
 - (viii) it will comply with law, regulations and orders, as well as the guidelines, regulations and orders of the applicable local tax, or other competent authorities.
- (b) Client represents, warrants and covenants that:
- (i) it has full power to execute and deliver this Agreement and to perform all the duties and obligations to be performed by it under this Agreement;
 - (ii) the execution, delivery and performance by Client of this Agreement are within Client's corporate powers and have been duly authorized by all necessary corporate action on the part of Client (if Client is a legal entity). This Agreement constitutes a valid and binding agreement of Client enforceable against Client in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws

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affecting creditors' rights generally and general principles of equity) and does not contravene, or constitute a default under, any provision of Applicable Law or regulation or of the articles of incorporation or other documents under which Client is organized (if Client is a legal entity) or of any agreement, judgment, injunction, order, decree or other similar instrument binding upon Client;

- (iii) it is not itself, nor is it an entity that is, an entity owned or controlled by any person or entity that is, or conducting any activities itself or on behalf of any person or entity that is (A) the subject of any sanctions administered or enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control, the U.S. Department of State, or any other Governmental Authority with jurisdiction over Custodian or the Services with respect to U.S. sanctions laws; (B) identified on the Denied Persons, Entity, or Unverified Lists of the U.S. Department of Commerce's Bureau of Industry and Security; or (C) located, organized or resident in a country or territory that is, or whose government is, the subject of U.S. economic sanctions, including, without limitation, Cuba, Iran, North Korea, Sudan, or Syria;
- (iv) it has all rights, title and interest in and to the Custodied Assets as necessary for Custodian to perform its obligations under this Agreement;
- (v) at the time of delivery of each Instruction, the execution, delivery and performance by Client of the Instruction will have been within Client's corporate powers and will have been duly authorized by all necessary corporate action on the part of Client (if Client is a legal entity). Any Instruction issued under this Agreement constitutes a valid and binding agreement of Client enforceable against Client in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditors' rights generally and general principles of equity) and does not contravene, or constitute a default under, any provision of Applicable Law or regulation or of the articles of incorporation or other documents under which Client is organized (if Client is a legal entity) or of any agreement, judgment, injunction, order, decree or other similar instrument binding upon Client;
- (vi) by providing an Instruction, Client hereby (A) authorizes Custodian to complete any documentation that may be required or appropriate to carry out the Instruction, and agrees to be contractually bound to the terms of that documentation "as is" without recourse against Custodian; (B) represents, warrants and covenants that it will provide Custodian with any information that is necessary or appropriate to enable Custodian's performance pursuant to an Instruction or under this Agreement; and (C) agrees that Custodian will be held harmless for the acts, omissions, or any unlawful activity of any agent of Client;

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- (vii) it will maintain appropriate security controls with respect to sensitive information related to the Account, including, for example, procedures for secure storage of passwords, use of two-factor authentication, secure e-mail, and secure storage of documents;
 - (viii) it will promptly execute and deliver, upon request, any proxies, powers of attorney or other instruments that may be necessary or desirable for Custodian to provide the Services; and
 - (ix) in the event that (x) Client is, or is acting on behalf of or with assets of, a “benefit plan investor” within the meaning of Section 3(42) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) or (y) the Custodied Assets include “plan assets” for purposes of ERISA or the Internal Revenue Code of 1986, as amended (the “Code”), (A) none of Custodian or any of its affiliates has or exercises any discretionary authority or control or renders any investment advice with respect to the Custodied Assets, and none of them is a fiduciary under ERISA or the Code with respect to Client or the Custodied Assets and (B) Client has determined in good faith that it will pay no more than “adequate consideration” within the meaning of Section 408(b)(17) of ERISA and Section 4975(f)(10) of the Code with respect to the Services, and, in making such determination, has engaged in a prudent investigation of the circumstances and applied sound business valuation principles in determining the fair market value of the consideration involved with respect to the Services.
- (c) *Notification of Adverse Change.* Custodian will immediately notify Client, and Client will immediately notify Custodian, if, at any time after the date of this Agreement, any of the representations, warranties and covenants made by Custodian or Client under this Agreement fail to be true and correct as if made at and as of that time. Custodian or Client, as applicable, will describe in reasonable detail the representation, warranty or covenant affected, the circumstances giving rise to that failure and the steps Custodian or Client, as applicable, has taken or proposes to take to rectify the failure.

