

**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 EXCHANGE ACT OF 1934

For the quarterly period ended March 31, 2024

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 001-40031

**BigBear.ai Holdings, Inc.**

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

85-4164597

(I.R.S. Employer Identification No.)

6811 Benjamin Franklin Drive, Suite 200, Columbia, MD

(Address of Principal Executive Offices)

21046

(Zip Code)

(410) 312-0885

Registrant's telephone number, including area code

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, \$0.0001 par value	BBAI	New York Stock Exchange
Redeemable warrants, each full warrant exercisable for one share of common stock at an exercise price of \$11.50 per share	BBAI.WS	New York Stock Exchange

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

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

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

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

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

There were 246,076,078 shares of our common stock, \$0.0001 par value per share, outstanding as of May 3, 2024.

**BIGBEAR.AI HOLDINGS, INC.**  
**Quarterly Report on Form 10-Q**  
**March 31, 2024**

**TABLE OF CONTENTS**

<b>Item</b>	<b>Page</b>
<b><u>PART I—FINANCIAL INFORMATION</u></b>	
<b><u>Item 1. Financial Statements (Unaudited)</u></b>	
<u>Consolidated Balance Sheets as of March 31, 2023 and December 31, 2023</u>	3
<u>Consolidated Statements of Operations for the Three Month Ended March 31, 2024 and 2023</u>	4
<u>Consolidated Statements of Stockholders' (Deficit) Equity for the Three Month Ended March 31, 2024 and 2023</u>	5
<u>Consolidated Statements of Cash Flows for the Three Month Ended March 31, 2024 and 2023</u>	6
<u>Notes to Consolidated Financial Statements (Unaudited)</u>	7
<b><u>Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations</u></b>	29
<b><u>Item 3. Quantitative and Qualitative Disclosures About Market Risk</u></b>	40
<b><u>Item 4. Controls and Procedures</u></b>	40
<b><u>PART II—OTHER INFORMATION</u></b>	
<b><u>Item 1. Legal Proceedings</u></b>	41
<u>Item 1A Risk Factors</u>	41
<b><u>Item 2. Unregistered Sales of Equity Securities and Use of Proceeds</u></b>	41
<b><u>Item 3. Defaults Upon Senior Securities</u></b>	41
<b><u>Item 5. Other Information</u></b>	41
<b><u>Item 6. Exhibits</u></b>	42
<b><u>SIGNATURES</u></b>	43

**PART I—FINANCIAL INFORMATION**
**Item 1. Financial Statements**

**BIGBEAR.AI HOLDINGS, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
*(unaudited; in thousands, except share and per share data)*

	March 31, 2024	December 31, 2023
<b>Assets</b>		
<b>Current assets:</b>		
Cash and cash equivalents	\$ 81,412	\$ 32,557
Accounts receivable, less allowance for credit losses of \$171 as of March 31, 2024 and \$230 as of December 31, 2023	36,584	21,949
Contract assets	2,379	4,822
Prepaid expenses and other current assets	4,661	4,449
<b>Total current assets</b>	<b>125,036</b>	<b>63,777</b>
<b>Non-current assets:</b>		
Property and equipment, net	1,570	997
Goodwill	119,769	48,683
Intangible assets, net	120,444	82,040
Right-of-use assets	9,701	4,041
Deferred tax assets	—	—
Other non-current assets	1,107	372
<b>Total assets</b>	<b>\$ 377,627</b>	<b>\$ 199,910</b>
<b>Liabilities and stockholders' deficit</b>		
<b>Current liabilities:</b>		
Accounts payable	\$ 6,215	\$ 11,038
Short-term debt, including current portion of long-term debt	826	1,229
Accrued liabilities	21,516	16,233
Contract liabilities	3,853	879
Current portion of long-term lease liability	848	779
Derivative liabilities	24,956	37,862
Other current liabilities	4,856	602
<b>Total current liabilities</b>	<b>63,070</b>	<b>68,622</b>
<b>Non-current liabilities:</b>		
Long-term debt, net	194,761	194,273
Long-term lease liability	11,300	4,313
Deferred tax liabilities	14	37
Other non-current liabilities	—	—
<b>Total liabilities</b>	<b>269,145</b>	<b>267,245</b>
<b>Commitments and contingencies (Note M)</b>		
<b>Stockholders' deficit:</b>		
Common stock, par value \$0.0001; 500,000,000 shares authorized and 246,061,379 shares issued and outstanding at March 31, 2024 and 157,287,522 at December 31, 2023	25	17
Additional paid-in capital	604,384	303,428
Treasury stock, at cost 9,952,803 shares at March 31, 2024 and December 31, 2023	(57,350)	(57,350)
Accumulated deficit	(438,577)	(313,430)
<b>Total stockholders' deficit</b>	<b>108,482</b>	<b>(67,335)</b>
<b>Total liabilities and stockholders' deficit</b>	<b>\$ 377,627</b>	<b>\$ 199,910</b>

The accompanying notes to the consolidated financial statements are an integral part of these statements.

**BIGBEAR.AI HOLDINGS, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
*(unaudited; in thousands, except share and per share data )*

	Three Months Ended March 31,	
	2024	2023
Revenues	\$ 33,121	\$ 42,154
Cost of revenues	26,135	31,941
<b>Gross margin</b>	<b>6,986</b>	<b>10,213</b>
Operating expenses:		
Selling, general and administrative	16,948	20,362
Research and development	1,144	1,128
Restructuring charges	860	755
Transaction expenses	1,103	—
Goodwill impairment	85,000	—
<b>Operating loss</b>	<b>(98,069)</b>	<b>(12,032)</b>
Interest expense	3,555	3,556
Net increase in fair value of derivatives	23,992	10,567
Other income	(455)	—
<b>Loss before taxes</b>	<b>(125,161)</b>	<b>(26,155)</b>
Income tax (benefit) expense	(14)	59
<b>Net loss</b>	<b>\$ (125,147)</b>	<b>\$ (26,214)</b>
Basic net loss per share	\$ (0.67)	\$ (0.19)
Diluted net loss per share	\$ (0.67)	\$ (0.19)
<b>Weighted-average shares outstanding:</b>		
Basic	187,279,204	138,548,599
Diluted	187,279,204	138,548,599

The accompanying notes to the consolidated financial statements are an integral part of these statements.

**BIGBEAR.AI HOLDINGS, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT**  
*(unaudited; in thousands, except share data)*

	Three Months Ended March 31, 2024					
	Common Stock		Additional paid in capital	Treasury stock	Accumulated deficit	Total stockholders' deficit
	Shares	Amount				
<b>As of December 31, 2023</b>	<b>157,287,522</b>	<b>\$ 17</b>	<b>\$ 303,428</b>	<b>\$ (57,350)</b>	<b>\$ (313,430)</b>	<b>\$ (67,335)</b>
Net loss	—	—	—	—	(125,147)	(125,147)
Equity-based compensation expense	—	—	5,157	—	—	5,157
Exercise of options	64,544	—	86	—	—	86
Issuance of common shares as consideration for the acquisition of Pangiam	61,838,072	6	207,770	—	—	207,776
Issuance of shares for equity-based compensation awards, net	4,096,003	—	(2,762)	—	—	(2,762)
Proceeds from exercise of 2023 warrants	22,775,144	2	90,705	—	—	90,707
<u>Convertible debt conversion</u>	94	—	—	—	—	—
<b>As of March 31, 2024</b>	<b>246,061,379</b>	<b>\$ 25</b>	<b>\$ 604,384</b>	<b>\$ (57,350)</b>	<b>\$ (438,577)</b>	<b>\$ 108,482</b>

	Three Months Ended March 31, 2023					
	Common Stock		Additional paid in capital	Treasury stock	Accumulated deficit	Total stockholders' deficit
	Shares	Amount				
<b>As of December 31, 2022</b>	<b>127,022,363</b>	<b>\$ 14</b>	<b>\$ 272,528</b>	<b>\$ (57,350)</b>	<b>\$ (253,064)</b>	<b>\$ (37,872)</b>
Net loss	—	—	—	—	(26,214)	(26,214)
Equity-based compensation expense	—	—	3,805	—	—	3,805
Issuance of Private Placement shares	13,888,889	2	7,079	—	—	7,081
Issuance of shares for equity-based compensation awards, net	911,861	—	(839)	—	—	(839)
Issuance of shares for exercised convertible notes	94	—	—	—	—	—
<b>As of March 31, 2023</b>	<b>141,823,207</b>	<b>\$ 16</b>	<b>\$ 282,573</b>	<b>\$ (57,350)</b>	<b>\$ (279,278)</b>	<b>\$ (54,039)</b>

The accompanying notes to the consolidated financial statements are an integral part of these statements.

**BIGBEAR.AI HOLDINGS, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
*(unaudited in thousands)*

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
<b>Cash flows from operating activities:</b>		
Net loss	\$ (125,147)	\$ (26,214)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization expense	2,439	1,986
Amortization of debt issuance costs	506	500
Equity-based compensation expense	5,157	3,805
Goodwill impairment	85,000	—
Non-cash lease expense	94	(35)
Provision for doubtful accounts	171	882
Deferred income tax (benefit) expense	(23)	54
Net increase in fair value of derivatives	23,992	10,567
Loss on sale of property and equipment	—	8
Changes in assets and liabilities:		
(Increase) in accounts receivable	(8,957)	(3,469)
Decrease (increase) in contract assets	2,443	(1,115)
Decrease in prepaid expenses and other assets	950	1,488
(Decrease) in accounts payable	(5,960)	(4,914)
Increase in accrued liabilities	2,599	4,066
Increase in contract liabilities	1,826	325
Increase in other liabilities	551	49
<b>Net cash used in operating activities</b>	<b>(14,359)</b>	<b>(12,017)</b>
<b>Cash flows from investing activities:</b>		
Acquisition of business, net of cash acquired	13,935	—
Purchases of property and equipment	(38)	—
Capitalized software development costs	(1,643)	—
<b>Net cash provided by investing activities</b>	<b>12,254</b>	<b>—</b>
<b>Cash flows from financing activities:</b>		
Proceeds from issuance of shares for exercised RDO and PIPE warrants	53,809	—
Proceeds from issuance of Private Placement shares	—	25,000
Payment of Private Placement transaction costs	—	(3,025)
Repayment of short-term borrowings	(403)	(763)
Proceeds from exercise of options	86	—
Payments of tax withholding from the issuance of common stock	(2,532)	—
<b>Net cash provided by financing activities</b>	<b>50,960</b>	<b>21,212</b>
Net increase in cash and cash equivalents	48,855	9,195
Cash and cash equivalents at the beginning of period	32,557	12,632
<b>Cash and cash equivalents at the end of the period</b>	<b>\$ 81,412</b>	<b>\$ 21,827</b>
<b>Supplemental schedule of non-cash investing and financing activities:</b>		
Issuance of common stock as consideration for Pangiam acquisition	\$ 207,776	\$ —

The accompanying notes to the consolidated financial statements are an integral part of these statements.

**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

---

**Note A—Description of the Business**

BigBear.ai Holdings, Inc.'s ("*BigBear.ai*", "*BigBear.ai Holdings*", or the "*Company*") mission is to help deliver clarity for the world's most complex decisions. BigBear.ai is a leading provider of Edge AI-powered decision intelligence solutions for national security, supply chain management and digital identity. Customers and partners rely on BigBear.ai's predictive analytics capabilities in highly complex, distributed, mission-based operating environments. We are a technology-led solutions organization, providing both software and services to our customers. Unless otherwise indicated, references to "we", "us" and "our" refer collectively to BigBear.ai Holdings, Inc. and its consolidated subsidiaries.

**Note B—Summary of Significant Accounting Policies**

***Basis of Presentation***

We prepared these accompanying unaudited consolidated financial statements in accordance with U.S. generally accepted accounting principles ("*GAAP*") for interim financial information, the instructions to Form 10-Q and Article 10 of SEC Regulation S-X. Accordingly, they do not include all information and notes required by GAAP for complete financial statements. Amounts presented within the consolidated financial statements and accompanying notes are presented in thousands of U.S. dollars unless stated otherwise, except for percentages, units, shares, per unit and per share amounts.

In the opinion of management, these consolidated financial statements reflect all adjustments that are of a normal recurring nature necessary for a fair presentation of our results of operations, financial condition and cash flows for the interim periods presented. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. We base these estimates on historical experience and on various other assumptions that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying amounts of assets and liabilities that are not readily apparent from other sources. Our actual results may differ materially from these estimates. Significant estimates inherent in the preparation of our consolidated financial statements include, but are not limited to, accounting for revenue and cost recognition; evaluation of goodwill; intangible assets; and other assets for impairment; income taxes; equity-based compensation; fair value measurements; and contingencies. We eliminate intercompany balances and transactions in consolidation.

The results of operations for the interim periods presented are not necessarily indicative of results to be expected for the full year or future periods. These consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2023.

***Emerging Growth Company***

Section 102(b)(1) of the Jumpstart Our Business Startups Act of 2012 (the "*JOBS Act*") exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that an emerging growth company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such an election to opt out is irrevocable. The Company has elected not to opt out of such extended transition period, which means that when a standard is issued or revised and it has different application dates for public or private companies, the Company, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard.

This may make comparison of the Company's financial statements with another public company that is neither an emerging growth company nor an emerging growth company that has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

***Recent Accounting Pronouncements***

***Recent Accounting Pronouncements Not Yet Adopted***

In December 2023, the FASB issued Accounting Standards Update ("*ASU*") No. 2023-09, *Improvements to Income Tax*

**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

---

*Disclosures (“ASU 2023-09”).* Under ASU 2023-09, public benefit entities must disclose specific categories and provide additional information in the tax rate reconciliation if the effect of those reconciling items is equal to or greater than 5 percent of the amount computed by multiplying pretax income or loss by the applicable statutory income tax rate. The amendments from ASU 2023-09 are effective for annual periods beginning after December 15, 2024. Early adoption is permitted for annual financial statements that have not yet been issued or made available for issuance. The Company does not expect this guidance to have a material impact to its consolidated financial statements or related disclosures.

*Recent Accounting Pronouncements Adopted*

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments—Credit Losses: Measurement of Credit Losses on Financial Instruments* (“ASU 2016-13”). ASU 2016-13 broadens the information that an entity must consider in developing its expected credit loss estimate for assets measured either collectively or individually. The amendments in ASU 2016-13 require an entity to record an allowance for credit losses for certain financial instruments and financial assets, including accounts receivable, based on expected losses rather than incurred losses. The measurement of expected credit losses is based on relevant information about past events, including historical experience, current conditions and reasonable and supportable forecasts that affect the collectability of the reported amount. An entity must use judgment in determining the relevant information and estimation methods that are appropriate in its circumstances. The new guidance is effective for the years beginning after December 15, 2022, including interim periods. The Company prospectively adopted ASU 2016-13 as of January 1, 2023. The adoption of ASU 2016-13 did not have a material impact to the Company’s consolidated financial statements or related disclosures.

**Note C—Restructuring Charges**

During the three months ended March 31, 2024, the Company refined its organizational structure resulting in employee separation costs of \$59, net of tax benefits. The Company had completed this restructuring action as of March 31, 2024. There were \$511 unpaid employee separation costs related to this restructuring action as of March 31, 2024.

During the three months ended March 31, 2023, the Company refined its organizational structure resulting in employee separation costs of \$80, net of tax benefits. The Company had completed this restructuring action as of March 31, 2023. There were no unpaid employee separation costs related to this restructuring action as of December 31, 2023.

**Note D—Business Combinations**

*Pangiam Acquisition*

On February 29, 2024, pursuant to the Agreement and Plan of Merger (the “*Merger Agreement*”), dated November 4, 2023, by and among BigBear, Pangiam Merger Sub, Inc., a Delaware corporation and a direct wholly-owned subsidiary of the Company (“*Merger Sub*”), Pangiam Purchaser, LLC, a Delaware limited liability company and a direct wholly-owned subsidiary of the Company (“*Pangiam Purchaser*”), Pangiam Ultimate Holdings, LLC, a Delaware limited liability company (the “*Seller*”), and Pangiam Intermediate Holdings, LLC, a Delaware limited liability company (“*Pangiam Intermediate*”), (i) Merger Sub merged with and into Pangiam Intermediate, with Merger Sub ceasing to exist and Pangiam Intermediate surviving as a wholly-owned subsidiary of the Company (the “*First Merger*”), and (ii) immediately following the First Merger, Pangiam Intermediate merged with and into Pangiam Purchaser, with Pangiam Intermediate ceasing to exist and Pangiam Purchaser continuing as a wholly-owned subsidiary of the Company (the “*Second Merger*”, together with the First Merger, the “*Mergers*”).

As consideration for the Mergers and the related transactions contemplated by the Merger Agreement, BigBear issued a total of 61,838,072 shares of the Company’s common stock to Seller based on the 20-day volume-weighted average price for common stock ending on the trading day immediately prior to the date of the Merger Agreement of \$1.3439, representing an enterprise value of \$70 million (which was subject to customary adjustments for indebtedness, cash, working capital and transaction expenses) (the “*Purchase Price*”), less \$3.5 million that was held back from the Purchase Price at the time of the closing of the Mergers to cover any post-closing downward adjustments to the Purchase Price (“*Holdback Amount*”). BigBear may issue an additional up to \$7 million of shares of Common Stock (based on the 20 day volume-weighted average price for the common stock ending on the trading day immediately prior to the settlement date) upon the final determination of any post-closing adjustments to the Purchase Price.



**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

The following table summarizes the fair value of the consideration transferred and the estimated fair values of the major classes of assets acquired and liabilities assumed as of the acquisition date.

	<b>February 29, 2024</b>
Holdback amount	3,500
Equity issued	207,776
Purchase consideration	\$ 211,276
Assets:	
Cash	\$ 13,935
Accounts receivable	5,848
Prepaid expenses and other current assets	143
Property and equipment	635
Right of use Assets	5,754
Intangible assets	39,100
Other non-current assets	1,772
Total assets acquired	\$ 67,187
Liabilities:	
Accounts payable	1,137
Accrued expenses	2,454
Other current liabilities	69
Deferred revenue	1,148
Current portion of long-term lease liability	1,080
Long-term lease liability	6,109
Total liabilities acquired	\$ 11,997
Fair value of net identifiable assets acquired	55,190
Goodwill	\$ 156,086

The Holdback amount is calculated for any potential differences between the estimated and final amount of cash balance, working capital and seller transaction costs and is presented as "other current liabilities" by BigBear.ai. The Holdback Amount will be settled in Company shares and the number of shares will be calculated based on the volume weighted average price for the BigBear.ai Holdings, Inc. shares over the 20 trading days ending on the Merger closing date.

The following table summarizes the intangible assets acquired by class:

	<b>February 29, 2024</b>
Technology	\$ 19,600
Trade names	2,400
Customer relationships	17,100
Total intangible assets	\$ 39,100

The acquired technology and customer relationship intangible assets have a weighted-average estimated useful lives of 7 years and 20 years, respectively.

The fair value of the acquired technology and trade name was determined using the relief from royalty (*RRR*) method. The fair value of the acquired customer relationships was determined using the excess earnings method.

The acquisition was accounted for as a business combination, whereby the excess of the purchase consideration over the fair value of identifiable net assets was allocated to goodwill. The goodwill reflects the potential synergies and expansion of the Company's

**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

---

offerings across product lines and markets complementary to its existing products and markets. For tax purposes, the goodwill related to the acquisition is deductible.

The results of operations of Pangiam for the period from February 29, 2024 to March 31, 2024 have been included in the results of operations for the three months ended March 31, 2024. The post-acquisition net revenues and net loss included in the results of operations for the three months ended March 31, 2024 were \$3,439 and \$1,127, respectively.

***Pro Forma Financial Data (Unaudited)***

The following table presents the pro forma consolidated results of operations of BigBear.ai for the three months ended March 31, 2024 and the year ended December 31, 2023 as though the acquisition of Pangiam had been completed as of January 1, 2023.

	Three months ended March 31, 2024	Year ended December 31, 2023
Net revenue	\$ 39,432	\$ 195,813
Net loss	(130,071)	(84,789)

The amounts included in the pro forma information are based on the historical results and do not necessarily represent what would have occurred if the business combination had taken place as of January 1, 2023, nor do they represent the results that may occur in the future. Accordingly, the pro forma financial information should not be relied upon as being indicative of the results that would have been realized had the acquisition occurred as of the date indicated or that may be achieved in the future.

The Company incurred \$1,103 of transaction expenses attributable to the acquisition of Pangiam during the three months ended March 31, 2024, which have been recorded in the pro forma results for the twelve months ended December 31, 2023. The Company incurred \$85,000 of goodwill impairment as outlined in Note F during the three months ended March 31, 2024, which has been recorded in the pro forma results for the three months ended March 31, 2024.

**Note E—Fair Value of Financial Instruments**

Cash and cash equivalents, accounts receivable, prepaid expenses and other current assets, accounts payable, short-term debt, including the current portion of long-term debt, accrued liabilities and other current liabilities are reflected on the consolidated balance sheets at amounts that approximate fair value because of the short-term nature of these financial assets and liabilities.

IPO warrants, 2023 and 2024 private placement warrants (“*PIPE warrants*”), and 2023 and 2024 registered direct offering warrants (“*RDO warrants*”) are valued using a modified Black-Scholes option pricing model (“*OPM*”), which is considered to be a Level 3 fair value measurement. See Note O—Warrants for information on the Level 3 inputs used to value the IPO warrants, PIPE warrants and RDO warrants.

**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

The table below presents the financial assets and liabilities measured at fair value :

		March 31, 2024			
Balance Sheet Caption	Level 1	Level 2	Level 3	Total	
<b>Recurring fair value measurements:</b>					
2023 PIPE warrants	\$ —	\$ —	\$ —	\$ —	
2023 RDO warrants	—	—	—	—	
IPO warrants	—	—	66	66	
2024 PIPE warrants	—	—	15,030	15,030	
2024 RDO warrants	—	—	9,860	9,860	
Total recurring fair value measurement			24,956	24,956	
<b>Nonrecurring fair value measurement:</b>					
Goodwill <sup>(1)</sup>	—	—	119,769	119,769	

		December 31, 2023			
Balance Sheet Caption	Level 1	Level 2	Level 3	Total	
2023 PIPE warrants	\$ —	\$ —	\$ 22,778	\$ 22,778	
2023 RDO warrants	—	—	15,018	15,018	
IPO warrants	—	—	66	66	
2024 PIPE warrants	—	—	—	—	
2024 RDO warrants	—	—	—	—	

<sup>(1)</sup> As of March 31, 2024, in accordance with Subtopic 350-20, goodwill with a carrying amount of \$ 204.8 million was written down to its implied fair value of \$119.8 million, resulting in an impairment charge of \$85.0 million, which was included in earnings for the period.