7. Prohibited Activities.

- (a) Client agrees that Client will not use the Services to perform any type of illegal activity of any sort or take any action that negatively affects the performance of the Services. Client may not engage in any of the following activities, either directly or through a third party:
 - (i) attempt to gain unauthorized access to the Services or another user’s account;
 - (ii) make any attempt to bypass or circumvent any security features;

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- (iii) reproduce, duplicate, copy, sell or resell the Services or access to the Services for any purpose except as authorized in this Agreement; or
- (iv) engage in any activity that is abusive or interferes with or disrupts the Services. Use of the Services in connection with any transaction involving illegal products or services is prohibited.
- (b) Custodian may suspend Client's (or any Authorized Person's) ability to provide Instructions with respect to the Account in the event of any breach of Section 7(a) of this Agreement.
- (c) Client will remain fully responsible for any acts or omissions of its Authorized Persons and will ensure that Authorized Persons comply with the terms of this Agreement.

8. Instructions.

- (a) Unless otherwise explicitly provided for in this Agreement, Custodian will perform its duties under this Agreement pursuant to Instructions.
- (b) Client must deliver Instructions in accordance with a Custodian Designated Security Procedure, unless Client elects to transmit an Instruction in accordance with a Client Designated Security Procedure.
- (c) Client may use a Client Designated Security Procedure to transmit Instructions only if Custodian has agreed to and acknowledged that procedure. If Client determines to use its proprietary transmission or other electronic transmission method, it must provide Custodian sufficient notice and information to allow testing or other confirmation that Instructions received via the Client Designated Security Procedure can be processed in good time and order. Custodian may require Client to execute additional documentation prior to the use of such transmission method. Custodian's acknowledgment of a Client Designated Security Procedure will authorize it to accept such means of delivery but will not represent a judgment by Custodian as to the reasonableness or security of the means utilized by Client. In electing to transmit an Instruction via a Client Designated Security Procedure, Client:
 - (i) agrees to be bound by the transaction(s) or payment order(s) specified on said Instruction, whether or not authorized, and accepted by Custodian in compliance with such Client Designated Security Procedure; and
 - (ii) accepts the risk associated with such Client Designated Security Procedure and confirms it is commercially reasonable for the transmission and authentication of the Instruction.
- (d) Instructions provided orally rather than in writing will be binding upon Custodian only if and when Custodian takes action with respect thereto. Custodian reserves the right

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to restrict Client's use of telephonic Instruction and/or to require Client to duplicate a telephonic order in a writing by the same Authorized Person who placed the telephonic order.

- (e) Client must provide an Instruction to Custodian to deposit Eligible Assets to the Digital Asset Account before each attempt to effect any transfers of those assets on the relevant Digital Asset Network into the Digital Asset Account. Client acknowledges that if Client attempts to transfer Eligible Assets to the Digital Asset Account before sending Custodian Instructions about that transfer and receiving an acknowledgement from the Custodian that it will accept a transfer, along with instructions from the Custodian regarding where the transfer should be made, Client may experience delays in the crediting of those Eligible Assets to the Digital Asset Account, or the Eligible Assets may be forever lost or inaccessible. Custodian will not be liable for any damages related to delays that result from the lack of a proper Instruction.
- (f) Custodian may treat any Authorized Person as having the full authority of Client to issue Instructions hereunder unless the notice of authorization contains explicit limitations as to said authority. Custodian will be entitled to rely upon the authority of Authorized Persons until it receives appropriate written notice from Client to the contrary.
- (g) The Authorized Person providing an Instruction will be responsible for assuring the adequacy and accuracy of that Instruction. If Custodian determines that an Instruction is either unclear or incomplete, Custodian may give prompt notice of that determination to Client. Such notice may be given in writing, via a Custodian Designated Security Procedure or any Client Designated Security Procedure used by Client, or orally by telephone, each of which is hereby deemed commercially reasonable. Client must thereupon amend or otherwise reform the Instruction. In such event, Custodian will have no obligation to take any action in response to the Instruction initially delivered until the redelivery of an amended or reformed Instruction.
- (h) The purpose of any Client Designated Security Procedure or Custodian Designated Security Procedure is to confirm the authenticity of any Instruction and is not designed to detect errors or omissions in such Instructions. Therefore, Custodian is not responsible for detecting any Client error or omission contained in any Instruction received by Custodian.
- (i) With respect to Instructions to transfer cash, Custodian will not be liable for interest on the amount of any Instruction that was not authorized or was erroneously executed unless Client so notifies Custodian within thirty (30) days following Client's receipt of notice that such Instruction was processed. Any such compensation payable in the form of interest will be payable in accordance with UCC 4A. If an Instruction in the name of Client and accepted by Custodian was not authorized by Client, the liability of the parties will be governed by the applicable provisions of UCC 4A.

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- (j) Custodian, after providing prior written notice, may decide to no longer accept a particular Client Designated Security Procedure or Custodian Designated Security Procedure, or to do so only on revised terms, in the event that it determines that such agreed or established method of transmission represents a security risk or is attendant to any general change in the Custodian's policy regarding Instructions.
- (k) Client will comply with any applicable Security Procedures with respect to the delivery or authentication of Instructions and will ensure that any codes, passwords or similar devices are reasonably safeguarded.
- (l) Custodian will use reasonable care to comply with any applicable Security Procedures with respect to the receipt or verification of Instructions and to ensure that any codes, passwords or similar devices are reasonably safeguarded.
- (m) Client may cancel an Instruction but Custodian will have no liability for Custodian's failure to act on a cancellation Instruction unless Custodian has received that cancellation Instruction at a time and in a manner affording Custodian reasonable opportunity to act prior to Custodian's execution of the original Instruction. Any cancellation Instruction must be sent and confirmed by a Custodian Designated Security Procedure or a Client Designated Security Procedure.
- (n) Custodian cannot and does not guarantee the value of Eligible Assets. Custodian does not control the relevant Digital Asset Networks and therefore is not responsible for the services provided by those Digital Asset Networks – in particular, verifying and confirming transactions that are submitted to the Digital Asset Networks. Furthermore, notwithstanding Section 8(m), Custodian cannot cancel or reverse a transaction that has been submitted to a Digital Asset Network. Once a transaction request has been submitted to a Digital Asset Network, Client will subsequently not be able to cancel or otherwise modify Client's transaction request. Client acknowledges and agrees that, to the extent Custodian did not cause or contribute to a loss Client suffers in connection with any Eligible Asset transaction initiated, Custodian will have no liability for that loss. Custodian has no control over the relevant Digital Asset Networks and therefore does not ensure that any transaction request Custodian submits to a Digital Asset Network will be completed. Client acknowledges and agrees that the transaction requests Client instructs Custodian to submit on a Digital Asset Network may not be completed, or may be substantially delayed, by that Digital Asset Network and Custodian is not responsible for any delay or any failure of completion caused by that Digital Asset Network. When Client provides Instructions to Custodian, Client authorizes Custodian to submit Client's transaction to the relevant Digital Asset Network in accordance with the Instructions Client provides.
- (o) Client may establish with Custodian a process to preauthorize certain repetitive payments or transfers. Client will execute all documentation required by Custodian, including a separate Preauthorized Repetitive Instructions ("PRI") form. The PRI shall be delivered to Custodian in writing or by another Custodian Designated Security

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Procedure or Client Designated Security Procedure and will become effective after Custodian shall have had a reasonable opportunity to act thereon (or if later, two (2) Business Days after receipt by Custodian). The PRI must take the form of a standing instruction in which Client provides in the PRI all required information for an Instruction (except for the transfer date and amount) on a "standing instructions" basis.

- (p) In the event Custodian fails to execute a properly executable Instruction and fails to give Client notice of Custodian's non-execution, Custodian will be liable only for Client's actual damages and, in the case of Instructions with respect to cash, only to the extent that such damages are recoverable under UCC 4A. Notwithstanding anything in this Agreement to the contrary, Custodian will in no event be liable for any consequential, indirect, special or punitive damages under this Section 8, whether or not such damages relate to services covered by UCC 4A, even if Custodian was advised of the possibility of such damages.

9. *Audio-recording.*

Client on behalf of itself and its customers (if any) authorizes Custodian to record any and all telephonic or other oral instructions given to Custodian by or on behalf of Client, including from any Authorized Person. This authorization will remain in effect until and unless revoked by Client in writing.

10. *Responsibility of Custodian.*

- (a) In performing its duties and obligations hereunder, Custodian will use reasonable care. Subject to the specific provisions of this Section 10, Custodian will be liable for any direct damage incurred by Client in consequence of Custodian's gross negligence, bad faith or willful misconduct. In no event will Custodian be liable hereunder for any special, indirect, punitive or consequential damages arising out of, pursuant to or in connection with this Agreement even if Custodian has been advised of the possibility of such damages. It is agreed that Custodian will have no duty to assess the risks inherent in Client's investments or to provide investment advice with respect to those investments and that Client as principal will bear any risks attendant to particular investments such as failure of counterparty, issuer, promoter or developer.
- (b) Custodian will not be responsible under this Agreement for any failure to perform its duties, and will not be liable hereunder for any loss or damage in association with such failure to perform, for or in consequence of any circumstance or event which is beyond the reasonable control of Custodian or any agent of Custodian and which adversely affects the performance by Custodian of its obligations hereunder or by any other agent of Custodian, including any event caused by, arising out of or involving (i) an act of God, (ii) accident, fire, water or wind damage or explosion, (iii) any computer, system or other equipment failure or malfunction caused by any computer virus or the malfunction or failure of any communications medium, (iv) any

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interruption of the power supply or other utility service, (v) any strike or other work stoppage, whether partial or total, (vi) any disruption of, or suspension of trading in, the digital asset markets, or (vii) any other cause similarly beyond the reasonable control of Custodian.