The changes in the fair value of the Level 3 liabilities are as follows:

	2023 PIPE warrants	2023 RDO warrants	IPO warrants	2024 PIPE warrants	2024 RDO warrants
December 31, 2023	\$ 22,778	\$ 15,018	\$ 66	\$ —	\$ —
Additions	—	—	—	27,990	15,196
Changes in fair value	37,361	15,551	—	(12,960)	(5,336)
Settlements	(60,139)	(30,569)	—	—	—
March 31, 2024	\$ —	\$ —	\$ 66	\$ 15,030	\$ 9,860

**Note F—Goodwill**

As of December 31, 2022, the Company had two operating and reportable segments that were organized by sector: Cyber & Engineering and Analytics. During the first quarter of 2023, the Company reevaluated its operating and reportable segments under *FASB ASC 280 - Segment Reporting*, following an organizational and legal entity restructuring, which allowed the Company to align its operations with how the business will be managed. As a result of such changes, the performance of the Company's operations are evaluated by the CODM using the consolidated financial results of the Company. As a result of this reevaluation, the Company determined it that it manages its operations as a single operating and reportable segment, which comprises a single reporting unit. The goodwill of the Cyber & Engineering and Analytics reporting units was combined into a single reporting unit during the first quarter of 2023.

The Company assessed if the reorganization was potentially masking a goodwill impairment by performing a quantitative goodwill impairment test of the Company's reporting units immediately before and after the reorganization. The Company utilized a combination of the discounted cash flow ("*DCF*") method of the Income Approach and the Market Approach. Under the Income Approach, the future cash flows of the Company's reporting units were projected based on estimates of future revenues, gross margins, operating income, excess net working capital, capital expenditures and other factors. The Company utilized estimated revenue growth rates and cash flow projections. The discount rates utilized in the DCF method were based on a weighted-average cost of capital ("*WACC*") determined from relevant market comparisons and adjusted for specific reporting unit risks and capital structure. A terminal value estimated growth rate was applied to the final year of the projected period and reflected the Company's estimate of perpetual growth. The Company then calculated the present value of the respective cash

**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

flows for each reporting unit to arrive at an estimate of fair value under the Income Approach. The Market Approach is comprised of the Guideline Public Company and the Guideline Transactions Methods. The Guideline Public Company Method focuses on comparing the Company to selected reasonably similar (or guideline) publicly traded companies. Under this method, valuation multiples were: (i) derived from the operating data of selected guideline companies; (ii) evaluated and adjusted based on the strengths and weaknesses of the Company relative to the selected guideline companies; and (iii) applied to the operating data of the Company to arrive at an indication of value. In the Guideline Transactions Method, consideration was given to prices paid in recent transactions that had occurred in the Company's industry or in related industries. The Company then reconciled the estimated fair value of its reporting units to its total public market capitalization as of the valuation date. The fair value of the Company's reporting units immediately before and after the reorganization exceeded its carrying values.

The table below presents the changes in the carrying amount of goodwill:

As of December 31, 2023	\$	48,683
Goodwill arising from the Pangiam acquisition		156,086
Goodwill impairment		(85,000)
<b>As of March 31, 2024</b>	<b>\$</b>	<b>119,769</b>

Accumulated impairment losses to goodwill were \$138,544 as of March 31, 2024.

During the first quarter of fiscal 2024, the Company performed a quantitative impairment analysis as a result of a decrease in share price during the quarter compared to the share price of the equity issued as consideration for the purchase of Pangiam as described in Note D. As a result of this testing, we recorded an \$85.0 million non-cash goodwill impairment charge during the three months ended March 31, 2024. Our goodwill impairment test reflected an allocation of 50% and 50% between the income and market-based approaches, respectively. Significant inputs into the valuation models included the discount rate, EBITDA Growth and estimated future cash flows. We used a discount rate of 31%, guideline peer group and their historical and forward-looking revenues in the goodwill impairment test. Subsequent to the impairment, there was no excess of reporting unit fair value over carrying value.

**Note G—Intangible Assets, net**

The intangible asset balances and accumulated amortization are as follows:

	March 31, 2024			
	Gross carrying amount	Accumulated amortization	Net carrying amount	Weighted average useful life in years
Customer relationships	\$ 91,700	\$ (12,524)	\$ 79,176	20
Technology	45,800	(12,364)	33,436	7
Software for sale	5,472	—	5,472	3
Trade name	2,400	(40)	2,360	5
<b>Total</b>	<b>\$ 145,372</b>	<b>\$ (24,928)</b>	<b>\$ 120,444</b>	

  

	December 31, 2023			
	Gross carrying amount	Accumulated amortization	Net carrying amount	Weighted average useful life in years
Customer relationships	\$ 74,600	\$ (11,432)	\$ 63,168	20
Technology	26,200	(11,156)	15,044	7
Software for sale	3,828	—	3,828	3
<b>Total</b>	<b>\$ 104,628</b>	<b>\$ (22,588)</b>	<b>\$ 82,040</b>	

No amortization expense was recognized for the capitalized software development costs during the three months ended March 31, 2024 and March 31, 2023.

**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

The table below presents the amortization expense related to intangible assets for the following periods:

	Three Months Ended March 31,	
	2024	2023
Amortization expense related to intangible assets	\$ 2,339	\$ 1,868

The table below presents the estimated amortization expense on intangible assets for the next five years and thereafter as of March 31, 2024:

Remainder of 2024	\$ 11,971
2025	16,137
2026	15,154
2027	13,258
2028	7,184
Thereafter	56,740
Total estimated amortization expense	\$ 120,444

**Note H—Prepaid expenses and other current assets**

The table below presents details on prepaid expenses and other current assets:

	March 31, 2024	December 31, 2023
Prepaid insurance	\$ 1,040	\$ 1,419
Prepaid expenses	1,840	1,246
Prepaid taxes	1,781	1,784
Total prepaid expenses and other current assets	\$ 4,661	\$ 4,449

**Note I—Accrued Liabilities**

The table below presents details on accrued liabilities:

	March 31 2024	December 31 2023
Payroll accruals	\$ 11,885	\$ 10,118
Accrued interest	3,559	560
Legal accruals	3,003	1,253
Other accrued expenses	3,069	4,302
Total accrued liabilities	\$ 21,516	\$ 16,233

**Note J—Debt**

The table below presents the Company's debt balances:

	March 31 2024	December 31 2023
Convertible Notes	\$ 200,000	\$ 200,000
Bank of America Senior Revolver	—	—
D&O Financing Loan	826	1,229
Total debt	200,826	201,229
Less: unamortized issuance costs	5,239	5,727
Total debt, net	195,587	195,502
Less: current portion	826	1,229
Long-term debt, net	\$ 194,761	\$ 194,273

**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

---

*Convertible Notes*

On December 7, 2021, the Company issued \$200.0 million of unsecured convertible notes (the “*Convertible Notes*”) to certain investors. The Convertible Notes bear interest at a rate of 6.0% per annum, payable semi-annually, and not including any interest payments that are settled with the issuance of shares, were initially convertible into 17,391,304 shares of the Company’s common stock at an initial Conversion Price of \$11.50. The Conversion Price is subject to adjustments. On May 29, 2022, pursuant to the Convertible Notes indenture, the conversion rate applicable to the Convertible Notes was adjusted to 94.2230 (previously 86.9565) shares of common stock per \$1,000 principal amount of Convertible Notes because the average of the daily volume-weighted average price of the common stock during the preceding 30 trading days was less than \$10.00 (the “*Conversion Rate Reset*”). After giving effect to the Conversion Rate Reset, the Conversion Price is \$10.61 and the Convertible Notes are convertible into 18,844,600 shares, not including any interest payments that are settled with the issuance of shares. The Convertible Note financing matures on December 15, 2026.

The Company may, at its election, force conversion of the Convertible Notes after December 15, 2022 and prior to October 7, 2026 if the trading price of the Company’s common stock exceeds 130% of the conversion price for 20 out of the preceding 30 trading days and the 30-day average daily trading volume ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to \$3.0 million for the first two years after the initial issuance of the Convertible Notes and \$2.0 million thereafter. Upon such conversion, the Company will be obligated to pay all regularly scheduled interest payments, if any, due on the converted Convertible Notes on each interest payment date occurring after the conversion date for such conversion to, but excluding, the maturity date (such interest payments, an “*Interest Make-Whole Payments*”). In the event that a holder of the Convertible Notes elects to convert the Convertible Notes (a) prior to December 15, 2024, the Company will be obligated to pay an amount equal to twelve months of interest or (b) on or after December 15, 2024 but prior to December 15, 2025, any accrued and unpaid interest plus any remaining amounts that would be owed up to, but excluding, December 15, 2025. The Interest Make-Whole Payments will be payable in cash or shares of the common stock at the Company’s election, as set forth in the Indenture.

Following certain corporate events that occur prior to the maturity date or if the Company exercises its mandatory conversion right in connection with such corporate events, the conversion rate will be increased in certain circumstances for a holder who elects, or has been forced, to convert its Convertible Notes in connection with such corporate events.

If a Fundamental Change (as defined in the Convertible Notes indenture) occurs prior to the maturity date, holders of the Convertible Notes will have the right to require the Company to repurchase all or any portion of their Convertible Notes in principal amounts of one thousand dollars or an integral multiple thereof, at a repurchase price equal to the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the repurchase date.

The Convertible Notes require the Company to meet certain financial and other covenants. As of March 31, 2024, the Company was in compliance with all covenants related to the Convertible Notes.

On May 29, 2022, pursuant to the conversion rate adjustment provisions in the Convertible Notes indenture, the Conversion Price was adjusted to \$10.61 (or 94.2230 shares of common stock per one thousand dollars of principal amount of Convertible Notes). Subsequent to the adjustment, the Convertible Notes are convertible into 18,844,600 shares, not including any interest payments that are settled with the issuance of shares.

During the three months ended March 31, 2024, Convertible Notes with a principal of \$2,000 were exercised for 94 shares of the Company’s common stock. As of March 31, 2024, the Company has an outstanding balance of \$200.0 million related to the Convertible Notes, which is recorded on the balance sheet net of approximately \$5.2 million of unamortized debt issuance costs. As of March 31, 2024, the fair value of the Convertible Notes is \$144,652, which is considered to be a Level 3 fair value measurement.

*Bank of America Senior Revolver*

The Company is party to a senior credit agreement with Bank of America, N.A. (the “*Bank of America Credit Agreement*”), entered into on December 7, 2021 (the “*Closing Date*”), subsequently amended on November 8, 2022, providing the Company with a \$25.0 million senior secured revolving credit facility (the “*Senior Revolver*”). Proceeds from the Senior Revolver will be

**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

---

used to fund working capital needs, capital expenditures and other general corporate purposes. The Senior Revolver matures on December 7, 2025 (the “Maturity Date”).

The Senior Revolver is secured by a pledge of 100% of the equity of certain of the Company’s wholly owned subsidiaries and a security interest in substantially all of the Company’s tangible and intangible assets. The Senior Revolver includes borrowing capacity available for letters of credit and for borrowings on same-day notice, referred to as the “swing loans.” Any issuance of letters of credit or making of a swing loan will reduce the amount available under the revolving credit facility. The Company may increase the commitments under the Senior Revolver in an aggregate amount of up to the greater of \$25.0 million or 100% of consolidated adjusted EBITDA plus any additional amounts so long as certain conditions, including compliance with the applicable financial covenants for such period, in each case on a pro forma basis, are satisfied.

As of the Closing Date, borrowings under the Senior Revolver bear interest, at the Company’s option, at:

- (i) A Base Rate plus a Base Rate Margin of 2.00%. Base Rate is a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus 0.50%, (b) the prime rate of Bank of America, N.A., and (c) Bloomberg Short-Term Yield Index (“BSBY”) Rate plus 1.00%; or
- (ii) The BSBY Rate plus a BSBY Margin of 1.00%.

The Base Rate Margin and BSBY Margin became subject to adjustment based on the Company’s Secured Net Leverage Ratio after March 31, 2022. The Company is also required to pay unused commitment fees and letter of credit fees under the Bank of America Credit Agreement. The Second Amendment (defined below) increased the Base Rate Margin, BSBY Margin and unused commitment fees by 0.25%.

The Bank of America Credit Agreement requires the Company to meet certain financial and other covenants. The Company was not in compliance with the Fixed Charge Coverage ratio requirement as of June 30, 2022, and as a result was unable to draw on the facility. The Company notified Bank of America N.A. of the covenant violation, and on August 9, 2022, entered into the First Amendment (the “*First Amendment*”) to the Bank of America Credit Agreement, which, among other things, waived the requirement that the Company demonstrate compliance with the minimum Fixed Charge Coverage ratio provided for in the Credit Agreement for the quarter ended June 30, 2022.

The Company was not in compliance with the Fixed Charge Coverage ratio requirement as of September 30, 2022, and as a result was unable to draw on the facility. On November 8, 2022, the Company entered into a Second Amendment to the Bank of America Credit Agreement (the “*Second Amendment*”), which modifies key terms of the Senior Revolver. As a result of the Second Amendment, funds available under the Senior Revolver are reduced to \$ 25.0 million from \$50.0 million, limited to a borrowing base of 90% of Eligible Prime Government Receivables and Eligible Subcontractor Government Receivables, plus 85% of Eligible Commercial Receivables. Additionally, the Second Amendment increased the Base Rate Margin, BSBY Margin and unused commitment fees by 0.25%. Following entry into the Second Amendment, the Senior Revolver no longer is subject to a minimum Fixed Charge Coverage ratio covenant, but is still subject to the Secured Net Leverage ratio covenant. In order for the facility to become available for borrowings (the “*initial availability quarter*”), the Company must report Adjusted EBITDA of at least one dollar. Commencing on the first fiscal quarter after the initial availability quarter, the Company is required to have aggregated reported Adjusted EBITDA of at least one dollar over the two preceding quarters to maintain its ability to borrow under the Senior Revolver (though the inability to satisfy such condition does not result in a default under the Senior Revolver). Failure to meet this Adjusted EBITDA requirement is not a default but limits the Company’s ability to make borrowings under the Senior Revolver until such time that the Company is able meet the Adjusted EBITDA threshold as defined in the Second Amendment.

As of March 31, 2024, the Company did not meet the Secured Net Leverage ratio covenant. As a result, the Company is unable to draw on the Senior Revolver as of March 31, 2024. Management performed a cash flow analysis to identify the Company’s projected approximate cash flow and liquidity needs for the next 12 months. Based on the Company’s projected cash flow and liquidity needs, the Company believes that its current cash balance of \$81,412 as of March 31, 2024 as well as cash from operating activities generated from continuing operations during the year will be adequate for the next 12 months to meet its anticipated uses of cash flow, including payroll obligations, working capital, operating lease obligations, capital expenditures and debt service costs.

As of March 31, 2024, the Company had not drawn on the Senior Revolver. Unamortized debt issuance costs of \$16 as of March 31, 2024, are recorded on the consolidated balance sheets and are presented in other non-current assets. The Bank of

**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

America Credit Agreement requires the Company to deliver monthly borrowing base certificates. The Company did not deliver such monthly borrowing base certificates for the months ending December 31, 2022, January 31, 2023, February 28, 2023, and March 31, 2023. Bank of America N.A. notified the Company of the reporting violation, and on April 21, 2023, Bank of America N.A. and the Company entered into the Third Amendment (the “*Third Amendment*”) to the Bank of America Credit Agreement, which, among other things, waived the requirement that the Company deliver the monthly borrowing base certificate for the months ending December 31, 2022, January 31, 2023, February 28, 2023, and March 31, 2023, and removed the reporting requirement to deliver a monthly borrowing base certificate going forward until the Company meets the Adjusted EBITDA requirements set forth above and is permitted to draw on the Senior Revolver.

*D&O Financing Loan*

On December 20, 2023, the Company entered into a \$1,229 loan (the “*2024 D&O Financing Loan*”) with US Premium Finance to finance the Company’s directors and officers insurance premium through September 2024. The D&O Financing Loan had an interest rate of 6.99% per annum and a maturity date of September 8, 2024.

On December 8, 2022, the Company entered into a \$2,059 loan (the “*2023 D&O Financing Loan*”) with AFCO Credit Corporation to finance the Company’s directors and officers insurance premium through December 2023. The 2023 D&O Financing Loan required an upfront payment of \$1,109 and had an interest rate of 5.75% per annum and a maturity date of December 8, 2023. The 2023 D&O Financing Loan was fully repaid at maturity.

**Note K—Leases**

The Company is obligated under operating leases for certain real estate and office equipment assets. The Company’s finance leases are not material. Certain leases contained predetermined fixed escalation of minimum rents at rates ranging from 2.5% to 5.4% per annum and remaining lease terms of up to ten years, some of which include renewal options that could extend certain leases to up to an additional five years.

The following table presents supplemental information related to leases:

	March 31, 2024	March 31, 2023
Weighted average remaining lease term	5.20	5.22
Weighted average discount rate	10.64 %	10.50 %

The table below presents the rent expense under all leases for the following periods:

	Three Months Ended March 31,			
	2024		2023	
Rent expense	\$	417	\$	377

Rent expense for the three months ended March 31, 2024 includes \$4 of short-term lease costs and \$26 of variable lease costs. Rent expense for the three months ended March 31, 2023 includes \$63 of short-term lease costs and \$22 of variable lease costs.

As of March 31, 2024 and March 31, 2023, the Company has subleased two and three of its real estate leases and recognized \$23 and \$39 of sublease income on the consolidated statements of operations during the three months ended March 31, 2024 and March 31, 2023, respectively.

The following table presents supplemental cash flow and non-cash information related to leases:

	Three Months Ended March 31,			
	2024		2023	
Cash paid for amounts included in the measurement of lease liabilities - operating cash flows from leases	\$	578	\$	325
Right-of-use assets obtained in exchange for lease obligations - non-cash activity	\$	—	\$	—



**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

As of March 31, 2024, the future annual minimum lease payments for operating leases are as follows:

Remainder of 2024	\$	1,790
2025		2,359
2026		2,278
2027		1,697
2028		1,671
Thereafter		9,076
<b>Total future minimum lease payments</b>	<b>\$</b>	<b>18,871</b>
Less: amounts related to imputed interest		(6,723)
<b>Present value of future minimum lease payments</b>		<b>12,148</b>
Less: current portion of long-term lease liability		848
<b>Long-term lease liability</b>	<b>\$</b>	<b>11,300</b>

**Note L—Income Taxes**

The table below presents the effective income tax rate for the following periods:

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Effective tax rate	— %	(0.2)%

The Company was taxed as a corporation for federal, state and local income tax purposes for the three month periods ended March 31, 2024 and three months ended March 31, 2023. The effective tax rate for the three months ended March 31, 2024 and three months ended March 31, 2023 differ from the U.S. federal income tax rate of 21.0% primarily due to foreign and state and local income taxes, permanent differences between book and taxable income, certain discrete items and the change in valuation allowance.

**Note M—Commitments and Contingencies**

*Contingencies in the Normal Course of Business*

Under certain contracts with the U.S. government and certain governmental entities, contract costs, including indirect costs, are subject to audit by and adjustment through negotiation with governmental representatives. Revenue is recorded in amounts expected to be realized on final settlement of any such audits.

*Legal Proceedings*

The Company is subject to litigation, claims, investigations and audits arising from time to time in the ordinary course of business. Although legal proceedings are inherently unpredictable, the Company intends to defend itself vigorously with respect to any matters currently pending against it. The outcome of these matters, individually and in the aggregate, is not expected to have a material impact on the Company's consolidated balance sheets, consolidated statements of operations, or cash flows. As of March 31, 2024, the Company has accrued \$1,631 related to various ongoing legal disputes. The \$1,631 balance as of March 31, 2024, reflects management's best estimate as of that date and is net of any anticipated amounts recoverable through insurance.

**Note N—Stockholders' Equity**

*Common Stock*

The table below presents the details of the Company's authorized common stock as of the following periods:

	<b>March 31, 2024</b>	<b>December 31, 2023</b>
<b>Common stock:</b>		

**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

	March 31, 2024	December 31, 2023
Authorized shares of common stock	500,000,000	500,000,000
Common stock par value per share	\$ 0.0001	\$ 0.0001
Common stock outstanding at the period end	246,061,379	157,287,522

*Treasury Stock*

These shares are measured at cost and presented as treasury stock on the consolidated balance sheets and consolidated statements of stockholders' deficit.

*Dividend Rights*

Subject to applicable law and the rights, if any, of the holders of any outstanding series of the Company's preferred stock or any class or series of stock having a preference over or the right to participate with the Company's common stock with respect to the payment of dividends, dividends may be declared and paid ratably on the Company's common stock out of the assets of the Corporation that are legally available for this purpose at such times and in such amounts as the Company's Board in its discretion shall determine.

*Voting Rights*

Each outstanding share of the Company's common stock is entitled to one vote on all matters submitted to a vote of stockholders. Holders of shares of common stock do not have cumulative voting rights.

*Conversion or Redemption Rights*

The Company's common stock is neither convertible nor redeemable.

*Liquidation Rights*

Upon the Company's liquidation, the holders of the Company's common stock are entitled to receive pro rata the Company's assets that are legally available for distribution, after payment of all debts and other liabilities and subject to the prior rights of any holders of the Company's preferred stock then outstanding.

*Preferred Stock*

The table below presents the details of the Company's authorized preferred stock as of the following periods:

	March 31, 2024	December 31, 2023
<b>Preferred stock:</b>		
Authorized shares of preferred stock	1,000,000	1,000,000
Preferred stock par value per share	\$ 0.0001	\$ 0.0001
Preferred stock outstanding at the period end	—	—

The Company's Board may, without further action by the Company's stockholders, from time to time, direct the issuance of shares of preferred stock in series and may, at the time of issuance, determine the designations, powers, preferences, privileges and relative participating, optional or special rights as well as the qualifications, limitations or restrictions thereof, including dividend rights, conversion rights, voting rights, terms of redemption and liquidation preferences, any or all of which may be greater than the rights of the Company's common stock. Satisfaction of any dividend preferences of outstanding shares of the Company's preferred stock would reduce the amount of funds available for the payment of dividends on shares of the Company's common stock. Upon the affirmative vote of a majority of the total number of directors then in office, the Company's Board may issue shares of the Company's preferred stock with voting and conversion rights which could adversely affect the holders of shares of the Company's common stock.

**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

**Note O—Warrants**

**2023 Registered Direct Offering Warrants**

On June 13, 2023, the Company consummated the closing of a registered direct offering pursuant to an Underwriting Agreement with Cowen and Company, LLC, as representative of the underwriters, for the sale and purchase of an aggregate of 11,848,341 shares of common stock at par value (“*Common Stock*”) and accompanying common warrants (“*RDO warrants*”). Each share of Common Stock is accompanied by a common warrant to purchase three-quarters of a share of Common Stock at an exercise price of \$2.32 per share. The RDO warrants were initially exercisable for up to 8,886,255 shares of Common Stock and became exercisable six months after issuance and had a five-year term.

The table below presents the value of the RDO warrants under the Black-Scholes OPM using the following assumptions as of the following dates:

	June 13, 2023
Value of each RDO warrant	\$ 1.96
Exercise price	\$ 2.32
Common stock price	\$ 2.30
Expected option term (years)	5.5
Expected volatility	118.60%
Risk-free rate of return	4.00%
Expected annual dividend yield	—%

On February 27, 2024, the Company entered into a warrant exercise agreement (the “*RDO Warrant Exercise Agreement*”) with an existing accredited investor (the “*RDO Investor*”) to exercise in full the outstanding RDO warrants to purchase up to an aggregate of 8,886,255 shares of the Company’s common stock for gross proceeds of \$20.6 million. Upon settlement of the RDO warrants, a loss of \$10.1 million was recognized for the three months ended March 31, 2024 and is presented in net increase in fair value of derivatives on the consolidated statements of operations.