- (c) Custodian will not be liable for any loss, claim, damage or other liability arising from the following causes (except such as may arise from its or its nominee's, agent's, employee's, contractor's, or representative's own grossly negligent action, grossly negligent failure to act, bad faith, or willful misconduct):
- (i) The failure of any third party beyond the control or choice of Custodian, including the failure of a Digital Asset Network or a commercially reasonable information provider relied upon by Custodian;
 - (ii) Client's or any Authorized Person's failure to protect the confidentiality or security of the Account information associated with Custodied Assets;
 - (iii) An unauthorized party's impersonation of an Authorized Person to provide an Instruction or otherwise access the Account;
 - (iv) Any action taken or omitted by Custodian in accordance with an Instruction, even when that action conflicts with, or is contrary to any provision of, Client's declaration of trust, certificate of incorporation or by-laws or other constitutive document, Applicable Law, or actions by the trustees, directors or shareholders of Client;
 - (v) Specific inaccuracies in information that Custodian received from a commercially reasonable source such as a commercial database, provided that Custodian has relied upon that information in good faith;
 - (vi) Any action taken or omitted by Custodian based on a good faith belief that the action is reasonably necessary to comply with requirements under Applicable Law, including requirements under any applicable anti-money laundering laws and regulations, except with respect to activities that are not caused or contributed to by Client's actions or status; or
 - (vii) Any action taken or omitted by Custodian pursuant to the advice of legal counsel and accountants (who may also be advisors to Client), in each case nationally recognized and with expertise in the relevant area, in relation to matters of law, regulation or market practice, provided that Custodian has relied upon that advice in good faith.

11. Indemnification.

Client hereby indemnifies Custodian and its agents, nominees, employees, officers and directors, and agrees to hold each of them harmless from and against all claims and liabilities, including

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reasonable counsel fees and taxes, incurred or assessed against any of them in connection with the performance of this Agreement and any Instruction except such as may arise from Custodian's or its nominees' own grossly negligent action, grossly negligent failure to act, bad faith, or willful misconduct.

12. Fees and Expenses.

- (a) Client will pay Custodian fees and expenses for the Services as separately agreed to by Client and Custodian in the Term Sheet, which fees and expenses Custodian may increase upon 30 days' written notice to Client.
- (b) Custodian will send a monthly invoice of fees and expenses to Client on as noted on the Term Sheet.
- (c) Client shall pay Custodian within the time period noted on the Term Sheet or otherwise Custodian may instruct NYDIG Execution to sell assets on Client's behalf, if so noted in the Term Sheet. If there are two or more kinds of Custodied Assets, unless otherwise instructed by Client in writing, Custodian will instruct NYDIG Execution to sell the Custodied Assets according to a pro-rata allocation calculated in good faith by Custodian at such time. In the event that Client has not executed an execution agreement with NYDIG Execution, Client authorizes NYDIG Execution to act as agent on its behalf for this limited purpose.

13. Termination.

- (a) This Agreement will commence on the Effective Date and will continue for one year, unless otherwise terminated as provided in this Section 13. After one year, this Agreement will automatically renew for successive one-year periods, unless either party notifies the other of termination, in writing, in accordance with this Section 13.
- (b) This Agreement may be terminated by either party upon thirty (30) days written notice to the other party.
- (c) Either party may terminate this Agreement at any time by written notice to the other party, effective immediately, or on such later date as may be specified in the notice, if:
 - (i) any representation, warranty, certification or statement made by the other party under this Agreement, or pursuant to any certificate or document delivered pursuant to this Agreement, was incorrect in any material respect when made or becomes incorrect in any material respect;
 - (ii) the other party fails in any material respect to perform any of its obligations under this Agreement, including if Custodian fails to perform in accordance with the Service Levels specified in Appendix A and, upon notification of such breach, the failure is not cured within five (5) days;

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- (iii) the other party requests a postponement of maturity or a moratorium with respect to any indebtedness or is adjudged bankrupt or insolvent, or there is commenced against the other party a case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or the other party files an application for an arrangement with its creditors, seeks or consents to the appointment of a receiver, administrator or other similar official for all or any substantial part of its property, admits in writing its inability to pay its debts as they mature, or takes any corporate action in furtherance of any of the foregoing, or fails to meet applicable legal minimum capital requirements;
 - (iv) any Applicable Law, rule or regulation or any change therein or in the interpretation or administration thereof has or may have a Material Adverse Effect on:
 - (A) Client or the rights of Client with respect to the Services;
 - (B) the quality or efficiency of the Services provided by Custodian under this Agreement; or
 - (C) Custodian's ability to provide the Services to Client as required under this Agreement; or
 - (v) a substantial change in the ownership or control, or a material adverse change in the financial condition, of Client or Custodian, as applicable, or in the ability of Client or Custodian, as applicable, to fulfill its responsibilities under this Agreement occurs.
- (d) Custodian will treat Client's notice of termination as a withdrawal request for all Custodied Assets and deliver or cause to be delivered to Client all Custodied Assets held or controlled by Custodian as of the effective date of termination, together with copies of the records maintained pursuant to Sections 3(b)-3(d), as Client requests, upon the next designated Cold Storage Withdrawal Timeframe.
- (e) Upon receiving written notice of termination of this Agreement (or 60 days after receiving written notice, in the case of a termination pursuant to Section 13(c)(iii)):
- (i) Client will, but only upon the performance by Custodian of its obligations under Section 3(d)(i), pay to Custodian all fees as set forth in the Agreement accrued to the date of termination; and
 - (ii) Client (and its Authorized Persons) must immediately discontinue all access and use of the Services;

provided that the Agreement will not be terminated until the Custodied Assets have been delivered to Client pursuant to Section 13(d), and termination of this Agreement

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will not affect any right or liability arising out of events occurring, or services delivered, prior to the effectiveness thereof.

- (f) As of the effective date of the termination of this Agreement (“Termination Date”), Client has no right and forfeits any claim to any digital assets or potential digital assets created through a fork or airdrop before or after the Termination Date if such digital assets were not Custodied Assets on the Termination Date.

14. Confidentiality.

- (a) The parties hereto agree that each will treat confidentially the terms and conditions of this Agreement and all information provided by each party to the other regarding its business and operations. Confidential information includes, without limitation, current and potential business strategies, performance data, reports, marketing materials, computer software, data files, file layouts, databases, analyses, technical know-how, trade secrets, portfolio positions, valuations, investment or trading strategies, commitments and arrangements with service providers and other third parties, as well as any affiliate, director, officer, manager, shareholder, member, advisor, agent, employee, consultant, attorney, accountant, financing source, or other representative of each party, and which information is clearly identified as confidential at the time of disclosure or would be assumed by a reasonable person to be confidential under the circumstances surrounding the disclosure. All confidential information provided by a party hereto may be used by any other party hereto solely for the purpose of rendering or obtaining the Services and, except as may be required in carrying out this Agreement (including, without limitation, disclosure to affiliates of Custodian or agents appointed by the Custodian), may not be disclosed to any third party without the prior consent of the party that provided the information, unless required by law or court order.
- (b) Section 14(a) is not applicable to any information that (i) was in the public domain when disclosed, (ii) was lawfully in a party’s possession before the other party provided it pursuant to this Agreement, (iii) becomes part of the public domain by publication or otherwise through no unauthorized act or omission on the part of a party, or (iv) is independently developed by an employee(s) or other agent(s) of a party with no access to information that is confidential under Section 14(a).
- (c) The obligations of confidentiality and nonuse related to the confidential information received under this Agreement will be binding and, in the event that this Agreement is terminated, continue in force.

15. Intellectual Property.

As between the parties hereto, Custodian will retain all right, title, and interest (including all copyright, trademark, patent, trade secrets, and all other intellectual property rights) in the Services provided by Custodian.

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16. Taxation.

Client is liable for all Taxes with respect to any Custodied Assets held for the benefit of Client or any transaction related thereto (any such tax, a “**Client Tax**”). Client will indemnify Custodian for any Client Tax, and any expenses related thereto, other than any Client Tax arising out of Custodian’s gross negligence, bad faith, or willful misconduct. Client acknowledges that Custodian may, or may instruct the applicable withholding agent to, withhold and remit to the appropriate Governmental Authority the amount of any Client Tax that Custodian is advised by counsel to withhold. Client also acknowledges that Custodian may, or may instruct another party to, report actions taken with respect to the Custodied Assets to the Internal Revenue Service or other Governmental Authority if advised to do so by counsel. Upon execution of this Agreement, Client will deliver to the Custodian a properly completed and executed Internal Revenue Service Form W-8 or W-9 appropriate to Client’s circumstances.