**2024 RDO Warrant**

In consideration for the immediate and full exercise of the RDO warrants, on February 28, 2024, the RDO Investor received a new unregistered common stock purchase warrant to purchase up to an aggregate of 5,800,000 of the Company’s common stock (the “*2024 RDO warrant*”) in a private placement. The 2024 RDO warrant will become exercisable commencing at any time on or after August 28, 2024 (the “*2024 RDO Warrant Exercise Date*”), with an expiration date five years after the 2024 RDO Warrant Exercise Date, with an exercise price per share equal to \$3.78.

The table below presents the value of the 2024 RDO warrant under the Black-Scholes OPM using the following assumptions as of the following dates:

	March 31, 2024	February 28, 2024
Value of each 2024 RDO warrant	\$ 1.70	\$ 2.62
Exercise price	\$ 3.78	\$ 3.78
Common stock price	\$ 2.05	\$ 3.14
Expected option term (years)	5.4	5.5
Expected volatility	126.70%	117.60%
Risk-free rate of return	4.20%	4.20%
Expected annual dividend yield	—%	—%

As of March 31, 2024, the 2024 RDO warrant has a fair value of \$9.9 million and is presented on the consolidated balance sheets within derivative liabilities. A loss of \$5.3 million, which includes transaction costs associated with the issuance of the RDO warrants, was recognized the three months ended March 31, 2024, and is presented in net decrease in fair value of derivatives on the consolidated statements of operations.

**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

As of March 31, 2024, there were 5,800,000 2024 RDO warrants issued and outstanding.

**2023 PIPE Warrants**

On January 19, 2023, the Company consummated the closing of a private placement (the “*Private Placement*”) by and among the Company and Armistice Capital Master Fund Ltd (the “*Purchaser*”). At the closing of the Private Placement, the Company issued 13,888,889 shares of the Company’s Common Stock at par value and warrants to purchase up to an additional 13,888,889 shares of common stock (the “*PIPE warrants*”). The PIPE warrants had an exercise price of \$2.39 per share and were exercisable as of July 19, 2023. The PIPE warrants were subject to a 4.99% beneficial ownership limitation.

The table below presents the value of the PIPE warrants under the Black-Scholes OPM using the following assumptions as of the following dates:

	January 19, 2023
Value of each PIPE warrant	\$ 1.22
Exercise price	\$ 2.39
Common stock price	\$ 1.87
Expected option term (years)	5.5
Expected volatility	82.10%
Risk-free rate of return	3.40%
Expected annual dividend yield	—%

On March 4, 2024, the Company entered into a warrant exercise agreement (the “*PIPE Warrant Exercise Agreement*”) with an existing accredited investor (the “*PIPE Investor*”) to exercise in full the outstanding PIPE warrants to purchase up to an aggregate of 13,888,889 shares of the Company’s common stock for gross proceeds of \$33.2 million. Upon settlement of the PIPE warrants, a loss of \$32.2 million was recognized as a result of the change in fair value for the three months ended March 31, 2024 and are presented in net increase in fair value of derivatives on the consolidated statements of operations.

**2024 PIPE Warrant**

In consideration for the immediate and full exercise of the PIPE warrants, on March 5, 2024, the PIPE Investor received a new unregistered common stock purchase warrant to purchase up to an aggregate of 9,000,000 shares of the Company’s common stock (the “*2024 PIPE warrant*”) in a private placement. The 2024 PIPE Warrant will become exercisable commencing at any time on or after September 5, 2024 (the “*2024 PIPE Warrant Exercise Date*”), with an expiration date five years after the 2024 PIPE Warrant Exercise Date, with an exercise price per share equal to \$4.75.

The table below presents the value of the 2024 PIPE warrant under the Black-Scholes OPM using the following assumptions as of the following dates:

	March 31, 2024	March 4, 2024
Value of each 2024 PIPE warrant	\$ 1.67	\$ 3.11
Exercise price	\$ 4.75	\$ 4.75
Common stock price	\$ 2.05	\$ 3.75
Expected option term (years)	5.4	5.5
Expected volatility	126.70%	117.00%
Risk-free rate of return	4.20%	4.10%
Expected annual dividend yield	—%	—%

As of March 31, 2024, the 2024 PIPE warrant has a fair value of \$15.0 million and is presented on the consolidated balance sheets within derivative liabilities. A loss of \$13.0 million was recognized as a result of the change in fair value the three months ended March 31, 2024, and is presented in net decrease in fair value of derivatives on the consolidated statements of operations.

**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

As of March 31, 2024, there were 9,000,000 2024 PIPE warrants issued and outstanding.

***IPO Public Warrants***

Each IPO public warrant entitles the registered holder to purchase one share of common stock at a price of \$1.50 per share, subject to adjustment. Pursuant to the warrant agreement, a warrant holder may exercise its warrants only for a whole number of shares of common stock. This means only a whole warrant may be exercised at a given time by a warrant holder. The warrants will expire on December 7, 2026, at 5:00 p.m., New York City time, or earlier upon redemption or liquidation.

The Company may call the public warrants for redemption as follows: (1) in whole and not in part; (2) at a price of \$0.01 per warrant; (3) upon a minimum of 30 days' prior written notice of redemption; (4) if there is an effective registration statement covering the shares of common stock issuable upon exercise of the warrants and a current prospectus available throughout the 30-day notice period; and (5) only if the last reported closing price of the common stock equals or exceeds \$8.00 per share for any 20 trading days within a 30-trading day period ending on the third trading day prior to the date on which the Company sends the notice of redemption to the warrant holders.

If the Company calls the public warrants for redemption, management will have the option to require all holders that wish to exercise the Company public warrants to do so on a "cashless basis."

The exercise price and number of shares of common stock issuable upon exercise of the warrants may be adjusted in certain circumstances including stock dividends, stock splits, extraordinary dividends, consolidation, combination, reverse stock split or reclassification of shares of the Company's common stock or other similar event. In no event will the Company be required to net cash settle the warrant shares.

As of March 31, 2024 and December 31, 2023, there were 12,150,878 public warrants issued and outstanding for both periods.

***IPO Private Warrants***

The terms and provisions of the public warrants above also apply to the IPO private warrants. If the IPO private warrants are held by holders other than GigAcquisitions4, LLC ("Sponsor"), Oppenheimer & Co. Inc. and Nomura Securities International, Inc. (together, the "Underwriters"), or any respective permitted transferees, the IPO private warrants will be redeemable by the Company and exercisable by the holders on the same basis as the IPO public warrants. The Sponsor, the Underwriters and any respective permitted transferees have the option to exercise the IPO private warrants on a cashless basis.

The table below presents the value of the IPO private warrants under the Black-Scholes OPM using the following assumptions as of the following dates:

	<b>March 31, 2024</b>	<b>December 31, 2023</b>
Fair value of each IPO private warrant	\$ 0.38	\$ 0.38
Exercise price	\$ 11.50	\$ 11.50
Common stock price	\$ 2.05	\$ 2.14
Expected option term (in years)	2.7	2.9
Expected volatility	88.70%	82.30%
Risk-free rate of return	4.40%	4.00%
Expected annual dividend yield	—%	—%

As of March 31, 2024 and December 31, 2023, the IPO private warrants have a fair value of \$6 thousand for both periods and are presented on the consolidated balance sheets within derivative liabilities and other non-current liabilities. The following was recognized as a result of the change in fair value for the three months ended March 31, 2024 and March 31, 2023 and is presented in net increase (decrease) in fair value of derivatives on the consolidated statements of operations:

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
(Gain) loss on change in fair value of IPO warrants	\$ —	\$ 43

**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

---

As of March 31, 2024 and December 31, 2023, there were 174,894 IPO private warrants issued and outstanding for both periods.

**Note P—Equity-Based Compensation**

***Class B Unit Incentive Plan***

In February 2021, the Company's parent, BBAI Ultimate Holdings, LLC ("*Parent*") adopted a compensatory benefit plan (the "*Class B Unit Incentive Plan*") to provide incentives to directors, managers, officers, employees, consultants, advisors and/or other service providers of the Company's Parent or its Subsidiaries in the form of the Parent's Class B Units ("*Incentive Units*"). Incentive Units have a participation threshold of \$1.00 and are divided into three tranches ("*Tranche I*," "*Tranche II*," and "*Tranche III*"). Tranche I Incentive Units are subject to performance-based, service-based and market-based conditions. The grant date fair value for the Incentive Units was \$5.19 per unit.

The assumptions used in determining the fair value of the Incentive Units at the grant date are as follows:

	February 16, 2021
Volatility	57.0%
Risk-free interest rate	0.1%
Expected time to exit (in years)	1.6

On July 29, 2021, the Company's Parent amended the Class B Unit Incentive Plan so that the Tranche I and the Tranche III Incentive Units immediately became fully vested, subject to continued employment or provision of services, upon the closing of the transaction stipulated in the Agreement and Plan of Merger (the "*Gig Business Combination Agreement*") dated June 4, 2021. The Company's Parent also amended the Class B Unit Incentive Plan so that the Tranche II Incentive Units will vest on any liquidation event, as defined in the Class B Unit Incentive Plan, rather than only upon the occurrence of an Exit Sale, subject to the market-based condition stipulated in the Class B Unit Incentive Plan prior to its amendment.

Equity-based compensation for awards with performance conditions is based on the probable outcome of the related performance condition. The performance conditions required to vest per the amended Incentive Plan remain improbable until they occur due to the unpredictability of the events required to meet the vesting conditions. As such events are not considered probable until they occur, recognition of equity-based compensation for the Incentive Units is deferred until the vesting conditions are met. Once the event occurs, unrecognized compensation cost associated with the performance-vesting Incentive Units (based on their modification date fair value) will be recognized based on the portion of the requisite service period that has been rendered.

The modification date fair value of the Incentive Units was \$9.06 per unit. The assumptions used in determining the fair value of the Incentive Units at the modification date are as follows:

	July 29, 2021
Volatility	46.0%
Risk-free interest rate	0.2%
Expected time to exit (in years)	1.2

The volatility used in the determination of the fair value of the Incentive Units was based on analysis of the historical volatility of guideline public companies and factors specific to the Company.

On December 7, 2021, the previously announced Gig Business Combination was consummated. As a result, the Tranche I and Tranche III Incentive Units immediately became fully vested and the performance condition for the Tranche II Incentive Units was met. The fair value determined at the date of the amendment of the Class B Unit Incentive Plan was immediately recognized as compensation expense on the vesting date for Tranches I and III. Compensation expense for the Tranche II Incentive Units is recognized over the derived service period of 30 months from the modification date. The remaining compensation expense for the Tranche II Incentive Units will be recognized over the remaining service period of approximately 25 months from the date of the amendment.

**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

The table below presents the activity in Tranche II of the Class B Units:

Unvested as of December 31, 2023	1,155,000
Granted	—
Vested	—
Forfeited	—
Unvested as of March 31, 2024	1,155,000

As of March 31, 2024, there was no unrecognized compensation cost related to Tranche II Incentive Units.

**Stock Options**

On December 7, 2021, the Company adopted the BigBear.ai Holdings, Inc. 2021 Long-Term Incentive Plan (the “Plan”). The purpose of the Plan is to promote the long-term success of the Company and the creation of stockholder value by providing eligible employees, prospective employees, consultants and non-employee directors of the Company the opportunity to receive stock- and cash-based incentive awards.

There were no stock options granted during the three months ended March 31, 2024.

The table below presents the activity in the Stock Options:

	Stock Options Outstanding	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Life (in years)	Aggregate Intrinsic Value
Outstanding as of December 31, 2023	5,127,673	\$ 2.14	9.03	\$ 2,209
Granted	—	—		
Vested	—	—		
Exercised	(69,171)	1.35		
Forfeited	(507,749)	2.55		
Expired	—	—		
Outstanding as of March 31, 2024	4,550,753	\$ 2.10	8.18	\$ 1,733
Vested and exercisable as of March 31, 2024	1,382,936	\$ 2.35	8.16	\$ 593

The Stock Options had \$1,733 intrinsic value as of March 31, 2024. The Company recognizes equity-based compensation expense for the Stock Options equal to the fair value of the awards on a straight-line basis over the service based vesting period. As of March 31, 2024, there was approximately \$3,892 of unrecognized compensation costs related to the Stock Options, which is expected to be recognized over the remaining weighted average period of 2.02 years.

**Restricted Stock Units**

During the three months ended March 31, 2024, pursuant to the Plan, the Company’s Board of Directors communicated the key terms and committed to grant Restricted Stock Units (“RSUs”) to certain employees and certain nonemployee directors and consultants. The Company granted 516,887 RSUs to employees and 0 RSUs to nonemployee directors during the three months ended March 31, 2024. RSUs granted to employees generally vest over four years, with 25% vesting on the one year anniversary of the grant date and then 6.25% per each quarter thereafter during years two, three and four. RSUs granted to nonemployee directors vest 25% each quarter following the grant date or 100% upon the first anniversary of the grant date. Vesting of RSUs is accelerated in the event of death, disability, or a change in control, subject to certain conditions.

**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

The table below presents the activity in the RSUs:

	RSUs Outstanding	Weighted-Average Grant Date Fair Value Per Share
Unvested as of December 31, 2023	10,052,113	\$ 2.11
Granted	516,887	1.87
Vested	(2,269,961)	2.17
Forfeited	(821,421)	2.55
Unvested as of March 31, 2024	7,477,618	\$ 2.03

As of March 31, 2024, there was approximately \$14,952 of unrecognized compensation costs related to the RSUs, which is expected to be recognized over the remaining weighted average period of 2.20 years.

***Performance Stock Units***

Pursuant to the Plan, the Company's Board of Directors communicated the key terms and granted Performance Stock Units ("PSUs") to certain employees. The Company grants PSUs to certain employees as a retention incentive ("2024 Retention PSUs"). During the three months ended March 31, 2024, the Company granted 1,932,946 2024 Retention PSUs. The Company also granted 82,097 PSUs to employees under the Company's Short-term Incentive Plan ("2023 STIP PSUs"), which contain performance measures based on a combination of Company's financial performance as well as the individual's personal performance. The number of 2024 Retention PSUs and 2023 STIP PSUs that will vest is based on the achievement of the performance criteria during each respective annual measurement period, provided that the employees remain in continuous service on each vesting date. Vesting will not occur unless a minimum performance criteria threshold is achieved.

The table below presents the activity in the PSUs:

	PSUs Outstanding	Weighted-Average Grant Date Fair Value Per Share
Unvested as of December 31, 2023	2,585,831	\$ 1.70
Granted	2,015,043	3.31
Vested	(2,359,319)	1.73
Forfeited	(175,000)	1.53
Unvested as of March 31, 2024	2,066,555	\$ 3.25

As of March 31, 2024, there was approximately \$5,730 of unrecognized compensation costs related to the 2024 Retention PSUs, which is expected to be recognized over the remaining average period of 2.20 years.

As of March 31, 2024, all of the performance conditions of the 2023 STIP PSUs were achieved as of December 31, 2023. Therefore, there were no unrecognized compensation costs related to the 2023 STIP PSUs, which were fully recognized as of December 31, 2023.

***Employee Share Purchase Plan ("ESPP")***

Concurrently with the adoption of the Plan, the Company's Board of Directors adopted the 2021 Employee Stock Purchase Plan (the "ESPP"), which authorizes the grant of rights to purchase common stock of the Company to employees, officers and directors (if they are otherwise employees) of the Company. As of January 1, 2022, the Company reserved an aggregate of 3,974,948 common shares (subject to annual increases on January 1 of each year and ending in 2031) of the Company's common stock for grants under the ESPP. During the three months ended March 31, 2024, zero shares were sold under the ESPP. As of March 31, 2024, the Company has withheld employee contributions of \$495 for future ESPP purchases, which are presented on the consolidated balance sheets within other current liabilities.



**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

Equity-based compensation expense related to purchase rights issued under the ESPP is based on the Black-Scholes OPM fair value of the estimated number of awards as of the beginning of the offering period. Equity-based compensation expense is recognized using the straight-line method over the offering period. The table below presents the assumptions used to estimate the grant date fair value of the purchase rights under the ESPP:

	December 31, 2023	December 31, 2022
Price of common stock on the grant date	\$1.80 to \$2.09	\$0.88 to \$10.01
Expected term (in years)	0.50	0.50 to 0.60
Expected volatility <sup>(1)</sup>	94.9% to 162.2%	56.0% to 110.0%
Risk-free rate of return	5.3% to 5.4%	1.5% to 4.6%
Expected annual dividend yield	—%	—%
<b>Fair value of the award on the grant date</b>	<b>\$0.75 to \$1.23</b>	<b>\$0.40 to \$3.22</b>

<sup>(1)</sup> Expected volatility is based on a combination of implied and historical equity volatility of selected reasonably similar publicly traded companies.

As of March 31, 2024, there was approximately \$104 of unrecognized compensation costs related to the ESPP, which is expected to be recognized over the remaining weighted average period of 0.17 years.

**Equity-based Compensation Expense**

The table below presents the total equity-based compensation expense recognized for Class A Units, Class B Units, Stock Options, RSUs, PSUs and ESPP in selling, general and administrative expense, cost of revenues and research and development for the following periods:

	Three Months Ended March 31,	
	2024	2023
Equity-based compensation expense in selling, general and administrative	\$ 2,171	\$ 2,803
Equity-based compensation expense in cost of revenues	2,653	874
Equity-based compensation expense in research and development	333	128
<b>Total equity-based compensation expense</b>	<b>\$ 5,157</b>	<b>\$ 3,805</b>

**Note Q—Net Loss Per Share**

The numerators and denominators of the basic and diluted net loss per share are computed as follows (in thousands, except per share, unit and per unit data):

	Three Months Ended March 31,	
	2024	2023
<b>Basic and diluted net loss per share</b>		
Numerator:		
Net loss	\$ (125,147)	\$ (26,214)
Denominator:		
Weighted average shares outstanding—basic and diluted	187,279,204	138,548,599
<b>Basic and diluted net loss per Share</b>	<b>\$ (0.67)</b>	<b>\$ (0.19)</b>

As of March 31, 2024, there were outstanding anti-dilutive Stock Options to purchase 4,550,753 shares of common stock at a weighted-average exercise price of \$2.10, outstanding IPO Private warrants and IPO Public warrants to convert to 174,894 shares and 12,150,878 shares, respectively, of common stock at a price of \$11.50 per share, outstanding PIPE warrants to convert to 9,000,000 shares of common stock at a price of \$4.75 per share, outstanding RDO warrants to convert to 5,800,000 shares of common stock at a price of \$3.78 per share, convertible notes to convert to 18,844,600 shares of common stock at a conversion price of \$0.61, ESPP contributions for the option to acquire 1,128,675 shares of common stock, and outstanding restricted stock units and performance stock units representing the right to receive 1,338,151 shares and 1,841,002 shares of common stock, respectively. Because of the net loss incurred during the three months ended March 31, 2024, the impacts of dilutive instruments would have been anti-dilutive for the period presented and have been excluded from loss per share calculations.

**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

As of March 31, 2023, there were outstanding anti-dilutive Stock Options to purchase 4,936,049 shares of common stock at a weighted-average exercise price of \$2.39, outstanding IPO warrants and public warrants to convert to 174,894 shares and 12,150,878 shares, respectively, of common stock at a price of \$11.50 per share, outstanding PIPE warrants to convert 13,888,889 shares of common stock at a price of \$2.39 per share, convertible notes to convert to 18,844,600 shares of common stock at an initial conversion price of \$10.61, ESPP contributions for the option to acquire 2,667,501 shares of common stock, and outstanding restricted stock units and performance stock units representing the right to receive 12,882,588 shares and 1,308,026 shares of common stock, respectively. Because of the net loss incurred during the three months ended March 31, 2023, the impacts of dilutive instruments would have been anti-dilutive for the period presented and have been excluded from loss per share calculations.

**Note R—Revenues**

All revenues were generated within the United States of America.

The table below presents total revenues by contract type for the following periods:

	Three Months Ended March 31,	
	2024	2023
Time and materials	\$ 17,960	\$ 27,159
Firm fixed price	10,046	10,400
Cost-reimbursable	5,115	4,595
Total revenues	\$ 33,121	\$ 42,154

The majority of the Company's revenue is recognized over time. Revenue derived from contracts that recognize revenue at a point in time was insignificant for all periods presented.

The table below summarizes the activity in the allowance for expected credit losses:

	Three Months Ended March 31,	
	2024	2023
Beginning balance	\$ 230	\$ 98
Additions	—	882
Write-offs	(59)	—
Ending balance	\$ 171	\$ 980

**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

*Concentration of Risk*

Revenue earned from customers contributing in excess of 10% of total revenues are presented in the tables below for the following periods:

	<b>Three Months Ended March 31, 2024</b>	
	<b>Total</b>	<b>Percent of total revenues</b>
Customer A	\$ 7,113	21 %
Customer B	6,350	19 %
Customer C	4,594	14 %
Customer D <sup>(1)</sup>	—	— %
All others	15,064	46 %
<b>Total revenues</b>	<b>\$ 33,121</b>	<b>100 %</b>

	<b>Three Months Ended March 31, 2023</b>	
	<b>Total</b>	<b>Percent of total revenues</b>
Customer A	\$ 4,222	10 %
Customer B	8,883	21 %
Customer C	4,668	11 %
Customer D <sup>(1)</sup>	6,763	16 %
All others	17,618	42 %
<b>Total revenues</b>	<b>\$ 42,154</b>	<b>100 %</b>

<sup>(1)</sup> Customers that contributed in excess of 10% of consolidated revenues in any period presented have been included in all periods presented for comparability.

*Contract Balances*

The table below presents the contract assets and contract liabilities included on the consolidated balance sheets for the following periods:

	<b>March 31, 2024</b>	<b>December 31, 2023</b>
Contract assets	\$ 2,379	\$ 4,822
Contract liabilities	\$ 3,853	\$ 879

The change in contract assets between December 31, 2023 and March 31, 2024 was primarily driven by services rendered for customers where the Company does not yet have the unconditional right to invoice. The change in contract liability balances between December 31, 2023 and March 31, 2024 was primarily driven by an increase in services rendered to customers that were previously invoiced. Revenue recognized in the three months ended March 31, 2024 that was included in the contract liability balance as of December 31, 2023 was \$879.

When the Company's estimate of total costs to be incurred to satisfy a performance obligation exceeds the expected revenue, the Company recognizes the loss immediately. When the Company determines that a change in estimate has an impact on the associated profit of a performance obligation, the Company records the cumulative positive or negative adjustment in the consolidated statements of operations. Changes in estimates and assumptions related to the status of certain long-term contracts may have a material effect on the Company's operating results.