17. Disclosure of Risks.

Custodian hereby notifies Client, and Client hereby acknowledges, that:

- a. digital units that are used as a medium of exchange or a form of digitally stored value (“**Virtual Currency**”) are not legal tender, and are not backed by the government;
- b. although this Agreement uses the term “deposit,” digital assets in the Digital Asset Account are not “deposits” within the meaning of U.S. federal or state banking law, and cash in the Cash Account are not deposits of Custodian. Balances of digital assets in Client’s Digital Asset Account are not subject to Federal Deposit Insurance Corporation (“**FDIC**”) or Securities Investor Protection Corporation (“**SIPC**”) protections;
- c. legislative and regulatory changes or actions at the state, federal, or international level may adversely affect the use, transfer, exchange, and value of Virtual Currency;
- d. if any Custodied Digital Assets are deemed to be securities under state or Federal securities laws or if providing custody services or the ability to withdraw with respect to any Custodied Digital Asset would otherwise violate applicable state or federal laws, Custodian will make reasonable efforts to return such Custodied Digital Assets to Client but such Custodied Digital Assets may become temporarily or permanently inaccessible to Client;
- e. the software and cryptography that governs the protocols of Digital Asset Networks have short histories and could at any time be found ineffective or faulty, which could result in the complete loss of value or theft of the Custodied Digital Assets;
- f. no physical, operational and cryptographic system for the secure storage of private keys is perfectly secure, and loss or theft due to operational or other failure is always possible;

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- g. transactions in Virtual Currency may be irreversible, and, accordingly, losses due to fraudulent or accidental transactions may not be recoverable;
- h. some Virtual Currency transactions shall be deemed to be made when recorded on a public ledger, which is not necessarily the date or time that an Authorized Person provides an Instruction;
- i. the value of Virtual Currency may be derived from the continued willingness of market participants to exchange government-issued currency that is designated as legal tender in its country of issuance through government decree, regulation, or law ("**Fiat Currency**") for Virtual Currency, which may result in the potential for permanent and total loss of value of a particular Virtual Currency should the market for that Virtual Currency disappear;
- j. there is no assurance that a Person who accepts a Virtual Currency as payment today will continue to do so in the future;
- k. the volatility and unpredictability of the price of Virtual Currency relative to Fiat Currency may result in significant loss over a short period of time;
- l. the nature of Virtual Currency may lead to an increased risk of fraud or cyber-attack;
- m. the nature of Virtual Currency means that any technological difficulties experienced by Custodian may prevent the access or use of Client's Virtual Currency;
- n. any bond or trust account maintained by Custodian for the benefit of its customers may not be sufficient to cover all losses incurred by customers; and
- o. for purposes of calculating fees and for account statements, the fair market value of each Custodied Asset will be determined by Custodian according to its valuation policy, which may differ from the way that Client values its digital asset holdings.

18. Limitations of Liability.

- (a) Neither party will be liable to the other party (whether under contract, tort (including negligence) or otherwise) for any indirect, incidental, special or consequential losses suffered or incurred by the other party (whether or not any such losses were foreseeable or within the contemplation of the parties).
- (b) Neither party's total aggregate liability arising out of or relating to this Agreement will exceed the greater of (1) the fair market value of the amount of Custodied Assets at the time in which the events giving rise to the liability occurred and (2) the fair market value of the amount of Custodied Assets at the time that Custodian notifies Client in writing or Client otherwise has actual knowledge of the events giving rise to the liability. The fair market value of each digital asset will be determined by Custodian according to its valuation policy, which may differ from the way that Client values its digital asset holdings.

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19. Miscellaneous.

- (a) *Headings.* The headings in this Agreement are for reference only and must not affect the construction or interpretation of any of the provisions herein.
- (b) *Counterparts.* This Agreement may be signed in any number of counterparts, each of which must be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement will become effective when each party hereto has received a counterpart hereof signed by all of the other parties hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement will have no effect and no party will have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns.
- (c) *Electronic Documents.* Client consents to the delivery of confirmations, any other required or optional communication or agreement under any applicable law or regulation by e-mail, Web site or other electronic means, including through the Portal, subject to compliance with any applicable laws, rules or regulations. Any such documents that are delivered to Client electronically are deemed to be “in writing.” If Client’s signature or acknowledgment is required or requested with respect to any such document and Client (if a natural person) or an authorized representative of Client “clicks” in the appropriate space, Client will be deemed to have signed or acknowledged the document to the same extent and with the same effect as if Client had signed the document manually. Client acknowledges its understanding that Client has the right to withdraw its consent to the electronic delivery and signature of documents at any time by providing prior written notice.
- (d) *Notices.* All notices, requests and other communications to any party hereunder must be in writing (including facsimile transmission and e-mail transmission, so long as a confirmation of receipt of any e-mail transmission is requested and received) and must be given,

if to Client, using Client Contact Info as given on the Term Sheet.

if to Custodian, to:

NYDIG Execution LLC
510 Madison Avenue, 21st Floor
New York, NY 10022
Attention: Legal Department
E-mail: legal@nydig.com

or such other address as a party may hereafter specify for the purpose by notice to the other party hereto. Each of the foregoing addresses will be effective unless and until

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notice of a new address is given by the applicable party to the other party in writing. Notice will not be deemed to be given unless it has been received.