**BIGBEAR.AI HOLDINGS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
*(in thousands of U.S. dollars unless stated otherwise)*

The following table summarizes the impact of the net estimates at completion (“EAC”) adjustments on the Company’s operating results:

	Three Months Ended March 31,	
	2024	2023
Net EAC Adjustments, before income taxes	\$ (240)	\$ (1,266)
Net EAC Adjustments, net of income taxes	\$ (189)	\$ (1,000)
Net EAC Adjustments, net of income taxes, per diluted share	\$ 0.01	\$ 0.01

*Remaining Performance Obligations*

The Company includes in its computation of remaining performance obligations customer orders for which it has accepted signed sales orders and generally includes the funded and unfunded components of contracts that have been awarded. As of March 31, 2024, the aggregate amount of the transaction price allocated to remaining performance obligations was \$111 million. The Company expects to recognize approximately 100% of its remaining performance obligations as revenue within the next 12 months and the balance thereafter.

**Note S—Related Party Transactions**

During the three months ended March 31, 2024, the Company paid or accrued \$611 as compensation expense for the members of the Board of Directors, including equity-based compensation related to the RSUs of \$526, which is reflected in the selling, general and administrative expenses within the consolidated statements of operations.

During the three months ended March 31, 2023, the Company paid or accrued \$295 as compensation expense for the members of the Board of Directors, including equity-based compensation related to the RSUs of \$205, which is reflected in the selling, general and administrative expenses within the consolidated statements of operations.

**Note T—Subsequent Events**

*At-the-Market Sales Agreement*

On May 10, 2024, the Company entered into a Controlled Equity Offering sales agreement (the “Sales Agreement”) with Cantor Fitzgerald & Co., as sales agent (the “sales agent”), pursuant to which the Company may, from time to time, sell shares of its common stock, having an aggregate offering price of up to \$150.0 million through the sales agent. The Company is not obligated to, and cannot provide any assurances that it will, make any sales of its shares under the Sales Agreement.

Upon delivery of a placement notice and subject to the terms and conditions of the Sales Agreement, the sales agent may sell the shares by methods deemed to be an “at-the-market” offering as defined in Rule 415(a)(4) promulgated under the Securities Act. Subject to the terms and conditions of the Sales Agreement, the sales agent will use commercially reasonable efforts consistent with its normal trading and sales practices to sell the shares from time to time, based upon the Company’s instructions. The Sales Agreement contains customary representations, warranties and agreements, indemnification rights and obligations of the parties. The Company will pay the sales agent a commission for its services as sales agent of up to 3% of the gross sales price of the shares of the Company’s common stock sold through the sales agent pursuant to the Sales Agreement.

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

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

*The following discussion and analysis provides information that BigBear.ai Holdings, Inc. ("BigBear.ai", "BigBear.ai Holdings", or the "Company") management believes is relevant to an assessment and understanding of BigBear.ai's audited consolidated results of operations and financial condition. The following discussion and analysis should be read in conjunction with BigBear.ai's consolidated financial statements and notes to those statements included elsewhere in this Quarterly Report on Form 10-Q. Certain information contained in this management discussion and analysis includes forward-looking statements that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of many factors. Please see "Cautionary Note Regarding Forward-Looking Statements," and "Risk Factors" in our Annual Report on Form 10-K and this Quarterly Report on Form 10-Q. Unless the context otherwise requires, all references in this section to the "Company," "BigBear.ai," "we," "us," or "our" refer to BigBear.ai Holdings, Inc.*

The following discussion and analysis of financial condition and results of operations of BigBear.ai is provided to supplement the consolidated financial statements and the accompanying notes of BigBear.ai included elsewhere in this Quarterly Report on Form 10-Q. We intend for this discussion to provide the reader with information to assist in understanding BigBear.ai's consolidated financial statements and the accompanying notes, the changes in those financial statements and the accompanying notes from period to period, along with the primary factors that accounted for those changes. All amounts presented below are in thousands of U.S. dollars unless stated otherwise.

The discussion and analysis of financial condition and results of operations of BigBear.ai is organized as follows:

- **Business Overview:** This section provides a general description of BigBear.ai's business, our priorities and the trends affecting our industry in order to provide context for management's discussion and analysis of our financial condition and results of operations.
- **Recent Developments:** This section provides recent developments that we believe are necessary to understand our financial condition and results of operations.
- **Results of Operations:** This section provides a discussion of our results of operations for the three months ended March 31, 2024 and, March 31, 2023.
- **Liquidity and Capital Resources:** This section provides an analysis of our ability to generate cash and to meet existing or reasonably likely future cash requirements.
- **Critical Accounting Policies and Estimates:** This section discusses the accounting policies and estimates that we consider important to our financial condition and results of operations and that require significant judgment and estimates on the part of management in their application. In addition, our significant accounting policies, including critical accounting policies, are summarized in Note B—Summary of Significant Accounting Policies to the accompanying consolidated financial statements included in this Quarterly Report on Form 10-Q.

**Business Overview**

Our mission is to help deliver clarity for the world's most complex decisions. BigBear.ai is a leading provider of Edge AI-powered decision intelligence solutions for national security, supply chain management and digital identity. Customers and partners rely on BigBear.ai's predictive analytics capabilities in highly complex, distributed, mission-based operating environments. We are a technology-led solutions organization, providing both software and services to our customers.

**Recent Developments**

**Pangiam Acquisition**

On February 29, 2024, the Company completed the acquisition of Pangiam Intermediate Holdings, LLC ("*Pangiam*" or the "*Pangiam Acquisition*"), a leader in vision AI for the global trade, travel and digital identity industries. The combination of BigBear.ai and Pangiam creates one of the industry's most comprehensive vision and edge AI portfolios, combining facial

recognition, image-based anomaly detection and advanced biometrics with BigBear.ai's computer vision and predictive analytics capabilities, positioning the Company as a foundational leader in how artificial intelligence is operationalized at the edge.

#### ***RDO Warrant Exercise***

On February 27, 2024, the Company entered into a warrant exercise agreement with an existing accredited investor (the '*RDO Investor*') to exercise in full the outstanding Registered Direct Offering (the "*RDO warrants*") to purchase up to an aggregate of 8,886,255 shares of the Company's common stock for gross proceeds of approximately \$20.6 million. In consideration for the immediate and full exercise of the RDO warrants, the RDO Investor received a new unregistered common stock purchase warrant to purchase up to an aggregate of 5,800,000 shares of the Company's common stock (the "*First New Warrant*") in a private placement. The First New Warrant will become exercisable commencing at any time on or after August 28, 2024, expiring after five years, with an exercise price per share equal to \$3.78.

#### ***Private Placement Warrant Exercise***

On March 4, 2024, the Company entered into a warrant exercise agreement with an existing accredited investor (the '*PIPE Investor*') to exercise in full the outstanding Private Placement (the "*PIPE warrants*") to purchase up to an aggregate of 13,888,889 shares of the Company's common stock for gross proceeds of approximately \$33.2 million. In consideration for the immediate and full exercise of the PIPE warrants, the PIPE Investor received a new unregistered common stock purchase warrant to purchase up to an aggregate of 5,800,000 shares of the Company's common stock (the "*Second New Warrant*") in a private placement. The Second New Warrant will become exercisable commencing at any time on or after September 5, 2024 (the "*Exercise Date*"), expiring after five years, with an exercise price per share equal to \$4.75.

#### ***U.S. Budget Environment***

The majority of our revenue is derived from federal government contracts. U.S. government spending levels, particularly defense spending, and timely funding thereof can affect our financial performance over the short and long term. On January 19, 2024, the President signed a continuing resolution that extends funding of appropriations bills to March 2024. This will provide Congress additional time to enact FY 2024 appropriations bills based on the overarching U.S. Government spending agreement reached by House and Senate leaders on January 7, 2024 which capped National Defense in FY 2024 to \$886 billion. Overall, congressional sentiment remains strong for supporting the National Defense Strategy and defense spending. However, the logistical and political challenges, especially in the U.S. House of Representatives, are complex and add funding risk. Under the continuing resolution, funding at amounts consistent with appropriated levels for FY 2023 are available, subject to certain restrictions, but new contract and program starts are not authorized. We expect our key contracts will continue to be supported and funded under the continuing resolution. However, during periods covered by continuing resolutions, we may experience delays in new contract awards, and those delays may adversely affect our results of operations.

We anticipate the federal budget will continue to be subject to debate and compromise shaped by, among other things, heightened political tensions, the global security environment, inflationary pressures, and macroeconomic conditions. The result may be shifting funding priorities, which could have material impacts on defense spending broadly and our federal government contracts.

#### ***Geopolitical Environment***

We operate in a complex and evolving security environment and our business is affected by geopolitical issues. Conflicts in Ukraine, the Middle East and heightened tension in the Pacific region have elevated global geopolitical tensions and security concerns. For our government customers, their focus on addressing immediate needs in these regions has slowed the pipeline and pace of contract awards, pushing revenue into subsequent periods. We continue to expect the geopolitical climate to drive adoption of our offerings over the long term, as it has heightened the need for advanced AI tools that provide enhanced intelligence and full spectrum cyber operations – areas where we have unmatched capabilities. While these conflicts are still evolving and the eventual outcomes remains highly uncertain, we do not believe that these events will have a material impact on our business and results of operations. However, if these conflicts worsen, leading to greater disruptions and uncertainty within the technology industry or global economy, our business and results of operations could be negatively impacted.

## **Components of Results of Operations**

### ***Revenues***

We generate revenue by providing our customers with Edge AI-powered decision intelligence solutions and services for data ingestion, data enrichment, data processing, artificial intelligence, machine learning, predictive analytics and predictive visualization. We have a diverse base of customers, including government defense, government intelligence, as well as various commercial enterprises. We generate revenue from providing both software and services to our customers.

### ***Cost of Revenues***

Cost of revenues primarily includes salaries, stock-based compensation expense, and benefits for personnel involved in performing the services described above as well as allocated overhead and other direct costs.

We expect that cost of revenues will increase in absolute dollars as our revenues grow and will vary from period-to-period as a percentage of revenues.

### ***Selling, General and Administrative (“SG&A”)***

SG&A expenses include salaries, stock-based compensation expense, and benefits for personnel involved in our executive, finance, accounting, legal, human resources, and administrative functions, as well as third-party professional services and fees, and allocated overhead.

### ***Research and Development***

Research and development expenses primarily consist of salaries, stock-based compensation expense, and benefits for personnel involved in research and development activities as well as allocated overhead. Certain research and development expenses relate to software developed for sale, lease or will otherwise be marketed. Costs incurred subsequent to the establishment of technological feasibility and prior to the general availability of the software, are capitalized when they are expected to become significant. All other research and development expenses are expensed in the period incurred.

### ***Restructuring Charges***

Restructuring charges consist of employee separation costs related to strategic cost saving initiatives to better align our organization and cost structure and improve the affordability of our products and services.

### ***Transaction Expenses***

Transaction expenses incurred in 2024 consist of diligence, legal and other related expenses incurred associated with the Pangiam Acquisition, which was completed on February 29, 2024.

### ***Goodwill Impairment***

Goodwill impairment consists of non-cash charges goodwill.

### ***Net Increase in Fair Value of Derivatives***

Net increase in fair value of derivatives consists of fair value remeasurements of the Company’s warrants.

### ***Interest Expense***

Interest expense consists primarily of interest expense, commitment fees and debt issuance cost amortization under our debt agreements.

### ***Income Tax (Benefit) Expense***

Income tax (benefit) expense consists of income taxes related to federal and state jurisdictions in which we conduct business.

**Results of Operations**

The table below presents our consolidated statements of operations for the following periods:

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Revenues	\$ 33,121	\$ 42,154
Cost of revenues	26,135	31,941
<b>Gross margin</b>	<b>6,986</b>	<b>10,213</b>
Operating expenses:		
Selling, general and administrative	16,948	20,362
Research and development	1,144	1,128
Restructuring charges	860	755
Transaction expenses	1,103	—
Goodwill impairment	85,000	—
<b>Operating loss</b>	<b>(98,069)</b>	<b>(12,032)</b>
Net increase in fair value of derivatives	23,992	10,567
Interest expense	3,555	3,556
Other income	(455)	—
<b>Loss before taxes</b>	<b>(125,161)</b>	<b>(26,155)</b>
Income tax (benefit) expense	(14)	59
<b>Net loss</b>	<b>\$ (125,147)</b>	<b>\$ (26,214)</b>

**Comparison of the Three Months Ended March 31, 2024 and 2023**

*Revenues*

	<b>Three Months Ended March 31,</b>		<b>Year-Over-Year Change</b>	
	<b>2024</b>	<b>2023</b>	<b>2024 vs 2023</b>	
Revenues	\$ 33,121	\$ 42,154	\$ (9,033)	(21.4)%

Revenues decreased by \$9.0 million during the three months ended March 31, 2024 as compared to the three months ended March 31, 2023. The decrease was primarily driven by the planned wind-down of the Air Force EPASS program in mid-2023 of \$6.8 million, the elimination of revenue from Virgin Orbit due to their bankruptcy announcement in April 2023 of \$1.5 million, as well as contract award delays due to the continuing resolutions. The decrease was partially offset by revenue of \$3.4 million attributed to Pangiam for the period from February 29, 2024 to March 31, 2024.

*Cost of Revenues*

	<b>Three Months Ended March 31,</b>		<b>Year-Over-Year Change</b>	
	<b>2024</b>	<b>2023</b>	<b>2024 vs 2023</b>	
Cost of revenues	\$ 26,135	\$ 31,941	\$ (5,806)	(18.2)%
<i>Cost of revenues as a percentage of revenues</i>	<i>79 %</i>	<i>76 %</i>		

Cost of revenues as a percentage of total revenues increased to 79% for the three months ended March 31, 2024 as compared to 76% for the three months ended March 31, 2023. The increase in cost of revenues as a percentage of total revenues was primarily driven by an increase in equity-based compensation expense of \$1.4 million and the elimination of gross margin from Virgin Orbit. Cost of revenues attributed to Pangiam activity for the period from February 29, 2024 to March 31, 2024 was \$2.1 million.



[Table of Contents](#)

**SG&A**

	Three Months Ended March 31,		Year-Over-Year Change	
	2024	2023	2024 vs 2023	
SG&A	\$ 16,948	\$ 20,362	\$ (3,414)	(16.8)%
<i>SG&amp;A as a percentage of revenues</i>	51 %		48 %	

SG&A expenses as a percentage of total revenues for the three months ended March 31, 2024 increased to 51% as compared to 48% for the three months ended March 31, 2023. The increase in SG&A expenses as a percentage of total revenues was primarily driven by increased employer payroll taxes related to equity-based compensation. SG&A expenses attributed to Pangiam activity for the period from February 29, 2024 to March 31, 2024 was \$1.5 million.

**Research and Development**

	Three Months Ended March 31,		Year-Over-Year Change	
	2024	2023	2024 vs 2023	
Research and development	\$ 1,144	\$ 1,128	\$ 16	1.4 %

Research and development expenses increased by \$16 thousand during the three months ended March 31, 2024 as compared to the three months ended March 31, 2023. Research and development expenses attributed to Pangiam activity for period from February 29, 2024 to March 31, 2024 were \$0.6 million, which were partially offset by decreased research and development expenses driven by certain software development projects that have reached the technological feasibility stage and for which related costs were capitalized during the three months ended March 31, 2024.

**Restructuring Charges**

	Three Months Ended March 31,		Year-Over-Year Change	
	2024	2023	2024 vs 2023	
Restructuring charges	\$ 860	\$ 755	\$ 105	13.9 %

Restructuring charges consist of employee separation costs related to strategic cost saving initiatives to better align our organization and cost structure and improve the affordability of our products and services. Restructuring charges for the three months ended March 31, 2023 includes the impairment of lease right-of-use assets associated with these strategic cost saving initiatives.

**Transaction Expenses**

	Three Months Ended March 31,		Year-Over-Year Change	
	2024	2023	2024 vs 2023	
Transaction expenses	\$ 1,103	\$ —	\$ 1,103	100.0 %

Transaction expenses for the three months ended March 31, 2024 consist of diligence, legal and other related expenses incurred associated with the Pangiam Acquisition.

**Goodwill Impairment**

	Three Months Ended March 31,		Year-Over-Year Change	
	2024	2023	2024 vs 2023	
Goodwill impairment	\$ 85,000	\$ —	\$ 85,000	100.0 %

During the quarter ended March 31, 2024, the Company recognized non-cash goodwill impairment charge of \$85.0 million primarily driven by a decrease in share price during the quarter compared to the share price of the equity issued as consideration for the purchase of Pangiam.

**Net Increase in Fair Value of Derivatives**

	Three Months Ended March 31,		Year-Over-Year Change	
	2024	2023	2024 vs 2023	
Net increase in fair value of derivatives	\$ 23,992	\$ 10,567	\$ 13,425	127.0 %

[Table of Contents](#)

The net increase in fair value of derivatives of \$24.0 million for the three months ended March 31, 2024 includes a \$42.3 million loss related to the change in fair value of warrants that were issued in 2023 (the “2023 Warrants”) that were exercised in the first quarter of 2024, partially offset by gains of \$10.6 million, net of cash proceeds received, related to the issuance of warrants in the first quarter of 2024 (the “2024 Warrants”), and a gain of \$18.3 million related to the decrease in fair value of the 2024 Warrants from the date of issuance to March 31, 2024.

**Interest Expense**

	Three Months Ended March 31,		Year-Over-Year Change	
	2024	2023	2024 vs 2023	
Interest expense	\$ 3,555	\$ 3,556	\$ (1)	—%

Interest expense during the three months ended March 31, 2024 and the three months ended March 31, 2023 consists primarily of interest expense, commitment fees, and debt issuance cost amortization under our Convertible Notes and Bank of America Senior Revolver. See the *Liquidity and Capital Resources* section below for more information.

**Other Income**

	Three Months Ended March 31,		Year-Over-Year Change	
	2024	2023	2024 vs 2023	
Other income	\$ (455)	\$ —	\$ (455)	100.0%

The change in other income during the three months ended March 31, 2024 as compared to the three months ended March 31, 2023 is primarily driven by interest income earned on money market accounts.

**Income Tax Expense (Benefit)**

	Three Months Ended March 31,		Year-Over-Year Change	
	2024	2023	2024 vs 2023	
Income tax (benefit) expense	\$ (14)	\$ 59	\$ (73)	(123.7)%
Effective tax rate	—%	(0.2)%		

The effective tax rate for the three months ended March 31, 2024 and the three months ended March 31, 2023 are consistent. The effective tax rate for the three months ended March 31, 2024 differs from the U.S. federal income tax rate of 21.0% primarily due to state and local income taxes, permanent differences between book and taxable income, certain discrete items and the change in valuation allowance.

As of March 31, 2024, the Company has determined that it is not more-likely-than-not that substantially all of its deferred tax assets will be realized in the future and continues to have a full valuation allowance established against its deferred tax assets.

Refer to Note L—Income Taxes of the Notes to consolidated financial statements included in this Quarterly Report on Form 10-Q for more information.

**Supplemental Non-GAAP Information**

The Company uses Adjusted EBITDA to evaluate its operating performance, generate future operating plans, and make strategic decisions, including those relating to operating expenses and the allocation of internal resources. Adjusted EBITDA is a financial measure not calculated in accordance with GAAP. Adjusted EBITDA is defined as net income (loss) adjusted for interest expense (income), net, income tax (benefit) expense, depreciation and amortization, equity-based compensation and associated employer payroll taxes, net increase in fair value of derivatives, restructuring charges, non-recurring strategic initiatives, non-recurring litigation, transaction expenses, goodwill impairment, non-recurring integration costs, capital market advisory fees, commercial start-up costs, loss on extinguishment of debt, transaction bonuses, termination of legacy benefits and management fees. Non-GAAP financial performance measures are used to supplement the financial information presented on a GAAP basis. This non-GAAP financial measure should not be considered in isolation or as a substitute for the relevant GAAP measures and should be read in conjunction with information presented on a GAAP basis. Because not all companies use identical calculations, our presentation of non-GAAP measures may not be comparable to other similarly titled measures of other companies.

**Adjusted EBITDA - Non-GAAP**

The following table presents a reconciliation of Adjusted EBITDA to net loss, computed in accordance with GAAP:

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Net loss	\$ (125,147)	\$ (26,214)
Interest expense	3,555	3,556
Interest income	(447)	—
Income tax (benefit) expense	(14)	59
Depreciation and amortization	2,439	1,986
EBITDA	(119,614)	(20,613)
Adjustments:		
Equity-based compensation	5,156	3,805
Employer payroll taxes related to equity-based compensation <sup>(1)</sup>	664	183
Net increase in fair value of derivatives <sup>(2)</sup>	23,992	10,567
Restructuring charges <sup>(3)</sup>	860	755
Non-recurring strategic initiatives <sup>(4)</sup>	1,334	1,508
Non-recurring litigation <sup>(5)</sup>	(121)	—
Transaction expenses <sup>(6)</sup>	1,103	—
Goodwill impairment <sup>(7)</sup>	85,000	—
Adjusted EBITDA	\$ (1,626)	\$ (3,795)

- (1) Includes employer payroll taxes due upon the vesting of equity awards granted to employees.
- (2) The increase in fair value of derivatives during the quarter ended March 31, 2024, relates to the \$42.3 million loss recorded upon the exercise of the 2023 RDO and 2023 PIPE Warrants (the “2023 Warrants”) in connection with the warrant exercise agreements entered into on February 27, 2024 and March 4, 2024. This loss was offset by gains of \$10.6 million, net of cash proceeds received, related to the issuance of warrants in 2024 (the “2024 Warrants”). In addition, an \$18.3 million reduction in fair value was recorded on the 2024 Warrants issued in connection with the warrant exercise agreements as the fair value decreased from the issue date to quarter end.
- (3) In the first quarter of 2024 and first quarter of 2023, the Company incurred employee separation costs associated with a strategic review of the Company’s capacity and future projections to better align the organization and cost structure and improve the affordability of its products and services.
- (4) Non-recurring professional fees related to the execution of certain strategic initiatives of the Company.
- (5) Non-recurring litigation consists primarily of legal settlements and related fees for specific proceedings that we have determined arise outside of the ordinary course of business based on the following considerations which we assess regularly: (1) the frequency of similar cases that have been brought to date, or are expected to be brought within two years; (2) the complexity of the case; (3) the nature of the remedy(ies) sought, including the size of any monetary damages sought; (4) offensive versus defensive posture of us; (5) the counterparty involved; and (6) our overall litigation strategy.
- (6) Transaction expenses during the quarter ended March 31, 2024 consist primarily of diligence, legal and other related expenses incurred associated with the Pangiam Acquisition.
- (7) During the quarter ended March 31, 2024, the Company recognized a non-cash goodwill impairment charge primarily driven by a decrease in share price during the quarter compared to the share price of the equity issued as consideration for the purchase of Pangiam.

**Free Cash Flow**

Free cash flow is defined as net cash used in operating activities less capital expenditures. Management believes free cash flow is useful to investors, analysts and others because it provides a meaningful measure of the Company’s ability to generate cash and meet its debt obligations.

The table below presents a reconciliation of free cash flow to net cash used in operating activities, computed in accordance with GAAP:

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Net cash used in operating activities	\$ (14,359)	\$ (12,017)
Capital expenditures, net	(1,681)	—
<b>Free cash flow</b>	<b>\$ (16,040)</b>	<b>\$ (12,017)</b>

**Key Performance Indicators**

## [Table of Contents](#)

### *Backlog*

We view growth in backlog as a key measure of our business growth. Backlog represents the estimated dollar value of contracts that we have been awarded for which work has not yet been performed, and in certain cases, our estimate of known opportunities for future contract awards on customer programs that we are currently supporting.

The majority of our historical revenues are derived from contracts with the Federal Government and its various agencies. In accordance with the general procurement practices of the Federal Government, most contracts are not fully funded at the time of contract award. As work under the contract progresses, our customers may add incremental funding up to the initial contract award amount. We generally do not deliver goods and services to our customers in excess of the appropriated contract funding.

At the time of award, certain contracts may include options for our customers to procure additional goods and services under the contract. Options do not create enforceable rights and obligations until exercised by our customers and thus we only recognize revenues related to options as each option is exercised. Contracts with such provisions may or may not specify the exact scope, nor corresponding price, associated with options; however, these contracts will generally identify the expected period of performance for each option. In cases where we have negotiated the estimated scope and price of an option in the contract with our customer, we use that information to measure our backlog and we refer to this as Priced Unexercised Options. If a contract does not specify the scope, level-of-effort, or price related to options to procure additional goods and services, we estimate the backlog associated with those options based on our discussions with our customer, our current level of support on the customer's program, and the period of performance for each option that was negotiated in the contract. We refer to this as Unpriced Unexercised Options.

We define backlog in these categories to provide the reader with additional context as to the nature of our backlog and so that the reader can understand the varying degrees of risk, uncertainty, and where applicable, management's estimates and judgements used in determining backlog at the end of a period. The categories of backlog are further defined below.

- *Funded Backlog.* Funded backlog represents the contract value of goods and services to be delivered under existing contracts for which funding is appropriated or otherwise authorized less revenues previously recognized on these contracts.
- *Unfunded backlog.* Unfunded backlog represents the contract value, or portion thereof, of goods and services to be delivered under existing contracts for which funding has not been appropriated or otherwise authorized.
- *Priced Unexercised Options.* Priced unexercised contract options represent the value of goods and services to be delivered under existing contracts if our customer elects to exercise all of the options available in the contract. For priced unexercised options, we measure backlog based on the corresponding contract values assigned to the options as negotiated in our contract with our customer.
- *Unpriced Unexercised Options.* Unpriced unexercised contract options represent the value of goods and services to be delivered under existing contracts if our customer elects to exercise all of the options available in the contract. For unpriced unexercised options, we estimate backlog generally under the assumption that our current level of support on the contract will persist for each option period.

The following table summarizes certain backlog information (in thousands):

	March 31, 2024		December 31, 2023	
Funded	\$	68,163	\$	30,112
Unfunded		42,674		49,382
Priced, unexercised options		150,575		63,878
Unpriced, unexercised options		34,790		24,438
<b>Total backlog</b>	<b>\$</b>	<b>296,202</b>	<b>\$</b>	<b>167,810</b>

### **Liquidity and Capital Resources**

Our primary sources of liquidity are cash flows provided by our operations and access to existing credit facilities, if available. Our primary short-term cash requirements are to fund payroll obligations, working capital, operating lease obligations, interest payments and short-term debt, including current maturities of long-term debt. Working capital requirements can vary significantly

[Table of Contents](#)

from period to period, particularly as a result of the timing of receipts and disbursements related to long-term contracts. As more fully disclosed below under “Bank of America Senior Revolver,” as of March 31, 2024, until such date as we are able to comply with the Adjusted EBITDA requirement under the Senior Revolver, we are unable to draw on the Senior Revolver. However, based on our projected cash flow and liquidity needs, we believe that our cash from operating activities generated from continuing operations during the year will be adequate for the next 12 months to meet our anticipated uses of cash flow.

Our medium-term to long-term cash requirements are to service and repay debt and to invest in facilities, equipment, technologies, and research and development for growth initiatives.

Our ability to fund our medium-term to long-term cash needs will depend, in part, on our ability to generate cash in the future, which depends on our future financial results. Our future results are subject to general economic, financial, competitive, legislative and regulatory factors that may be outside of our control. Our future access to, and the availability of credit on acceptable terms and conditions, is impacted by many factors, including capital market liquidity and overall economic conditions.

On May 10, 2024, we entered into a Controlled Equity Offering sales agreement with Cantor Fitzgerald & Co., as sales agent (the “sales agent”), pursuant to which we may, from time to time, sell shares of our common stock, having an aggregate offering price of up to \$150.0 million through the sales agent under an “at-the-market” equity offering program. Any offer and sale of shares of our common stock under the Sales Agreement will be made pursuant to our shelf registration statement on Form S-3 (No. 333-271230), which was declared effective by the SEC on April 21, 2023, and the related prospectus supplement dated May 10, 2024 and accompanying prospectus that form a part of the registration statement.

As stated in Note J—Debt of the Notes to consolidated financial statements included in this Quarterly Report on Form 10-Q, the Company was not in compliance with the covenants of the Senior Revolver as of March 31, 2024 and is currently unable to draw on the Senior Revolver.

While we intend to reduce debt over time using cash provided by operations, we may also attempt to meet long-term debt obligations, if necessary, by obtaining capital from a variety of additional sources or by refinancing existing obligations. These sources include public or private capital markets, bank financings, proceeds from dispositions or other third-party sources.

Our available liquidity as of March 31, 2024 and 2023, consisted primarily of available cash and cash equivalents, which were as follows:

	March 31, 2024	December 31, 2023
Available cash and cash equivalents	\$ 81,412	\$ 32,557

The following table summarizes borrowings under our existing credit facilities as of the dates indicated:

	March 31, 2024	December 31, 2023
Convertible Notes	\$ 200,000	\$ 200,000
Bank of America Senior Revolver	—	—
D&O Financing Loan	826	1,229
Total debt	200,826	201,229
Less: unamortized issuance costs	5,239	5,727
Total debt, net	195,587	195,502
Less: current portion	826	1,229
<b>Long-term debt, net</b>	<b>\$ 194,761</b>	<b>\$ 194,273</b>

#### Convertible Notes

On December 7, 2021, the Company issued \$200.0 million of unsecured convertible notes (the “Convertible Notes”) to certain investors. The Convertible Notes bear interest at a rate of 6.0% per annum, payable semi-annually, and not including any interest payments that are settled with the issuance of shares, were convertible into 17,391,304 shares of the Company’s common stock at an initial Conversion Price of \$11.50. The Conversion Price is subject to adjustments, including but not limited to, the Conversion Rate Reset described below and in Note J—Debt of the Notes to consolidated financial statements included in this Quarterly Report on Form 10-Q. The Convertible Notes mature on December 15, 2026.

On May 29, 2022, pursuant to the conversion rate adjustment provisions in the Convertible Notes indenture, the Conversion Price was adjusted to \$10.61 (or 94.2230 shares of common stock per \$1,000 principal amount of Convertible Notes) because the

## [Table of Contents](#)

average of the daily volume-weighted average price of the common stock during the preceding 30 trading days was less than \$10.00 (the *Conversion Rate Reset*). Subsequent to the Conversion Rate Reset, the Convertible Notes are convertible into 18,844,600 shares, not including any interest payments that are settled with the issuance of shares.

The Convertible Notes require the Company to meet certain financial and other covenants. As of March 31, 2024, the Company was in compliance with all covenants related to the Convertible Notes.

As of March 31, 2024, the Company has an outstanding balance of \$200.0 million related to the Convertible Notes, which is recorded on the balance sheet net of approximately \$5.2 million of unamortized debt issuance costs.

### *Bank of America Senior Revolver*

BigBear.ai is a party to a senior Bank of America Credit Agreement, entered into on December 7, 2021, subsequently amended on November 8, 2022, providing BigBear.ai with a \$25.0 million senior secured revolving credit facility (the *Senior Revolver*). Proceeds from the Senior Revolver will be used to fund working capital needs, capital expenditures, and other general corporate purposes. The Senior Revolver matures on December 7, 2025.

The Senior Revolver includes borrowing capacity available for letters of credit and for borrowings on same-day notice, referred to as the “swing loans.” Any issuance of letters of credit or making of a swing loan will reduce the amount available under the revolving credit facility. BigBear.ai may increase the commitments under the Senior Revolver in an aggregate amount of up to the greater of \$25.0 million or 100% of consolidated adjusted EBITDA plus any additional amounts so long as certain conditions, including compliance with the applicable financial covenants for such period, in each case on a pro forma basis, are satisfied.

The Bank of America Credit Agreement requires BigBear.ai to meet certain financial and other covenants. The Company was not in compliance with the Fixed Charge Coverage ratio requirement as of June 30, 2022, and as a result was unable to draw on the facility. The Company notified Bank of America N.A. of the covenant violation, and on August 9, 2022, entered into the First Amendment, which among other things, waived the requirement that the Company demonstrate compliance with the minimum Fixed Charge Coverage ratio provided for in the Credit Agreement for the quarter ended June 30, 2022.

The Company was not in compliance with the Fixed Charge Coverage ratio requirement as of September 30, 2022, and as a result was unable to draw on the facility. On November 8, 2022, the Company entered into a Second Amendment to the Bank of America Credit Agreement (the *Second Amendment*), which modifies key terms of the Senior Revolver. As a result of the Second Amendment, funds available under the Senior Revolver are reduced to \$25.0 million from \$50.0 million, limited to a borrowing base of 90% of Eligible Prime Government Receivables and Eligible Subcontractor Government Receivables, plus 85% of Eligible Commercial Receivables. Additionally, the Second Amendment increased the Base Rate Margin, BSBY Margin and unused commitment fees by 0.25%. Following entry into the Second Amendment, the Senior Revolver no longer is subject to a minimum Fixed Charge Coverage ratio covenant, but is still subject to the Secured Net Leverage ratio covenant. In order for the facility to become available for borrowings (the *initial availability quarter*), the Company must report Adjusted EBITDA of at least one dollar. Commencing on the first fiscal quarter after the initial availability quarter, the Company is required to have aggregated reported Adjusted EBITDA of at least \$1 over the two preceding quarters to maintain its ability to borrow under the Senior Revolver (though the inability to satisfy such condition does not result in a default under the Senior Revolver). Failure to meet this Adjusted EBITDA requirement is not a default but limits the Company’s ability to make borrowings under the Senior Revolver until such time that the Company is able to meet the Adjusted EBITDA thresholds as defined in the Second Amendment.

The Company did not meet the Secured Net Leverage ratio covenant during the three months ended March 31, 2024, and is unable to draw on the Senior Revolver as of March 31, 2024.

As of March 31, 2024, the Company had not drawn on the Senior Revolver. Unamortized debt issuance costs of \$116 were recorded on the balance sheet and are presented in Other non-current assets.

Refer to Note J—Debt of the Notes to consolidated financial statements included in this Quarterly Report on Form 10-Q for more information.

### *D&O Financing Loan*

## [Table of Contents](#)

On December 20, 2023, the Company entered into a \$1,229 loan (the “2024 D&O Financing Loan”) with US Premium Finance to finance the Company’s directors and officers insurance premium through September 2024. The D&O Financing Loan had an interest rate of 6.99% per annum and a maturity date of September 8, 2024.

On December 8, 2022, the Company entered into a \$2,059 loan (the “2023 D&O Financing Loan”) with AFCO Credit Corporation to finance the Company’s directors and officers insurance premium through December 2023. The 2023 D&O Financing Loan required an upfront payment of \$1,109 and has an interest rate of 5.75% per annum and a maturity date of December 8, 2023. The 2023 D&O Financing Loan was fully repaid at maturity.

### *RDO Warrant Exercise*

On February 27, 2024, the Company entered into a warrant exercise agreement with an existing accredited investor to exercise in full the outstanding RDO warrants to purchase up to an aggregate of 8,886,255 shares of the Company’s common stock for total gross proceeds of approximately \$20.6 million, prior to deducting estimated offering expenses.

### *PIPE Warrant Exercise*

On March 4, 2024, the Company entered into a warrant exercise agreement with an existing accredited investor to exercise in full the outstanding PIPE warrants to purchase up to an aggregate of 13,888,889 shares of the Company’s common stock for total gross proceeds of approximately \$33.2 million, prior to deducting estimated offering expenses.

## **Cash Flows**

The table below summarizes certain information from our consolidated statements of cash flows for the following periods:

	Three Months Ended March 31,	
	2024	2023
Net cash used in operating activities	(14,359)	(12,017)
Net cash provided by investing activities	12,254	—
Net cash provided by financing activities	50,960	21,212
Net increase in cash and cash equivalents	48,855	9,195
Cash and cash equivalents at the beginning of period	32,557	12,632
<b>Cash and cash equivalents at the end of the period</b>	<b>\$ 81,412</b>	<b>\$ 21,827</b>

### **Operating activities**

For the three months ended March 31, 2024, net cash used in operating activities was \$14,359. Net loss before deducting depreciation, amortization and other non-cash items was \$7,811 and was further impacted by an unfavorable change in net working capital of \$6,548 which contributed to operating cash flows during this period. The unfavorable change in net working capital was largely driven by a decrease in contract assets of \$2,443, a decrease in prepaid expenses and other assets of \$950, an increase in accrued liabilities of \$2,599, an increase in contract liabilities of \$1,826, and an increase in other liabilities of \$551. These were partially offset by an increase in accounts receivable of \$8,957 and a decrease in accounts payable of \$5,960.

For the three months ended March 31, 2023, net cash used in operating activities was \$12,017. Net loss before deducting depreciation, amortization and other non-cash items was \$8,447 and was further impacted by an unfavorable change in net working capital of \$3,570 which contributed to operating cash flows during this period. The unfavorable change in net working capital was largely driven by a decrease in accounts payable of \$4,914 and increases in contract assets of \$1,115 and accounts receivable of \$3,469. These were partially offset by a decrease in prepaid expenses and other assets of \$1,488 and an increase in accrued liabilities of \$4,066.

### **Investing activities**

For the three months ended March 31, 2024, net cash provided by investing activities was \$12,254, primarily consisting of cash acquired from the Pangiam acquisition of \$13,935, partially offset by capitalized software development costs of \$1,643. There were no investing activities during the three months ended March 31, 2023.

### **Financing activities**

## [Table of Contents](#)

For the three months ended March 31, 2024, net cash provided by financing activities was \$50,960, primarily consisting of the net proceeds from the issuance of the Private Placement and Registered Direct Offering shares of \$53,809, partially offset by the payment of taxes related to net share settlement of equity awards \$2,532 and the net repayment of \$403 related to the 2023 D&O Financing Loan.

For the three months ended March 31, 2023, net cash provided by financing activities was \$21,212, primarily consisting of net proceeds from the issuance of the Private Placement shares of \$25,000, partially offset by \$3,025 of fees related to the issuance of the Private Placement shares and payments on short-term borrowings of \$763 related to the 2023 D&O Financing Loan.

### **Critical Accounting Policies and Estimates**

For the critical accounting estimates used in preparing our consolidated financial statements, we make assumptions and judgments that can have a significant impact on revenue and expenses in our consolidated statements of operations, as well as, on the value of certain assets and liabilities on our consolidated balance sheets. We base our assumptions, judgments and estimates on historical experience and various other factors that we believe are reasonable under the circumstances. Actual results could differ materially from these estimates under different assumptions or conditions.

Our critical accounting estimates are disclosed in Management’s Discussion and Analysis of Financial Condition and Results of Operation included in our Annual Report on Form 10-K, for the year ended December 31, 2023, as filed with the SEC on March 15, 2024.

### **Recent Accounting Pronouncements**

See Note B—Summary of Significant Accounting Policies of the consolidated financial statements included in this Quarterly Report on Form 10-Q for a discussion of recently issued accounting pronouncements.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

Our main exposure to market risk relates to changes in the value of our common stock or other instruments that are tied to our common stock, including derivative liabilities and convertible debt. Decreases in the value of our common stock have triggered certain reset provisions in our Convertible Notes that are based on the value of our common stock and volume of shares traded during the reset period. On May 29, 2022, pursuant to the Convertible Note indenture, the conversion rate applicable to the Convertible Notes was adjusted to 94.2230 (previously 86.9565) shares of common stock per \$1,000 principal amount of Convertible Notes because the average of the daily volume-weighted average price of the common stock during the preceding 30 trading days was less than \$10.00 (the “Conversion Rate Reset”). After giving effect to the Conversion Rate Reset, the conversion price is \$10.61 and the Convertible Notes are convertible into 18,844,600 shares, not including any interest payments that are settled with the issuance of shares. In addition, the Convertible Notes indenture contains certain “make-whole” provisions pursuant to which, under certain circumstances, the Company must increase the conversion rate and such increase depends, in part, on the price of our common stock. Refer to —Written Put Option and Note J—Debt in the notes to our consolidated financial statements in Item 1 on this Quarterly Report on Form 10-Q for further information.

We are also exposed to market risk related to interest rates. Our financial instruments that are subject to interest rate risk principally include fixed-rate long-term debt and revolving credit, if drawn. As of March 31, 2024, the outstanding principal amount of our long-term debt was \$200.0 million excluding unamortized discounts and issuance costs of \$5.2 million.

Inflation affects the way we operate in our target markets. In general, we believe that, over time, we will be able to increase prices to counteract the majority of the inflationary effects of increasing costs and to generate sufficient cash flows to maintain our productive capability. Additionally, many of our long-term contracts have annual rate escalation clauses.

We have established policies, procedures and internal processes governing our management of market risks and to manage and mitigate our exposure to these risks.

### **Item 4. Controls and Procedures**

Our management, with the participation of our principal executive officer and principal financial officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on this evaluation, our principal executive officer and principal financial officer have concluded that as of March 31, 2024, our disclosure controls and procedures were effective to



provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the rules and forms of the SEC, and that such information is accumulated and communicated to our management, including our chief executive officer and chief financial officer, as appropriate, to allow timely decisions regarding required disclosure.

There were no changes in our internal control over financial reporting during the three months ended March 31, 2024 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II—OTHER INFORMATION**

---

### **Item 1. Legal Proceedings**

We are subject to litigation, claims, investigations and audits arising from time to time in the ordinary course of business. Although legal proceedings are inherently unpredictable, we intend to vigorously defend against any matters currently pending against us. The outcome of these matters, individually and in the aggregate, is not expected to have a material impact on our consolidated balance sheets, statements of operations or cash flows.

### **Item 1A. Risk Factors**

For a discussion of the material factors that make an investment in the Company risky, please see the risk factors disclosed in “Item 1A, Risk Factors” of our Annual Report on Form 10-K for the year ended December 31, 2023. These risks and uncertainties have the potential to materially affect our business, results of operations, financial condition, cash flows, projected results and future prospects. These risks are not exclusive and additional risks to which we are subject include the factors mentioned under “Forward-Looking Statements” and the risks described in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in this Quarterly Report on Form 10-Q.

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

#### **Recent Sales of Unregistered Securities**

There have not been sales of unregistered equity securities during the period covered by this Quarterly Report on Form 10-Q that were not previously reported in a Current Report on Form 8-K.

#### **Issuer Repurchases of Equity Securities**

There were no repurchases of our common stock during the three months ended March 31, 2024.

### **Item 3. Defaults Upon Senior Securities**

Not applicable.

### **Item 5. Other Information**

#### **At-the-Market Sales Agreement**

On May 10, 2024, the Company entered into a Controlled Equity Offering sales agreement (the “Sales Agreement”) with Cantor Fitzgerald & Co., as sales agent (the “sales agent”), pursuant to which the Company may, from time to time, sell shares of our common stock, having an aggregate offering price of up to \$150.0 million through the sales agent. The Company is not obligated to, and cannot provide any assurances that it will, make any sales of our shares under the Sales Agreement.

Upon delivery of a placement notice and subject to the terms and conditions of the Sales Agreement, the sales agent may sell the shares by methods deemed to be an “at-the-market” offering as defined in Rule 415(a)(4) promulgated under the Securities Act. Subject to the terms and conditions of the Sales Agreement, the sales agent will use commercially reasonable efforts consistent with its normal trading and sales practices to sell the shares from time to time, based upon our instructions. The Sales Agreement contains customary representations, warranties and agreements, indemnification rights and obligations of the parties. The Company will pay the sales agent a commission for its services as sales agent of up to 3% of the gross sales price of the shares of our common stock sold through the sales agent pursuant to the Sales Agreement.

Any offer and sale of shares of the Company's common stock under the Sales Agreement will be made pursuant to our shelf registration statement on Form S-3 (No. 333-271230), which was declared effective by the SEC on April 21, 2023, and the related prospectus supplement dated May 10, 2024 and accompanying prospectus that form a part of the registration statement.

A copy of the Sales Agreement is filed as Exhibit 10.1 to this Quarterly Report on Form 10-Q. A copy of the opinion of the Company's counsel relating to the validity of the shares to be issued pursuant to the Sales Agreement is filed as Exhibit 5.1 to this Quarterly Report on Form 10-Q.

**Item 6. Exhibits**

Exhibit Number	Description of Exhibits	Incorporated by Reference			Original Exhibit Number	Filed Herewith	Furnished Herewith
		Form	Date Filed	File Number			
4.1	<a href="#">Form of Common Stock Purchase Warrant</a>	8-K	2/28/2024	001-40031	4.1		
4.2	<a href="#">Form of Common Stock Purchase Warrant</a>	8-K	3/5/2024	001-40031	4.1		
5.1	<a href="#">Opinion of Latham &amp; Watkins LLP</a>					X	
10.1	<a href="#">Warrant Exercise Agreement, dated as of February 27, 2024, by and between BigBear.ai and the Investor.</a>	8-K	2/28/2024	001-40031	10.1		
10.2	<a href="#">Joinder &amp; Second Amendment to Amended &amp; Restated Investor Rights Agreement, by and among BBAL, AE BBAL Aggregator, LP, BBAL Ultimate Holdings, LLC, Seller and the other parties thereto, dated as of December 6, 2021, as amended on July 20, 2023, effective as of February 29, 2024.</a>	8-K	3/1/2024	001-40031	10.1		
10.3	<a href="#">Warrant Exercise Agreement, dated as of March 4, 2024, by and between BigBear.ai and the Investor.</a>	8-K	3/5/2024	001-40031	4.1		
10.4	<a href="#">Controlled Equity Offering<sup>SM</sup> Sales Agreement, dated May 10, 2024, by and between Bigbear.ai Holdings, Inc. and Cantor Fitzgerald &amp; Co.</a>					X	
23.1	<a href="#">Consent of Latham &amp; Watkins LLP (included in Exhibit 5.1)</a>					X	
31.1	<a href="#">Certification of Chief Executive Officer (Principal Executive Officer) pursuant to Rules 13a-14(a) and 15d-14(a), under the Securities Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>					X	
31.2	<a href="#">Certification of Chief Financial Officer (Principal Financial Officer) pursuant to Rules 13a-14(a) and 15d-14(a), under the Securities Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>					X	
32.1	<a href="#">Certification of Chief Executive Officer (Principal Executive Officer) pursuant to 18 U.S.C 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>						X
32.2	<a href="#">Certification of Chief Financial Officer (Principal Financial Officer) pursuant to 18 U.S.C 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>						X
101.INS	Inline XBRL Instance Document (the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document)					X	
101.SCH	Inline XBRL Taxonomy Extension Schema Document					X	
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document					X	
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document					X	
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document					X	
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document					X	
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101).					X	

**SIGNATURES**

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

<b>Date:</b> May 10, 2024	<b>By:</b> <u>/s/ Amanda Long</u>
	<b>Name:</b> Amanda Long
	<b>Title:</b> Chief Executive Officer (Principal Executive Officer)

<b>Date:</b> May 10, 2024	<b>By:</b> <u>/s/ Julie Peffer</u>
	<b>Name:</b> Julie Peffer
	<b>Title:</b> Chief Financial Officer (Principal Financial Officer)

1271 Avenue of the Americas  
New York, New York 10020-1401  
Tel: +1.212.906.1200 Fax: +1.212.751.4864  
www.lw.com

## LATHAM & WATKINS<sup>LLP</sup>

### FIRM / AFFILIATE OFFICES

Austin	Milan
Beijing	Munich
Boston	New York
Brussels	Orange County
Century City	Paris
Chicago	Riyadh
Dubai	San Diego
Düsseldorf	San Francisco
Frankfurt	Seoul
Hamburg	Silicon Valley
Hong Kong	Singapore
Houston	Tel Aviv
London	Tokyo
Los Angeles	Washington, D.C.
Madrid	

May 10, 2024

BigBear.ai Holdings, Inc.  
6811 Benjamin Franklin Drive, Suite 200  
Columbia, MD 21046

Re: Registration Statement on Form S-3 (No. 333-217230); Shares of Common Stock, par value \$ 0.0001 per share, having an aggregate offering price of up to \$150,000,000

To the addressee set forth above:

We have acted as special counsel to BigBear.ai Holdings, Inc., a Delaware corporation (the “Company”), in connection with the sale through Cantor Fitzgerald & Co., as sales agent (“Sales Agent”), from time to time by the Company of shares of common stock of the Company, par value \$0.0001 per share (the “Common Stock”), having an aggregate offering price of up to \$150,000,000 (the “Shares”), to be issued pursuant to a registration statement on Form S-3 originally filed by the Company with the Securities and Exchange Commission (the “Commission”) on April 12, 2024 (Registration No. 333-271230) (as so filed and amended, the “Registration Statement”), the base prospectus included in the Registration Statement (the “Base Prospectus”) and the related prospectus supplement, dated May 10, 2024, filed with the Commission pursuant to Rule 424(b) promulgated under the Securities Act (together with the Base Prospectus, the “Prospectus”), and that certain Controlled Equity Offering<sup>SM</sup> Sales Agreement, dated May 10, 2024, by and between the Company and the Sales Agent (the “Sales Agreement”).

This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or the Prospectus, other than as expressly stated herein with respect to the issue of the Shares.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein as to the General Corporation Law of the State of Delaware (the “DGCL”), and we express no opinion with respect to any other laws.

---

**LATHAM & WATKINS<sup>LLP</sup>**

Subject to the foregoing and the other matters set forth herein, it is our opinion that upon the completion of all Corporate Proceedings (as defined below) relating to the Shares, when the Shares shall have been duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the purchasers, and have been issued by the Company against payment therefor (not less than par value) in the circumstances contemplated by the Sales Agreement, the issue and sale of the Shares will have been duly authorized by all necessary corporate action of the Company, and the Shares will be validly issued, fully paid and nonassessable. In rendering the foregoing opinion, we have assumed that (i) the Company will comply with all applicable notice requirements regarding uncertificated shares provided in the DGCL, (ii) upon the issue of any of the Shares, the total number of shares of Common Stock issued and outstanding will not exceed the total number of shares of Common Stock that the Company is then authorized to issue under its Amended and Restated Certificate of Incorporation and (iii) certain terms of the Shares to be issued by the Company from time to time will be authorized and approved by the Board of Directors of the Company or a committee thereof established by the Board of Directors of the Company with the authority to issue and sell Shares pursuant to the Sales Agreement in accordance with the DGCL, the Company's Amended and Restated Certificate of Incorporation, the Bylaws of the Company and certain resolutions of the Board of Directors of the Company and, as applicable, a committee thereof (such approvals referred to herein as, the "Corporate Proceedings") prior to the issuance thereof.

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Act. We consent to your filing this opinion as an exhibit to the Company's Form 10-Q for the period ended March 31, 2024 and to the reference to our firm in the Prospectus under the heading "Legal Matters." In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Sincerely,

/s/ Latham & Watkins LLP

---





**BigBear.ai Holdings, Inc.**  
Shares of Common Stock  
(par value \$0.0001 per share)

**Controlled Equity Offering<sup>SM</sup>**

**Sales Agreement**

May 10, 2024

Cantor Fitzgerald & Co.  
110 East 59<sup>th</sup> Street, 4<sup>th</sup> Floor  
New York, NY 10022

Ladies and Gentlemen:

BigBear.ai Holdings, Inc., a Delaware corporation (the “**Company**”), confirms its agreement (this “**Agreement**”) with Cantor Fitzgerald & Co. (the “**Agent**”), as follows:

1. **Issuance and Sale of Shares.** The Company agrees that, from time to time during the term of this Agreement, on the terms and subject to the conditions set forth herein, it may issue and sell to or through the Agent, as sales agent or principal, shares of common stock (the “**Placement Shares**”) of the Company, par value \$0.0001 per share (the “**Common Stock**”); *provided, however*, that in no event shall the Company issue or sell through the Agent such number or dollar amount of Placement Shares that would (a) exceed the number or dollar amount of shares of Common Stock registered on the effective Registration Statement (defined below) pursuant to which the offering is being made, (b) exceed the number of authorized but unissued shares of Common Stock (less shares of Common Stock issuable upon exercise, conversion or exchange of any outstanding securities of the Company or otherwise reserved from the Company’s authorized capital stock), (c) exceed the number or dollar amount of shares of Common Stock permitted to be sold under Form S-3 (including General Instruction I.B.6 thereof, if applicable) or (d) exceed the number or dollar amount of shares of Common Stock for which the Company has filed a Prospectus Supplement (defined below) (the lesser of (a), (b), (c) and (d), the “**Maximum Amount**”). Notwithstanding anything to the contrary contained herein, the parties hereto agree that compliance with the limitations set forth in this Section 1 on the amount of Placement Shares issued and sold under this Agreement shall be the sole responsibility of the Company and that the Agent shall have no obligation in connection with such compliance. The offer and sale of Placement Shares through the Agent will be effected pursuant to the Registration Statement (as defined below) filed by the Company and declared effective by the Securities and Exchange Commission (the “**Commission**”) on April 21, 2023, although nothing in this Agreement shall be construed as requiring the Company to use the Registration Statement to issue Common Stock.

The Company has filed, in accordance with the provisions of the Securities Act of 1933, as amended (the “**Securities Act**”), and the rules and regulations thereunder (the “**Securities Act Regulations**”), with the Commission a registration statement on Form S-3 (File No. 333-271230), including a base prospectus, relating to certain securities,

---

including the Placement Shares to be issued from time to time by the Company, and which incorporates by reference documents that the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), and the rules and regulations thereunder. The Company has prepared a prospectus or a prospectus supplement to the base prospectus included as part of the registration statement, which prospectus or prospectus supplement relates to the Placement Shares to be issued from time to time by the Company (the “**Prospectus Supplement**”). The Company will furnish to the Agent, for use by the Agent, copies of the prospectus included as part of such registration statement, as supplemented by the Prospectus Supplement, relating to the Placement Shares to be issued from time to time by the Company. Except where the context otherwise requires, such registration statement(s), including all documents filed as part thereof or incorporated by reference therein, and including any information contained in a Prospectus (as defined below) subsequently filed with the Commission pursuant to Rule 424(b) under the Securities Act Regulations or deemed to be a part of such registration statement pursuant to Rule 430B of the Securities Act Regulations, and any one or more additional effective registration statements on Form S-3 from time to time that will contain a base prospectus and related prospectus or prospectus supplement, if applicable (which shall be a Prospectus Supplement), with respect to the Placement Shares, is herein called the “**Registration Statement**.” The base prospectus or base prospectuses, including all documents incorporated therein by reference, included in the Registration Statement, as it may be supplemented, if necessary, by the Prospectus Supplement, in the form in which such prospectus or prospectuses and/or Prospectus Supplement have most recently been filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act Regulations, together with the then issued Issuer Free Writing Prospectus(es) (as defined below), is herein called the “**Prospectus**.”

Any reference herein to the Registration Statement, any Prospectus Supplement, the Prospectus or any Issuer Free Writing Prospectus shall be deemed to refer to and include the documents, if any, incorporated by reference therein (the “**Incorporated Documents**”), including, unless the context otherwise requires, the documents, if any, filed as exhibits to such Incorporated Documents. Any reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement, any Prospectus Supplement, the Prospectus or any Issuer Free Writing Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act on or after the most-recent effective date of the Registration Statement, or the date of the Prospectus Supplement, Prospectus or such Issuer Free Writing Prospectus, as the case may be, and incorporated therein by reference. For purposes of this Agreement, all references to the Registration Statement, the Prospectus or to any amendment or supplement thereto shall be deemed to include the most recent copy filed with the Commission pursuant to its Electronic Data Gathering Analysis and Retrieval system, or if applicable, the Interactive Data Electronic Application system when used by the Commission (collectively, “**EDGAR**”).

2. **Placements.** Each time that the Company wishes to issue and sell Placement Shares hereunder (each, a “**Placement**”), it will notify the Agent by email notice (or other method mutually agreed to by the parties) of the number of Placement Shares to be issued, the time period during which sales are requested to be made, any limitation on the number of



Placement Shares that may be sold in any one day and any minimum price below which sales may not be made (a “**Placement Notice**”), the form of which is attached hereto as Schedule 1. The Placement Notice shall originate from any of the individuals from the Company set forth on Schedule 3 (with a copy to each of the other individuals from the Company listed on such schedule), and shall be addressed to each of the individuals from the Agent set forth on Schedule 3, as such Schedule 3 may be amended from time to time. The Placement Notice shall be effective unless and until (i) the Agent declines to accept the terms contained therein for any reason, in its sole discretion, (ii) the entire amount of the Placement Shares thereunder have been sold, (iii) the Company suspends or terminates the Placement Notice or (iv) this Agreement has been terminated under the provisions of Section 12. The amount of any discount, commission or other compensation to be paid by the Company to the Agent in connection with the sale of the Placement Shares shall be calculated in accordance with the terms set forth in Schedule 2. It is expressly acknowledged and agreed that neither the Company nor the Agent will have any obligation whatsoever with respect to a Placement or any Placement Shares unless and until the Company delivers a Placement Notice to the Agent and the Agent does not decline such Placement Notice pursuant to the terms set forth above, and then only upon the terms specified therein and herein. In the event of a conflict between the terms of this Agreement and the terms of a Placement Notice, the terms of the Placement Notice will control.

3. Sale of Placement Shares by the Agent. Subject to the provisions of Section 5(a), the Agent, for the period specified in the Placement Notice, will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable state and federal laws, rules and regulations and the rules of the New York Stock Exchange (the “**Exchange**”), to sell the Placement Shares up to the amount specified in, and otherwise in accordance with the terms of, such Placement Notice. The Agent will provide written confirmation to the Company no later than the opening of the Trading Day (as defined below) immediately following the Trading Day on which it has made sales of Placement Shares hereunder setting forth the number of Placement Shares sold on such day, the compensation payable by the Company to the Agent pursuant to Section 2 with respect to such sales, and the Net Proceeds (as defined below) payable to the Company, with an itemization of the deductions made by the Agent (as set forth in Section 5(b)) from the gross proceeds that it receives from such sales. Subject to the terms of the Placement Notice, the Agent may sell Placement Shares by any method permitted by law deemed to be an “at the market offering” as defined in Rule 415(a)(4) of the Securities Act Regulations. “**Trading Day**” means any day on which Common Stock is traded on the Exchange.
4. Suspension of Sales. The Company or the Agent may, upon notice to the other party in writing (including by email correspondence to each of the individuals of the other party set forth on Schedule 3, if receipt of such correspondence is actually acknowledged by any of the individuals to whom the notice is sent, other than via auto-reply) or by telephone (confirmed immediately by verifiable facsimile transmission or email correspondence to each of the individuals of the other party set forth on Schedule 3), suspend any sale of Placement Shares (a “**Suspension**”); *provided, however*, that such Suspension shall not affect or impair any party’s obligations with respect to any Placement Shares sold



hereunder prior to the receipt of such notice. While a Suspension is in effect any obligation under Sections 7(l), 7(m), and 7(n) with respect to the delivery of certificates, opinions, or comfort letters to the Agent, shall be waived. Each of the parties agrees that no such notice under this Section 4 shall be effective against any other party unless it is made to one of the individuals named on Schedule 3 hereto, as such Schedule may be amended from time to time. Notwithstanding any other provision of this Agreement, during any period in which the Company is in possession of material non-public information, the Company and the Agent agree that (i) no sale of Placement Shares will take place, (ii) the Company shall not request the sale of any Placement Shares, and (iii) the Agent shall not be obligated to sell or offer to sell any Placement Shares.

5. Sale and Delivery to the Agent; Settlement.

- (a) Sale of Placement Shares. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, upon the Agent's acceptance of the terms of a Placement Notice, and unless the sale of the Placement Shares described therein has been declined, suspended, or otherwise terminated in accordance with the terms of this Agreement, the Agent, for the period specified in the Placement Notice, will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable law and regulations to sell such Placement Shares up to the amount specified, and otherwise in accordance with the terms of such Placement Notice. The Company acknowledges and agrees that (i) there can be no assurance that the Agent will be successful in selling Placement Shares, (ii) the Agent will incur no liability or obligation to the Company or any other person or entity if it does not sell Placement Shares for any reason other than a failure by the Agent to use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable law and regulations to sell such Placement Shares as required under this Agreement and (iii) the Agent shall be under no obligation to purchase Placement Shares on a principal basis pursuant to this Agreement, except as otherwise agreed by the Agent and the Company.
- (b) Settlement of Placement Shares. Unless otherwise specified in the applicable Placement Notice, settlement for sales of Placement Shares will occur on the second (2nd) Trading Day (or such earlier day as is industry practice for regular-way trading) following the date on which such sales are made (each, a "**Settlement Date**"). The Agent shall notify the Company of each sale of Placement Shares no later than the opening of the Trading Day immediately following the Trading Day on which it has made sales of Placement Shares hereunder. The amount of proceeds to be delivered to the Company on a Settlement Date against receipt of the Placement Shares sold (the "**Net Proceeds**") will be equal to the aggregate sales price received by the Agent, after deduction for (i) the Agent's commission, discount or other compensation for such sales payable by the Company pursuant to Section 2 hereof, and (ii) any transaction fees imposed by any Governmental Authority in respect of such sales.
- (c) Delivery of Placement Shares. On or before each Settlement Date, the Company will or will cause its transfer agent to, electronically transfer the Placement Shares

will, or will cause its transfer agent to, electronically transfer the Placement Shares



being sold by crediting the Agent's or its designee's account (provided the Agent shall have given the Company written notice of such designee at least one Trading Day prior to the Settlement Date) at The Depository Trust Company through its Deposit and Withdrawal at Custodian System or by such other means of delivery as may be mutually agreed upon by the parties hereto which in all cases shall be freely tradable, transferable, registered shares in good deliverable form. On each Settlement Date, the Agent will deliver the related Net Proceeds in same day funds to an account designated by the Company on, or prior to, the Settlement Date. The Company agrees that if the Company, or its transfer agent (if applicable), defaults in its obligation to deliver Placement Shares on a Settlement Date, the Company agrees that in addition to and in no way limiting the rights and obligations set forth in Section 10(a) hereto, it will (i) hold the Agent harmless against any loss, claim, damage, or expense (including reasonable and documented legal fees and expenses), as incurred, arising out of or in connection with such default by the Company or its transfer agent (if applicable) and (ii) pay to the Agent any commission, discount, or other compensation to which it would otherwise have been entitled absent such default.

- (d) Denominations; Registration. Certificates for the Placement Shares, if any, shall be in such denominations and registered in such names as the Agent may request in writing at least one full Business Day (as defined below) before the applicable Settlement Date. The certificates for the Placement Shares, if any, will be made available by the Company for examination and packaging by the Agent in The City of New York not later than noon (New York time) on the Business Day prior to the applicable Settlement Date.
- (e) Limitations on Offering Size. Under no circumstances shall the Company cause or request the offer or sale of any Placement Shares if, after giving effect to the sale of such Placement Shares, the aggregate gross sales proceeds of Placement Shares sold pursuant to this Agreement would exceed the lesser of (A) together with all sales of Placement Shares under this Agreement, the Maximum Amount and (B) the amount authorized from time to time to be issued and sold under this Agreement by the Company's board of directors, a duly authorized committee thereof or a duly authorized executive committee, and notified to the Agent in writing. Under no circumstances shall the Company cause or request the offer or sale of any Placement Shares pursuant to this Agreement at a price lower than the minimum price authorized from time to time by the Company's board of directors, a duly authorized committee thereof or a duly authorized executive committee. Further, under no circumstances shall the Company cause or permit the aggregate offering amount of Placement Shares sold pursuant to this Agreement to exceed the Maximum Amount.

- 6. Representations and Warranties of the Company. The Company represents and warrants to, and agrees with the Agent that as of the date of this Agreement and as of each Applicable Time (as defined below):



- (a) Registration Statement and Prospectus. The Company and the transactions contemplated by this Agreement meet the requirements for and comply with the applicable conditions set forth in Form S-3 (including General Instructions I.A and I.B) under the Securities Act. The Registration Statement has been filed with the Commission and has been declared effective by the Commission under the Securities Act prior to the issuance of any Placement Notices by the Company. The Prospectus Supplement will name the Agent as the agent in the section entitled “Plan of Distribution.” The Company has not received, and has no notice of, any order of the Commission preventing or suspending the use of the Registration Statement, or threatening or instituting proceedings for that purpose. The Registration Statement and the offer and sale of Placement Shares as contemplated hereby meet the requirements of Rule 415 under the Securities Act and comply in all material respects with said Rule. Any statutes, regulations, contracts or other documents that are required to be described in the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement have been so described or filed. Copies of the Registration Statement, the Prospectus, and any such amendments or supplements and all documents incorporated by reference therein that were filed with the Commission on or prior to the date of this Agreement have been delivered, or are available through EDGAR, to the Agent and its counsel. The Company has not distributed and, prior to the later to occur of each Settlement Date and completion of the distribution of the Placement Shares, will not distribute any offering material in connection with the offering or sale of the Placement Shares other than the Registration Statement and the Prospectus and any Issuer Free Writing Prospectus to which the Agent has consented. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is currently listed on the Exchange under the trading symbol “BBAI.” The Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act, delisting the Common Stock from the Exchange, nor has the Company received any notification that the Commission or the Exchange is contemplating terminating such registration or listing. To the Company’s Knowledge, it is in compliance with all applicable listing requirements of the Exchange. As used in paragraph (a) and elsewhere in this Agreement:

“**Knowledge**” means (a) as to the Company, the actual knowledge of the Company’s executive officers or knowledge that the Company’s executive officers could have acquired had they made a reasonable inquiry of the employee of the Company with management control or oversight over such matter and (b) as to any other person, the actual knowledge of such person or knowledge which such person could have acquired had they made a reasonable inquiry of the employee of the Company with management control or oversight over such matter.

Any reference herein to the Registration Statement or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein. Any reference to any amendment or supplement to the Prospectus shall be deemed to refer to and include any documents filed after the date of the Prospectus under the Exchange Act, and incorporated by reference in such Prospectus. Any reference



to any amendment to the Registration Statement shall be deemed to refer to and include any annual report of the Company filed pursuant to Section 13(a) or 15(d) of the Exchange Act after the date of this Agreement that is incorporated by reference in the Registration Statement.

- (b) No Misstatement or Omission. The Registration Statement, when it became or becomes effective, and the Prospectus, and any amendment or supplement thereto, on the date of such Prospectus or amendment or supplement, conformed and will conform in all material respects with the requirements of the Securities Act. At each Settlement Date, the Registration Statement and the Prospectus, as of such date, will conform in all material respects with the requirements of the Securities Act. The Registration Statement, when it became or becomes effective, did not, and will not, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Prospectus and any amendment and supplement thereto, on the date thereof and at each Applicable Time (defined below), did not or will not include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The documents incorporated by reference in the Prospectus or any Prospectus Supplement did not, and any further documents filed and incorporated by reference therein will not, when filed with the Commission, contain an untrue statement of a material fact or omit to state a material fact required to be stated in such document or necessary to make the statements in such document, in light of the circumstances under which they were made, not misleading. The foregoing shall not apply to statements in, or omissions from, any such document made in reliance upon, and in conformity with, information furnished to the Company by the Agent in writing specifically for use in the preparation thereof, it being understood and agreed that the only such information furnished by the Agent to the Company consists of “Agent Information” as defined below.
- (c) [Reserved].
- (d) [Reserved].
- (e) Distribution of Offering Materials. The Company has not, directly or indirectly, distributed and will not distribute any offering material in connection with the offering and sale of the Placement Shares other than the Prospectus and other materials, if any, permitted under the Securities Act.
- (f) Emerging Growth Company. From the first date on which the Company engaged directly or through any person authorized to act on its behalf in any communication in reliance on Section 5(d) of the Securities Act) through the date hereof, the Company has been and is an “emerging growth company,” as defined in Section 2(a) of the Securities Act (an “**Emerging Growth Company**”).



- (g) Organization and Good Standing. The Company and each of its subsidiaries (as set forth on Schedule 4, collectively, the “**Subsidiaries**”) have been duly organized and are validly existing as corporations or other legal entities in good standing (or the foreign equivalent thereof) under the laws of their respective jurisdictions of organization. The Company and each of its Subsidiaries are duly qualified to do business and are in good standing as foreign corporations or other legal entities in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification and have all power and authority (corporate or other) necessary to own or hold their respective properties and to conduct the businesses in which they are engaged, except where the failure to so qualify or have such power or authority would not (i) have, singularly or in the aggregate, a material adverse effect on the business, properties, management, financial position, stockholders’ equity, results of operations or prospects of the Company and its Subsidiaries taken as a whole, or (ii) impair in any material respect the ability of the Company to perform its obligations under this Agreement or to consummate any transactions contemplated by this Agreement, the Registration Statement or the Prospectus (any such effect as described in clauses (i) or (ii), a “**Material Adverse Effect**”). The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the Subsidiaries listed in Exhibit 21.1 to the Company’s Annual Report on Form 10-K.
- (h) Capitalization. All of the issued shares of capital stock of the Company have been duly and validly authorized and issued, are fully paid and non-assessable, have been issued in compliance with federal and state securities laws, and conform to the description thereof contained in the Registration Statement and the Prospectus. All of the Company’s options, warrants and other rights to purchase or exchange any securities for shares of the Company’s capital stock have been duly authorized and validly issued and were issued in compliance with federal and state securities laws. None of the outstanding shares of Common Stock were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. As of each of the dates set forth in the Registration Statement and Prospectus, there were no authorized or outstanding shares of capital stock, options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its Subsidiaries other than those described above or accurately described in the General Disclosure Package. Since such date, the Company has not issued any securities other than Common Stock issued pursuant to the exercise of warrants or upon the exercise of stock options or other awards outstanding under the Company’s stock option plans, options or other securities granted or issued pursuant to the Company’s existing equity compensation plans or other plans, and the issuance of Common Stock pursuant to employee stock purchase plans. The description of the Company’s stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, as described in the General Disclosure Package and the Prospectus, accurately and fairly present the





information required to be shown with respect to such plans, arrangements, options and rights.

- (i) Capitalization of Subsidiaries. All the outstanding shares of capital stock (if any) of each subsidiary of the Company have been duly authorized and validly issued, are fully paid and nonassessable and, except to the extent set forth in the Registration Statement or the Prospectus, are owned by the Company directly or indirectly through one or more wholly-owned Subsidiaries, free and clear of any claim, lien, encumbrance, security interest, restriction upon voting or transfer or any other claim of any third party.
- (j) No Conflicts. The execution, delivery and performance of this Agreement by the Company, the issue and offering or sale of the Placement Shares by the Company and the consummation of the transactions contemplated hereby will not (with or without notice or lapse of time or both) (i) conflict with or result in a breach or violation of any of the terms or provisions of, constitute a default or a Debt Repayment Triggering Event (as defined below) under, or result in the creation or imposition of any lien, encumbrance, security interest, claim or charge upon any property or assets of the Company or any subsidiary pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound or to which any of the property or assets of the Company or any of its Subsidiaries is subject, (ii) result in any violation of the provisions of the charter or by-laws (or analogous governing instruments, as applicable) of the Company or any of its Subsidiaries or (iii) result in the violation of any law, statute, rule, regulation, judgment, order or decree of any court or governmental or regulatory agency or body, domestic or foreign, having jurisdiction over the Company or any of its Subsidiaries or any of their properties or assets except, in the case of clauses (i) and (iii) above, for any such conflict, breach, violation or default that would not, individually or in the aggregate, have a Material Adverse Effect. A **“Debt Repayment Triggering Event”** means any event or condition that gives, or with the giving of notice or lapse of time would give the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company of any of its Subsidiaries.
- (k) Underwriter Agreements. The Company is not a party to any agreement with an agent or underwriter for any other “at the market” or continuous equity transaction.
- (l) No Consents Required. No consent, approval, authorization, order, registration or qualification of or with any Governmental Authority is required for the execution, delivery and performance by the Company of this Agreement, the issuance and sale by the Company of the Placement Shares, except for such consents, approvals, authorizations, orders and registrations or qualifications as may be required under applicable state securities laws or by the by-laws and rules of the Financial Industry Regulatory Authority (“**FINRA**”) or the Exchange in connection with the sale of the Placement Shares by the Agent

the Placement Shares by the Agent.

- (m) Authorization; Enforceability. The Company has full legal right, power and authority to enter into this Agreement and perform the transactions contemplated hereby. This Agreement has been duly authorized, executed and delivered by the Company and is a legal, valid and binding agreement of the Company enforceable in accordance with its terms, except to the extent that enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general equitable principles.
- (n) Authorization of Placement Shares. The Placement Shares, when issued and delivered pursuant to the terms approved by the board of directors of the Company or a duly authorized committee thereof, or a duly authorized executive committee, against payment therefor as provided herein, will be duly and validly authorized and issued and fully paid and nonassessable, free and clear of any pledge, lien, encumbrance, security interest or other claim, including any statutory or contractual preemptive rights, resale rights, rights of first refusal or other similar rights, and will be registered pursuant to Section 12 of the Exchange Act. The Placement Shares, when issued, will conform to the description thereof set forth in or incorporated into the Prospectus.
- (o) Agent Purchases. The Company acknowledges and agrees that the Agent has informed the Company that the Agent may, to the extent permitted under the Securities Act and the Exchange Act, purchase and sell Common Stock for its own account while this Agreement is in effect, provided, that the Company shall not be deemed to have authorized or consented to any such purchases or sales by the Agent.
- (p) Stock Transfer Taxes. On each Settlement Date, all stock transfer or other taxes (other than income taxes) which are required to be paid in connection with the sale and transfer of the Placement Shares to be sold hereunder will be, or will have been, fully paid or provided for by the Company and all laws imposing such taxes will be or will have been fully complied with.
- (q) No Preferential Rights. Except as set forth in the Registration Statement and the Prospectus, (i) no person, as such term is defined in Rule 1-02 of Regulation S X promulgated under the Securities Act (each, a "**Person**"), has the right, contractual or otherwise, to cause the Company to issue or sell to such Person any Common Stock or shares of any other capital stock or other securities of the Company, (ii) no Person has any preemptive rights, resale rights, rights of first refusal, rights of co-sale, or any other rights (whether pursuant to a "poison pill" provision or otherwise) to purchase any Common Stock or shares of any other capital stock or other securities of the Company, (iii) no Person has the right to act as an underwriter or as a financial advisor to the Company in connection with the offer and sale of the Common Stock, and (iv) no Person has the right, contractual or otherwise, to require the Company to register under the Securities Act any Common Stock or shares of any other capital stock or other securities of the Company, or to include any such shares or other securities in the Registration Statement or the offering contemplated thereby, whether as a result of the filing or effectiveness of



the Registration Statement or the sale of the Placement Shares as contemplated thereby or otherwise.

- (r) Independent Auditors. Grant Thornton LLP, who have certified certain financial statements of the Company and its Subsidiaries included or incorporated by reference in the Registration Statement and the Prospectus, and have audited the Company's internal control over financial reporting and management's assessment thereof, is an independent registered public accounting firm with respect to the Company and its Subsidiaries within the meaning of Article 2-01 of Regulation S-X and the Public Company Accounting Oversight Board (United States) (the "PCAOB") and is not in violation of the auditor independence requirements of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the "Sarbanes-Oxley Act").
- (s) Financial Statements. The financial statements, together with the related notes included or incorporated by reference in the Prospectus and in the Registration Statement fairly present the financial position and the results of operations and changes in financial position of the Company and its consolidated Subsidiaries at the respective dates or for the respective periods therein specified. Such statements and related notes have been prepared in accordance with the generally accepted accounting principles in the United States ("GAAP") applied on a consistent basis throughout the periods involved except as may be set forth in the related notes included or incorporated by reference in the Registration Statement or the Prospectus. The financial statements, together with the related notes included or incorporated by reference in the Registration Statement and the Prospectus comply in all material respects with Regulation S-X. No other financial statements or supporting schedules or exhibits are required by Regulation S-X to be described, included or incorporated by reference in the Registration Statement, the Registration Statement or the Prospectus. There is no pro forma or as adjusted financial information which is required to be included in the Registration Statement or the Prospectus or a document incorporated by reference therein in accordance with Regulation S-X which has not been included or incorporated as so required. The summary and selected financial data included or incorporated by reference in the Prospectus and the Registration Statement fairly present the information shown therein as at the respective dates and for the respective periods specified and are derived from the consolidated financial statements set forth incorporated by reference in the Registration Statement and the Prospectus and other financial information. All information contained in the Registration Statement and the Prospectus regarding "non-GAAP financial measures" (as defined in Regulation G) complies in all material respects with Regulation G and Item 10 of Regulations S-K, to the extent applicable.
- (t) eXtensible Business Reporting Language. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

guidelines applicable thereto.

- (u) No Material Adverse Change. Neither the Company nor any of its Subsidiaries has sustained, since the date of the latest audited financial statements included or incorporated by reference in the Registration Statement or the Prospectus: (i) any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or action, order or decree of any court or governmental or regulatory authority, otherwise than as set forth or contemplated in the Registration Statement and the Prospectus; (ii) any change in the capital stock (other than the issuance of shares of Common Stock upon exercise of stock options and warrants described as outstanding in, and the grant of options and awards under existing equity incentive plans described in, the Registration Statement or the Prospectus) or long-term debt of the Company or any of its Subsidiaries, or any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of capital stock; or (iii) to the Company's Knowledge any material adverse changes, or any development involving a prospective material adverse change, in or affecting the business, properties, assets, general affairs, management, financial position, prospects, stockholders' equity or results of operations of the Company and its Subsidiaries taken as a whole; in each case, except otherwise than as set forth or contemplated in the Registration Statement or the Prospectus.
- (v) [Reserved].
- (w) No Reliance. The Company has not relied upon the Agent or legal counsel for the Agent for any legal, tax or accounting advice in connection with the offering and sale of the Placement Shares.
- (x) Legal Proceedings. Except as set forth in the Registration Statement or the Prospectus, to the Company's Knowledge there is no legal or governmental proceeding pending to which the Company or any of its Subsidiaries is a party or of which any property or assets of the Company or any of its Subsidiaries is the subject that is required to be described in the Registration Statement or the Prospectus or a document incorporated by reference therein and is not described therein, or which if determined adversely to the Company or any of its Subsidiaries, could reasonably be expected to have a Material Adverse Effect; and no such proceedings are threatened or, to the Company's Knowledge, contemplated by governmental or regulatory authorities or threatened by others.
- (y) No Violation or Default. Neither the Company nor any of its Subsidiaries is (i) in violation of its charter or by-laws (or analogous governing instrument, as applicable), (ii) in default in any respect, and no event has occurred which, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other material agreement or instrument to which it is a party or by which it is bound or to which any of its property or assets is subject or (iii) in violation in any respect of any law, ordinance, governmental rule, regulation or court order, decree or judgment to which it or its property or assets is subject except, in the case of clauses (ii) and (iii)

which it or its property or assets is subject except, in the case of clauses (ii) and (iii)



above, for any such violation or default that would not, singularly or in the aggregate, have a Material Adverse Effect.

- (z) Licenses or Permits. The Company and each of its Subsidiaries possess all licenses, certificates, security clearances, authorizations and permits issued by, and have made all declarations and filings with, the appropriate local, state, federal or foreign governmental or regulatory agencies or bodies, and their respective personnel have all security clearances, that are necessary for the ownership or lease of their respective properties or the conduct of their respective businesses as described in the Registration Statement and the Prospectus (collectively, the “**Governmental Permits**”) except where any failures to possess or make the same would not, singularly or in the aggregate, have a Material Adverse Effect. The Company and its Subsidiaries are in compliance with all such Governmental Permits in all material respects; all such Governmental Permits are valid and in full force and effect, except where the validity or failure to be in full force and effect would not, singularly or in the aggregate, have a Material Adverse Effect. Neither the Company nor any subsidiary has received notification of any revocation, modification, suspension, termination or invalidation (or proceedings related thereto) of any such Governmental Permit and the Company has no reason to believe that any such Governmental Permit will not be renewed.
- (aa) Investment Company Act. Neither the Company nor any of its Subsidiaries is or, after giving effect to the offering of the Placement Shares and the application of the proceeds thereof as described in the Prospectus, will be required to register as an “investment company” or an entity “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder.
- (bb) No Stabilization. Neither the Company nor, to the Company’s Knowledge, any of its officers, directors or affiliates has taken or will take, directly or indirectly, any action designed or intended to stabilize or manipulate the price of any security of the Company, or which caused or resulted in, or which might in the future reasonably be expected to cause or result in, stabilization or manipulation of the price of any security of the Company.
- (cc) Intellectual Property. The Company and its Subsidiaries own or possess the valid right to use all (i) valid and enforceable patents, patent applications, trademarks, trademark registrations, service marks, service mark registrations, Internet domain name registrations, copyrights, copyright registrations, licenses, trade secret rights (“**Intellectual Property Rights**”) and (ii) inventions, software, works of authorships, trademarks, service marks, trade names, databases, formulae, know how, Internet domain names and other intellectual property (including trade secrets and other unpatented and/or unpatentable proprietary confidential information, systems, or procedures) (collectively, “**Intellectual Property Assets**”) necessary to conduct their respective businesses as currently conducted, and as proposed to be conducted and described in the Registration Statement and the Prospectus, except where ownership or possession of the valid right to use all Intellectual Property



Rights or Intellectual Property Assets would not, singularly or in the aggregate, have a Material Adverse Effect. The Company and its Subsidiaries have not received any opinion from their legal counsel concluding that any activities of their respective businesses infringe, misappropriate, or otherwise violate, valid and enforceable Intellectual Property Rights of any other person, and have not received written notice of any challenge, which is to their Knowledge still pending, by any other person to the rights of the Company and its Subsidiaries with respect to any Intellectual Property Rights or Intellectual Property Assets owned or used by the Company or its Subsidiaries. To the Company's Knowledge, the Company and its Subsidiaries' respective businesses as now conducted do not give rise to any infringement of, any misappropriation of, or other violation of, any valid and enforceable Intellectual Property Rights of any other person. All licenses for the use of the Intellectual Property Rights described in the Registration Statement and the Prospectus are valid, binding upon, and enforceable by or against the parties thereto in accordance to its terms. The Company has complied in all material respects with, and is not in breach nor has received any asserted or threatened claim of breach of any Intellectual Property license, and the Company has no Knowledge of any breach or anticipated breach by any other person to any Intellectual Property license. Except as described in the Registration Statement or the Prospectus, no claim has been made against the Company alleging the infringement by the Company of any patent, trademark, service mark, trade name, copyright, trade secret, license in or other intellectual property right or franchise right of any person. The Company has taken all reasonable steps to protect, maintain and safeguard its Intellectual Property Rights, including the execution of appropriate nondisclosure and confidentiality agreements. The consummation of the transactions contemplated by this Agreement will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other person in respect of, the Company's right to own, use, or hold for use any of the Intellectual Property Rights as owned, used or held for use in the conduct of the business as currently conducted. With respect to the use of the software in the Company's business as it is currently conducted, the Company has not experienced any material defects in such software including any material error or omission in the processing of any transactions other than defects which have been corrected, and to the Company's Knowledge, no such software contains any device or feature designed to disrupt, disable, or otherwise impair the functioning of any software.

- (dd) Privacy Laws. The Company and its Subsidiaries are in material compliance with all applicable data privacy and security laws and regulations ("**Privacy Laws**"). To ensure compliance with the Privacy Laws, the Company and its Subsidiaries have in place, comply with, and take appropriate steps reasonably designed to ensure compliance in all material respects with their policies and procedures relating to data privacy and security and the collection, storage, use, disclosure, handling and analysis of Personal Data (the "**Policies**"). The Company provides accurate notice of its Policies to its customers, employees, third party vendors and representatives as necessary. The Policies provide accurate and sufficient notice of the Company's then-current privacy practices relating to its subject matter and such Policies do not



contain any material omissions of the Company's then-current privacy practices. "**Personal Data**" means (i) a natural persons' name, street address, telephone number, email address, photograph, social security number, bank information, or customer or account number; (ii) any information which would qualify as "personally identifying information" under the Federal Trade Commission Act, as amended; (iii) "personal data" as defined by the Union General Data Protection Regulation (EU 2016/679); and (iv) any other piece of information that allows the identification of such natural person, or his or her family, or permits the collection or analysis of any data related to an identified person's health or sexual orientation. None of such disclosures made or contained in any of the Policies have been inaccurate, misleading, deceptive or in violation of any Privacy Laws or Policies in any material respect. The execution, delivery and performance of this Agreement or any other agreement referred to in this Agreement will not result in a material breach of any Privacy Laws or Policies. Neither the Company nor any of its Subsidiaries, (i) has received notice of any actual or potential liability under or relating to, or actual or potential violation of, any of the Privacy Laws, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) is currently conducting or paying for, in whole or in part, any investigation, remediation or other corrective action pursuant to any Privacy Law; or (iii) is a party to any order, decree, or agreement that imposed any obligation or liability under any Privacy Law.

- (ee) IT Systems. (i)(x) To the Company's Knowledge, there has been no security breach or attack or other compromise of or relating to any of the Company's and its Subsidiaries' information technology and computer systems, networks, hardware, software, data (including the data of their respective customers, employees, suppliers, vendors and any third party data maintained by or on behalf of them), equipment or technology ("**IT Systems and Data**"), and (y) the Company and its Subsidiaries have not been notified of, and have no knowledge of any event or condition that would reasonably be expected to result in any security breach, attack or compromise to their IT Systems and Data, (ii) except as disclosed in the Registration Statement or the Prospectus, the Company and its Subsidiaries have materially complied, and are presently in compliance with, all applicable laws, statutes or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority and all industry guidelines, standards, internal policies and contractual obligations relating to the privacy and security of IT Systems and Data and to the protection of such IT Systems and Data from unauthorized use, access, misappropriation or modification and (iii) the Company and its Subsidiaries have implemented backup and disaster recovery technology consistent with industry standards and practice.
- (ff) Title to Real and Personal Property. The Company and each of its Subsidiaries have good and marketable title in and (in the case of real property) to, or have valid and marketable rights to lease or otherwise use, all items of real or personal property which are material to the business of the Company and its Subsidiaries taken as a whole, in each case free and clear of all liens, encumbrances, security interests,



claims and defects that (i) do not, singularly or in the aggregate, materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company or any of its Subsidiaries or (ii) could not reasonably be expected, singularly or in the aggregate, to have a Material Adverse Effect.

- (gg) No Labor Dispute. There is (A) no significant unfair labor practice complaint pending against the Company, or any of its Subsidiaries, nor to the Company's Knowledge, threatened against it or any of its Subsidiaries, before the National Labor Relations Board, any state or local labor relation board or any foreign labor relations board, and no significant grievance or significant arbitration proceeding arising out of or under any collective bargaining agreement is so pending against the Company or any of its Subsidiaries, or, to the Company's Knowledge, threatened against it and (B) no labor disturbance by or dispute with, employees of the Company or any of its Subsidiaries exists or, to the Company's Knowledge, is contemplated or threatened, and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its or its Subsidiaries' principal suppliers, manufacturers, customers or contractors, that could reasonably be expected, singularly or in the aggregate, to have a Material Adverse Effect. The Company is not aware that any key employee or significant group of employees of the Company or any subsidiary plans to terminate employment with the Company or any such subsidiary.
- (hh) Compliance with ERISA. No "prohibited transaction" (as defined in Section 406 of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("**ERISA**"), or Section 4975 of the Internal Revenue Code of 1986, as amended from time to time (the "**Code**")) or "accumulated funding deficiency" (as defined in Section 302 of ERISA) or any of the events set forth in Section 4043(b) of ERISA (other than events with respect to which the thirty (30)-day notice requirement under Section 4043 of ERISA has been waived) has occurred or could reasonably be expected to occur with respect to any employee benefit plan of the Company or any of its Subsidiaries which could, singularly or in the aggregate, have a Material Adverse Effect. Each employee benefit plan of the Company or any of its Subsidiaries is in compliance in all material respects with applicable law, including ERISA and the Code. The Company and its Subsidiaries have not incurred and could not reasonably be expected to incur liability under Title IV of ERISA with respect to the termination of, or withdrawal from, any pension plan (as defined in ERISA) which could, singularly or in the aggregate, have a Material Adverse Effect. Each pension plan sponsored by the Company or any of its Subsidiaries that is intended to be qualified under Section 401(a) of the Code either has received a favorable determination letter issued by the Internal Revenue Service or may rely on a favorable opinion letter issued by the Internal Revenue Service.
- (ii) Environmental Laws and Hazardous Materials. The Company and its Subsidiaries are in compliance with all foreign, federal, state and local rules, laws and regulations relating to the use, treatment, storage and disposal of hazardous or toxic





substances or waste and protection of health and safety or the environment which are applicable to their businesses (“**Environmental Laws**”), where the failure to so comply would be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. There has been no storage, generation, transportation, handling, treatment, disposal, discharge, emission, or other release of any kind of toxic or other wastes or other hazardous substances by, due to, or caused by the Company or any of its Subsidiaries (or, to the Company’s Knowledge, any other entity for whose acts or omissions the Company or any of its Subsidiaries is or may otherwise be liable) upon any of the property now or previously owned or leased by the Company or any of its Subsidiaries, or upon any other property, in violation of any law, statute, ordinance, rule, regulation, order, judgment, decree or permit or which would, under any law, statute, ordinance, rule (including rule of common law), regulation, order, judgment, decree or permit, give rise to any liability; and there has been no disposal, discharge, emission or other release of any kind onto such property or into the environment surrounding such property of any toxic or other wastes or other hazardous substances with respect to which the Company or any of its Subsidiaries has knowledge.

- (jj) Taxes. The Company and its Subsidiaries each (i) have timely filed, with any allowable extension period, all necessary federal, state, local and foreign tax returns, and all such returns were true, complete and correct, (ii) have paid when due all federal, state, local and foreign taxes, for which it is liable, including, without limitation, all sales and use taxes and all taxes which the Company or any of its Subsidiaries is obligated to withhold from amounts owing to employees, creditors and third parties, and (iii) do not have any tax deficiency or claims outstanding or assessed or, to its Knowledge, proposed against any of them, except those, in each of the cases described in clauses (i), (ii) and (iii) above, that would not, singularly or in the aggregate, have a Material Adverse Effect.
- (kk) Insurance. The Company and each of its Subsidiaries carry, or are covered by, insurance in such amounts and covering such risks as they reasonably believe is adequate for the conduct of their respective businesses and the value of their respective properties. Neither the Company nor any of its Subsidiaries has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries has received written notice from any insurer, agent of such insurer or the broker of the Company or any of its Subsidiaries that any material capital improvements or any other material expenditures (other than premium payments) are required or necessary to be made in order to continue such insurance.
- (ll) Accounting Controls. The Company and each of its Subsidiaries maintains a system of “internal control over financial reporting” (as such term is defined in Rule 13a-15(f) of the General Rules and Regulations under the Exchange Act (the “**Exchange Act Rules**”)) that complies with the requirements of the Exchange Act and has been designed by their respective principal executive and principal

and has been designed by their respective principal executive and principal

financial officers, or under their supervision, to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as disclosed in the Registration Statement or the Prospectus, the Company's internal control over financial reporting is effective. Except as described in the Registration Statement or the Prospectus, since the end of the Company's most recent audited fiscal year, there has been (A) no material weakness in the Company's internal control over financial reporting (whether or not remediated) and (B) no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

- (mm) Disclosure Controls. The Company and its Subsidiaries maintain disclosure controls and procedures (as such is defined in Rule 13a-15(e) of the Exchange Act Rules) that comply with the requirements of the Exchange Act; such disclosure controls and procedures have been designed to ensure that information required to be disclosed by the Company and its Subsidiaries in reports that they file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company's management to allow timely decisions regarding disclosures. The Company and its Subsidiaries have conducted evaluations of the effectiveness of their disclosure controls as required by Rule 13a-15 of the Exchange Act.
- (nn) Minute Books. The minute books of the Company and each of its Subsidiaries have been made available to the Agents and counsel for the Agents, and such books (i) contain a complete summary of all meetings and actions of the board of directors (including each board committee) and stockholders of the Company (or analogous governing bodies and interest holders, as applicable), and each of its Subsidiaries since the later of (x) the time of its respective incorporation or organization and (y) December 7, 2021, in each case through the date of the latest meeting and action, and (ii) accurately in all material respects reflect all transactions referred to in such minutes.
- (oo) No Undisclosed Relationships. No relationship, direct or indirect, exists between or among the Company or any of its Subsidiaries on the one hand, and the directors, officers, stockholders (or analogous interest holders), customers or suppliers of the Company or any of its affiliates on the other hand, which is required to be described in the Registration Statement and the Prospectus or a document incorporated by reference therein and which is not so described.



- (pp) No Registration Rights. Except as described in the Registration Statement or the Prospectus, there are no persons with registration rights or similar rights to have any securities registered by the Company or any of its Subsidiaries under the Securities Act.
- (qq) Margin Rules. The application of the proceeds received by the Company from the issuance, sale and delivery of the Securities as described in the Registration Statement and the Prospectus will not violate Regulation T, U or X of the Board of Governors of the Federal Reserve system or any other regulation of such Board of Governors.
- (rr) No Broker's Fees. Except as otherwise disclosed to Agent, neither the Company nor any of its Subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against the Company or any of its Subsidiaries or the Agent for a brokerage commission, finder's fee or like payment in connection with the offering and sale of the Placement Shares or any transaction contemplated by this Agreement, the Registration Statement or the Prospectus.
- (ss) No Restrictions on Subsidiaries. Except as described in the General Registration Statement and the Prospectus, no subsidiary of the Company is currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party or is subject, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's properties or assets to the Company or any other subsidiary of the Company.
- (tt) PFIC. The Company is not a Passive Foreign Investment Company ("**PFIC**") within the meaning of Section 1296 of the United States Internal Revenue Code of 1966, and the Company is not likely to become a PFIC.
- (uu) Forward-Looking Statements. No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in either the Registration Statement or the Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.
- (vv) Listing. The Company is subject to and in compliance in all material respects with the reporting requirements of Section 13 or Section 15(d) of the Exchange Act. The Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act and is listed on the Exchange, and the Company has taken no action designed to, or reasonably likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the Exchange, nor has the Company received any notification that the Commission or FINRA is contemplating terminating such registration or listing, except as disclosed in the Registration Statement or Prospectus.



- (ww) Sarbanes-Oxley Act. There is and has been no failure on the part of the company or, to the Company's Knowledge, any of the Company's officers or directors, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act, including Section 402 related to loans and Sections 302 and 906 related to certifications.
- (xx) No Unlawful Payments. Neither the Company nor any of its Subsidiaries nor, to the Company's Knowledge, any director, officer, employee, agent, affiliate or other person acting on behalf of the Company or any subsidiary, has (i) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, (ii) made any direct or indirect unlawful payment to foreign or domestic government officials or employees, political parties or campaigns, political party officials, or candidates for political office from corporate funds, (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended, or any applicable anti-corruption laws, rules, or regulation of any other jurisdiction in which the Company or any subsidiary conducts business, or (iv) made any other unlawful bribe, rebate, payoff, influence payment, kickback, or other unlawful payment to any person.
- (yy) Statistical and Market Data. The statistical and market related data included in the Registration Statement and the Prospectus are based on or derived from sources that the Company believes to be reliable and accurate, and such data agree with the sources from which they are derived.
- (zz) Compliance with Money Laundering Laws. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with all applicable financial recordkeeping and reporting requirements, including those of the U.S. Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where the Company and its Subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Anti-Money Laundering Laws**"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the Company's Knowledge, threatened.
- (aaa) Compliance with OFAC.
- (i) Neither the Company nor any of its Subsidiaries, nor any director, officer or employee thereof, nor, to the Company's Knowledge, any agent, affiliate, representative or other person acting on behalf of the Company or any of its Subsidiaries, is Person that is, or is owned or controlled by a Person that is: (i) the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control ("**OFAC**"). the





United Nations Security Council (“UNSC”), the European Union (“EU”), His Majesty’s Treasury (“HMT”), or other relevant sanctions authority (collectively, “Sanctions”), nor (ii) located, organized or resident in a country or territory that is the subject of a U.S. government embargo (including, without limitation, the so-called Donetsk People’s Republic, the so-called Luhansk People’s Republic, the Crimea Region of Ukraine, Russia, Cuba, Iran, North Korea and Syria).

- (ii) The Company will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person: (i) to fund or facilitate any activities or business of or with any Person that, at the time of such funding or facilitation, is the subject of Sanctions, or in any country or territory that, at the time of such funding or facilitation, is the subject of a U.S. government embargo; or (ii) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise).
  - (iii) For the past three (3) years, the Company and its Subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and will not engage in, any direct or indirect dealings or transactions with any Person that at the time of the dealing or transaction is or was the subject of Sanctions or any country or territory that, at the time of the dealing or transaction is or was the subject of a U.S. government embargo.
- (bbb) No Associated Persons; FINRA Matters. Neither the Company nor any of its affiliates (within the meaning of FINRA Rule 5121(f)(1)) (i) is required to register as a “broker” or “dealer” in accordance with the provisions of the Exchange Act or (ii) directly or indirectly controls, is controlled by, or is under common control with, or is an associated person (within the meaning of Article I, Section 1(ee) of the By-laws of FINRA) of, any member firm of FINRA.
- (ccc) No Acquisitions or Dispositions. Except as are described in the Registration Statement and the Prospectus, there are no contracts, letters of intent, term sheets, agreement, arrangements or understandings with respect to the direct or indirect acquisition or disposition by the Company of material interests in real or personal property.
- (ddd) Export and Import Laws. Each of the Company and its Subsidiaries, and, to the Company’s knowledge, each of their affiliates and any director, officer, agent or employee of, or other person acting on behalf of the Company has acted at all times in compliance with applicable Export and Import Laws (as defined below) applicable to the Company in connection with the Company’s products and services and there are no claims, complaints, charges, investigations or proceedings pending or expected or, to the knowledge of the Company, threatened between the Company or any of the Subsidiaries and any governmental authority under any Export or Import Laws. The term “**Export and Import Laws**” means the Arms Export



Control Act, the International Traffic in Arms Regulations, the Export Administration Act of 1979, as amended, the Export Administration Regulations, and all other laws and regulations of the United States government regulating the provision of services to non-U.S. parties or the export and import of articles or information from and to the United States of America, and all similar laws and regulations of any foreign government regulating the provision of services to parties not of the foreign country or the export and import of articles and information from and to the foreign country to parties not of the foreign country.

- (eee) Defense Contract Audit Agency. Except as disclosed in the Registration Statement and the Prospectus, to the Company's Knowledge, there is no outstanding allegation of improper or illegal activities arising from any government audit or non-audit review, including without limitation, by the Defense Contract Audit Agency, of the Company or any of its Subsidiaries or work performed by the Company or any of its Subsidiaries that would have a Material Adverse Effect. Except as disclosed in the Registration Statement and the Prospectus, there are no civil or criminal penalties or administrative sanctions that have been imposed upon the Company or any of its Subsidiaries, or to the Company's Knowledge, are pending or threatened, arising from a government audit or non-audit review of the Company or any of its Subsidiaries or work performed by the Company or any of its Subsidiaries, including, but not limited to, termination of contracts, forfeiture of profits, suspension of payments, fines, or suspension or debarment from doing business with any of the United States Government or any agency thereof that would have a Material Adverse Effect.
- (fff) Federal Acquisition Regulation. With respect to each Government Contract to which the Company or any of its Subsidiaries is currently a party or has received final payment within three years prior to the date hereof and to each Government Bid and except as disclosed in the Registration Statement and the Prospectus: (i) the Company and each of its Subsidiaries has complied and is in compliance in all material respects with all material terms and conditions of each Government Contract and Government Bid, including all incorporated clauses, provisions, certifications, representations, requirements, schedules, attachments, regulations and applicable laws, including without limitation, FAR 52.204-24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, FAR 52.204-26, Covered Telecommunications Equipment or Services-Representation, the Truth in Negotiations Act, the Federal Acquisition Regulation, and the Cost Accounting Standards, as applicable; (ii) the Company and each of its Subsidiaries has complied in all material respects with all material requirements of statute, rule, regulation, order or agreements with the U.S. Government pertaining to, and as applicable, such Government Contract or Government Bid; and (iii) neither the U.S. Government, nor any prime contractor, subcontractor or other person has notified the Company or any of its Subsidiaries, in writing, that the Company or any of its Subsidiaries has breached or violated any statute, rule, regulation, certification,



representation, clause, provision or requirement, except as would not, individually or in the aggregate, have a Material Adverse Effect; and (iv) to the Company's Knowledge, no reasonable basis exists to give rise to a material claim by a Governmental Authority for fraud (as such concept is defined under the state or federal laws of the United States) in connection with any such Government Contract; for the purposes of this Agreement, "**Governmental Authority**" means any federal, state, local or foreign court or tribunal, governmental, judicial, arbitral, legislative, executive or regulatory body (or subdivision thereof), administrative agency, self-regulatory authority, instrumentality, agency commission or other governmental authority or body; "**Government Bid**" means any offer made by the Company or any of its affiliates (including its Subsidiaries), which, if accepted, would result in a Government Contract; "**Government Contract**" means any contract, including any arrangement, joint venture, basic ordering agreement, pricing agreement, letter agreement or other similar arrangement of any kind, between the Company or any of its Subsidiaries on the one hand, and (A) the United States Government, (B) any prime contractor to the United States Government in its capacity as a prime contractor, or (C) any subcontractor with respect to any contract described in clause (A) or clause (B) above, on the other hand. A task, purchase or delivery order under a Government Contract shall not constitute a separate Government Contract, for purposes of this definition, but shall be part of the Government Contract to which it relates.

- (ggg) Termination for Cause. The Company and its Subsidiaries have not received any written notice of termination for cause, "show cause" or cure notice (that has resulted in a termination for cause) pertaining to any Government Contract; provided that this clause (ggg) shall not apply to any notice received more than three years prior to the date hereof.
- (hhh) Trade Controls. To the Company's Knowledge, there is no charge, proceeding or investigation by any Governmental Authority with respect to a material violation by the Company of any applicable United States national customs or export control laws and regulations, including the Export Administration Regulations, the Arms Export Control Act, and the International Traffic in Arms Regulations ("**Trade Controls**"). The Company has not, since the Company's inception, made any mandatory or voluntary disclosure with respect to a possible violation of Trade Controls to any Governmental Authority.
- (iii) No Consent Order. Within the past three years, the Company has not entered into any consent order or administrative agreement relating directly or indirectly to any Government Contract or Government Bid that has had or would reasonably be expected to result in a Material Adverse Effect.
- (jii) No Conflict of Interest. The Company has a written code of business ethics and conduct, a business ethics awareness and compliance program, and an internal control system that are in material compliance with all requirements of the Government Contracts of the Company and of applicable laws (including without limitation FAR 52.203-13, where applicable). Within the past three years, the



Company has not performed any activities under any Government Contract nor has it had any other relationship with any other person or entity that at the time constituted an “Organizational Conflict of Interest” (as defined by FAR 9.501) or a violation of the Procurement Integrity Act (41 U.S.C. §§ 2101-2107).

(kkk) No Disbarment or Suspension. None of the Company nor, to the knowledge of the Company, any of its officers, employees, agents, nor any “Principal” (as defined in FAR 52.209-5) of the Company has been debarred, or suspended from participation in the award of contracts with any Governmental Authority, or been the subject of a debarment, suspension or exclusion from participation in programs funded by any Governmental Authority, nor to the Company’s Knowledge has any such debarment, suspension or exclusion proceeding been initiated in the past three years. The Company is not, nor has it ever been, suspended or debarred from doing business with a Governmental Authority or, to the knowledge of the Company, proposed for suspension or debarment by a Governmental Authority and has not been the subject of a finding of non-responsibility or ineligibility for contracting with a Governmental Authority.

(III) Domestic Preference Laws. The Company has complied in all material respects with all applicable domestic preference statutes and regulations, including the Buy American Act and the Trade Agreements Act.

(mmm)Small Business Certification. No Company Government Contract was awarded on the basis of the Company having preferential status (small business, small disadvantaged business, 8(a), woman-owned business, etc.).

Any certificate signed by or on behalf of the Company and delivered to the Agent or to counsel for the Agent shall be deemed to be a representation and warranty by the Company to each Agent as to the matters covered thereby.

7. Covenants of the Company. The Company covenants and agrees with the Agent that:

(a) Registration Statement Amendments. After the date of this Agreement and during any period in which a Prospectus relating to any Placement Shares is required to be delivered by the Agent under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act or similar rule), (i) the Company will notify the Agent promptly of the time when any subsequent amendment to the Registration Statement, other than documents incorporated by reference, has been filed with the Commission and/or has become effective or any subsequent supplement to the Prospectus has been filed and of any request by the Commission for any amendment or supplement to the Registration Statement or Prospectus or for additional information, (ii) the Company will prepare and file with the Commission, promptly upon the Agent’s request, any amendments or supplements to the Registration Statement or Prospectus that, in the Agent’s reasonable opinion, may be necessary or advisable in connection with the distribution of the Placement Shares by the Agent (*provided, however*, that the failure of the Agent to make such request shall not relieve the Company of any





obligation or liability hereunder, or affect the Agent's right to rely on the representations and warranties made by the Company in this Agreement and *provided, further*, that the only remedy the Agent shall have with respect to the failure to make such filing shall be to cease making sales under this Agreement until such amendment or supplement is filed); (iii) the Company will not file any amendment or supplement to the Registration Statement or Prospectus relating to the Placement Shares or a security convertible into the Placement Shares unless a copy thereof has been submitted to Agent within a reasonable period of time before the filing and the Agent has not objected thereto (*provided, however*, that the failure of the Agent to make such objection shall not relieve the Company of any obligation or liability hereunder, or affect the Agent's right to rely on the representations and warranties made by the Company in this Agreement and *provided, further*, that the only remedy the Agent shall have with respect to the failure by the Company to obtain such consent shall be to cease making sales under this Agreement) and the Company will furnish to the Agent at the time of filing thereof a copy of any document that upon filing is deemed to be incorporated by reference into the Registration Statement or Prospectus, except for those documents available via EDGAR; and (iv) the Company will cause each amendment or supplement to the Prospectus to be filed with the Commission as required pursuant to the applicable paragraph of Rule 424(b) of the Securities Act or, in the case of any document to be incorporated therein by reference, to be filed with the Commission as required pursuant to the Exchange Act, within the time period prescribed (the determination to file or not file any amendment or supplement with the Commission under this Section 7(a), based on the Company's reasonable opinion or reasonable objections, shall be made exclusively by the Company).

- (b) Notice of Commission Stop Orders. The Company will advise the Agent, promptly after it receives notice or obtains knowledge thereof, of the issuance or threatened issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, of the suspension of the qualification of the Placement Shares for offering or sale in any jurisdiction, or of the initiation or threatening of any proceeding for any such purpose; and it will promptly use its commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal if such a stop order should be issued. The Company will advise the Agent promptly after it receives any request by the Commission for any amendments to the Registration Statement or any amendment or supplements to the Prospectus or any Issuer Free Writing Prospectus or for additional information related to the offering of the Placement Shares or for additional information related to the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus.
- (c) Delivery of Prospectus; Subsequent Changes. During any period in which a Prospectus relating to the Placement Shares is required to be delivered by the Agent under the Securities Act with respect to the offer and sale of the Placement Shares, (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act or similar rule), the Company will comply with all requirements imposed upon it by the Securities Act, as from time to time in



force, and to file on or before their respective due dates all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14, 15(d) or any other provision of or under the Exchange Act. If the Company has omitted any information from the Registration Statement pursuant to Rule 430B under the Securities Act, it will use its best efforts to comply with the provisions of and make all requisite filings with the Commission pursuant to said Rule 430B and to notify the Agent promptly of all such filings. If during such period any event occurs as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances then existing, not misleading, or if during such period it is necessary to amend or supplement the Registration Statement or Prospectus to comply with the Securities Act, the Company will promptly notify the Agent to suspend the offering of Placement Shares during such period and the Company will promptly amend or supplement the Registration Statement or Prospectus (at the expense of the Company) so as to correct such statement or omission or effect such compliance.

- (d) Listing of Placement Shares. Prior to the date of the first Placement Notice, the Company will use its reasonable best efforts to cause the Placement Shares to be listed on the Exchange.
- (e) Delivery of Registration Statement and Prospectus. The Company will furnish to the Agent and its counsel (at the expense of the Company) copies of the Registration Statement, the Prospectus (including all documents incorporated by reference therein) and all amendments and supplements to the Registration Statement or Prospectus that are filed with the Commission during any period in which a Prospectus relating to the Placement Shares is required to be delivered under the Securities Act (including all documents filed with the Commission during such period that are deemed to be incorporated by reference therein), in each case as soon as reasonably practicable and in such quantities as the Agent may from time to time reasonably request and, at the Agent's request, will also furnish copies of the Prospectus to each exchange or market on which sales of the Placement Shares may be made; *provided, however*, that the Company shall not be required to furnish any document (other than the Prospectus) to the Agent to the extent such document is available on EDGAR.
- (f) Earning Statement. To the extent not available on EDGAR, the Company will make generally available to its security holders as soon as practicable, but in any event not later than 15 months after the end of the Company's current fiscal quarter, an earning statement covering a 12-month period that satisfies the provisions of Section 11(a) and Rule 158 of the Securities Act.
- (g) Use of Proceeds. The Company will use the Net Proceeds as described in the Prospectus in the section entitled "Use of Proceeds."



- (h) Notice of Other Sales. Without the prior written consent of the Agent, the Company will not, directly or indirectly, offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Stock (other than the Placement Shares offered pursuant to this Agreement) or securities convertible into or exchangeable for Common Stock, warrants or any rights to purchase or acquire, Common Stock during the period beginning on the fifth (5<sup>th</sup>) Trading Day immediately prior to the date on which any Placement Notice is delivered to Agent hereunder and ending on the fifth (5<sup>th</sup>) Trading Day immediately following the final Settlement Date with respect to Placement Shares sold pursuant to such Placement Notice (or, if the Placement Notice has been terminated or suspended prior to the sale of all Placement Shares covered by a Placement Notice, the date of such suspension or termination); and will not directly or indirectly in any other “at the market” or continuous equity transaction offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Stock (other than the Placement Shares offered pursuant to this Agreement) or securities convertible into or exchangeable for Common Stock, warrants or any rights to purchase or acquire, Common Stock prior to the sixtieth (60<sup>th</sup>) day immediately following the termination of this Agreement; *provided, however*, that such restrictions will not be required in connection with the Company’s issuance or sale of (i) Common Stock, options to purchase Common Stock or Common Stock issuable upon the exercise of options, pursuant to any employee or director stock option or benefits plan, stock ownership plan or dividend reinvestment plan (but not Common Stock subject to a waiver to exceed plan limits in its dividend reinvestment plan) of the Company whether now in effect or hereafter implemented, (ii) Common Stock issuable upon conversion of securities or the exercise of warrants, options or other rights in effect or outstanding, and disclosed in filings by the Company available on EDGAR or otherwise in writing to the Agent, (iii) Common Stock or securities convertible into or exchangeable for shares of Common Stock as consideration for mergers, acquisitions, other business combinations or strategic alliances occurring after the date of this Agreement which are not issued for capital raising purposes and (iv) Common Stock or securities convertible into or exchangeable for shares of Common Stock as consideration for research, collaboration, technology license, development, marketing or other similar agreements or strategic partnerships.
- (i) Change of Circumstances. The Company will, at any time during the pendency of a Placement Notice, advise the Agent promptly after it shall have received notice or obtained knowledge thereof, of any information or fact that would alter or affect in any material respect any opinion, certificate, letter or other document required to be provided to the Agent pursuant to this Agreement.
- (j) Due Diligence Cooperation. The Company will cooperate with any reasonable due diligence review conducted by the Agent or its representatives in connection with the transactions contemplated hereby, including, without limitation, providing information and making available documents and senior corporate officers, during regular business hours and at the Company’s principal offices, as the Agent may reasonably request.



- (k) Required Filings Relating to Placement of Placement Shares. The Company shall disclose, in its quarterly reports on Form 10-Q and in its annual report on Form 10-K to be filed by the Company with the Commission from time to time, the number of the Placement Shares sold through the Agent under this Agreement, and the net proceeds to the Company from the sale of the Placement Shares pursuant to this Agreement during the relevant quarter or, in the case of an Annual Report on Form 10-K, during the fiscal year covered by such Annual Report and the fourth quarter of such fiscal year. The Company agrees that on such dates as the Securities Act shall require, the Company will (i) file a prospectus supplement with the Commission under the applicable paragraph of Rule 424(b) under the Securities Act (each and every filing date under Rule 424(b), a “**Filing Date**”), which prospectus supplement will set forth, within the relevant period, the amount of Placement Shares sold through the Agent, the Net Proceeds to the Company and the compensation payable by the Company to the Agent with respect to such Placement Shares, and (ii) deliver such number of copies of each such prospectus supplement to each exchange or market on which such sales were effected as may be required by the rules or regulations of such exchange or market.
- (l) Representation Dates; Certificate. (1) Prior to the date of the first Placement Notice and (2) each time the Company:
- (i) files the Prospectus relating to the Placement Shares or amends or supplements (other than a prospectus supplement relating solely to an offering of securities other than the Placement Shares) the Registration Statement or the Prospectus relating to the Placement Shares by means of a post-effective amendment, sticker, or supplement but not by means of incorporation of documents by reference into the Registration Statement or the Prospectus relating to the Placement Shares;
  - (ii) files an annual report on Form 10-K under the Exchange Act (including any Form 10-K/A containing amended financial information or a material amendment to the previously filed Form 10-K);
  - (iii) files its quarterly reports on Form 10-Q under the Exchange Act; or
  - (iv) files a current report on Form 8-K containing amended financial information (other than information “furnished” pursuant to Items 2.02 or 7.01 of Form 8-K or to provide disclosure pursuant to Item 8.01 of Form 8-K relating to the reclassification of certain properties as discontinued operations in accordance with Statement of Financial Accounting Standards No. 144) under the Exchange Act (each date of filing of one or more of the documents referred to in clauses (i) through (iv) shall be a “**Representation Date**”);

the Company shall furnish the Agent (but in the case of clause (iv) above only if the Agent reasonably determines that the information contained in such Form 8-K is material) with a certificate dated the Representation Date, in the form and





substance reasonably satisfactory to the Agent and its counsel, substantially similar to the form previously provided to the Agent and its counsel, modified, as necessary, to relate to the Registration Statement and the Prospectus as amended or supplemented. The requirement to provide a certificate under this Section 7(l) shall be waived for any Representation Date occurring at a time during which no Placement Notice is pending or a Suspension is in effect, which waiver shall continue until the earlier to occur of the date the Company delivers instructions for the sale of Placement Shares hereunder (which for such calendar quarter shall be considered a Representation Date) and the next occurring Representation Date. Notwithstanding the foregoing, if the Company subsequently decides to sell Placement Shares following a Representation Date when a Suspension was in effect and did not provide the Agent with a certificate under this Section 7(l), then before the Company delivers the instructions for the sale of Placement Shares or the Agent sells any Placement Shares pursuant to such instructions, the Company shall provide the Agent with a certificate in conformity with this Section 7(l) dated as of the date that the instructions for the sale of Placement Shares are issued.

- (m) Legal Opinion. (1) Prior to the date of the first Placement Notice and (2) within five (5) Trading Days of each Representation Date with respect to which the Company is obligated to deliver a certificate pursuant to Section 7(l) for which no waiver is applicable and excluding the date of this Agreement, the Company shall cause to be furnished to the Agent a written opinion and negative assurance letter of Latham & Watkins LLP (“**Company