- (e) *Relationship of the Parties.* Nothing in this Agreement will be deemed or is intended to be deemed, nor will it cause, Client and Custodian to be treated as partners, joint ventures, or otherwise as joint associates for profit.
- (f) *Governing Law.* This Agreement is governed by and is to be construed in accordance with the law of the State of New York, without giving effect to the conflicts of law rules of that state.
- (g) *Jurisdiction.* The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby will be brought in the United States District Court for the Southern District of New York or any New York State court sitting in New York City, so long as one of those courts has subject matter jurisdiction over the suit, action or proceeding, and that any cause of action arising out of this Agreement will be deemed to have arisen from a transaction of business in the State of New York, and each of the parties hereby irrevocably consents to the jurisdiction of those courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on that party as provided in Section 19(c) will be deemed effective service of process on that party.

- (h) *Claims.* It is the intention of the parties that no party other than parties to this Agreement will have or assert any rights, claims or remedies against any party in respect of any action, omission, failure or neglect in the performance of any responsibilities referred to in this Agreement. For the avoidance of doubt, the parties acknowledge and agree that the foregoing sentence does not affect the right of any party to recover from Custodian pursuant to Section 10 of this Agreement the losses, claims, damages, liabilities or expenses specified in Section 10. Custodian will advise Client as soon as reasonably practicable in the event any such claim is asserted by a third party against Custodian.
- (i) Modifications, Amendments and Waivers.
 - (i) Custodian may modify or amend the terms and conditions of this Agreement at any time after providing 30 days' advance notice to Client. The parties may

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agree, memorialized in writing signed by both parties, to modify or amend this Agreement at any time.

- (ii) Any provision of this Agreement may be waived if, but only if, the waiver is in writing and is signed by the party against whom the waiver is to be effective.
- (iii) Custodian may change its internal policies and procedures, including its valuation policy, without notice to, or consent by, Client. However, to the extent of any conflict between this Agreement and updated policies and procedures, this Agreement shall control.
- (iv) No failure or delay by any party in exercising any right, power or privilege hereunder operates as a waiver thereof nor may any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.
- (j) *Successors and Assigns.* The provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns but the parties agree that no party may assign its rights and obligations under this Agreement without the prior written consent of the other parties, which consent may not be unreasonably withheld or delayed, except that Custodian may assign its rights and obligations under the Agreement to any affiliate of Custodian that is chartered or licensed to provide the Services or to any entity which succeeds to all or substantially all of the assets and business of Custodian without the prior written consent of Client.
- (k) *Entire Agreement.* This Agreement embodies the entire agreement and understanding between the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter of this Agreement, except that any non-disclosure agreement or agreements previously entered into between the parties hereto continue to be in force.
- (l) *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement will remain in full force and effect and will in no way be affected, impaired or invalidated so long as the economic or legal substance of the Services contemplated hereby is not affected in any manner materially adverse to either party. Upon such a determination, the parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the Services contemplated hereby be consummated as originally contemplated to the fullest extent possible.
- (m) *No Advice.* Client acknowledges that Custodian is not providing any legal, tax, or investment advice in providing the Services under this Agreement.

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- (n) *No Third Party Beneficiaries.* A person who is not a party to this Agreement has no right to enforce any term of this Agreement.

Each of the undersigned has caused this Agreement to be executed by its duly authorized officer.

Marathon Digital Holdings, Inc.

NYDIG Execution LLC

By: Fred Thiel

By: Carlee Cooper

Name: Fred Thiel

Name: Carlee Cooper

Title: CEO

Title: Counsel

Date: 6/29/21

Date: July 27, 2021

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Appendix A

- (o) NYDIG - Custody Service Level Agreement
- (p) NYDIG Execution LLC (“NYDIG”) is open every day that the New York Stock Exchange is open (a “Business Day”). NYDIG’s hours are 9:00 a.m. through 5:00 p.m. Eastern Time, Monday through Friday. The tables below indicate, for each proper, valid request that a Client may make in relation to its account, how long NYDIG as custodian has to take a corresponding action.
- (q) NYDIG accepts its final withdrawal requests at 4:00 p.m. Eastern Time on a Business Day. All other requests may be made until 5:00 p.m. Eastern Time on a Business Day. **ANY REQUEST MADE AFTER 5:00 P.M. EASTERN TIME OR NOT ON A BUSINESS DAY WILL BE TREATED AS THOUGH IT WAS MADE AT THE OPEN OF BUSINESS ON THE NEXT BUSINESS DAY.**
- (r)
- (s) General SLAs

Client Request	Custodian Action	SLA Time (after Client Request)
Changes to Authorized Persons	Initiate the process to add or remove a person authorized to perform administrative actions on the account.	3 Business Days
Modification or override of risk limits	Confirm the source of the request and review the risk limit increase for approval.	2 Business Days
Severity 1 Support Request	Determine the source of the service disruption, provide workarounds, and a resolution timeline.	4 hours
Severity 2 Support Request	Acknowledge and reproduce the issue and provide a resolution timeline.	2 Business Days
Severity 3 Support Request	Collect the requested information and provide a written summary to the client.	5 Business Days

- (t) Problem Severity Levels

Severity 1	Critical communication issue impacting Client’s ability to submit instructions, critical issue preventing Custodian from processing withdrawal or deposits.
Severity 2	Unexpected system behavior or Severity 1 issues with manual workarounds.

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Severity 3	Information request related to an already completed transaction.
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Cold Storage SLAs

Client Request/Action	Custodian Action	SLA Time (after Client Request)
Place a digital asset withdrawal request	Acknowledge receipt and confirm or reject withdrawal request parameters (e.g., sub-account, asset type, amount, destination).	4 hours
	Transfer assets on the blockchain and provide confirmation of the details of the withdrawal.	1 Business Day <i>(i.e., next Business Day)</i>
Request allocation of additional digital asset addresses	Provide a batch of 10 new client dedicated addresses.	2 Business Days
Place a digital asset deposit request (including to a specific allocated digital asset address)	Acknowledge receipt, confirm or reject deposit request parameters (e.g., sub-account, asset type, amount, destination), and send a deposit address.	4 hours
Deposit (i.e., transfer to client's account via on-blockchain transfer to address provided by NYDIG)	Provide confirmation of the details of the transaction.	1 Business Day
Changes to digital asset withdrawal addresses	Add or remove an address whitelisted to receive digital assets from the client's account.	2 Business Days

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(u) Cash SLAs

(v) Client Request/Action	(w) Custodian Action	(x) SLA Time (after Client Request)
(y) Wire transfer (<i>i.e.</i> , send funds to FBO customer account)	(z) Credit Client's Cash Account.	(aa) 1 Business Day
(bb) Place a request withdraw cash	(cc) Debit Client's Cash Account.	(dd) 1 Business Day

CONFIDENTIAL

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER AND
PRINCIPAL FINANCIAL AND ACCOUNTING OFFICER
PURSUANT TO SECTION 302 OF THE
SARBANES-OXLEY ACT OF 2002**

I, Fred Thiel, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Marathon Digital Holdings, Inc. for the period ended March 31, 2023;
2. Based on my knowledge, this quarterly 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 quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;
4. The registrant's other certifying officer 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 controls 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 for the period in which this quarterly 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;
 - 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 that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal controls which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Dated: May 10, 2023

By: /s/ Fred Thiel

Fred Thiel
Chief Executive Officer (Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER AND
PRINCIPAL FINANCIAL AND ACCOUNTING OFFICER
PURSUANT TO SECTION 302 OF THE
SARBANES-OXLEY ACT OF 2002**

I, Hugh Gallagher certify that:

1. I have reviewed this quarterly report on Form 10-Q of Marathon Digital Holdings, Inc for the period ended March 31, 2023.;
2. Based on my knowledge, this quarterly 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 quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;
4. The registrant's other certifying officer 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 controls 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 for the period in which this quarterly 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;
 - 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 that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal controls which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Dated: May 10, 2023

By: /s/ Hugh Gallagher

Hugh Gallagher
Chief Financial Officer (Principal Financial Officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

About the Quarterly Report of Marathon Digital Holdings, Inc. (the "Company") on Form 10-Q for the period ended March 31, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Fred Thiel, Chief Executive Officer (Principal Executive Officer) of the Company, certifies, pursuant to 18 U.S.C. section 1350 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 10, 2023

By: /s/ Fred Thiel

Fred Thiel

Chief Executive Officer (Principal Executive Officer)

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Marathon Digital Holdings, Inc. (the "Company") on Form 10-Q for the period ended March 31, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Hugh Gallagher, Chief Financial Officer, Secretary and Director (Principal Financial and Accounting Officer) of the Company, certifies, pursuant to 18 U.S.C. section 1350 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 10, 2023

By: /s/ Hugh Gallagher

Hugh Gallagher

Chief Financial Officer (Principal Financial Officer)

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.
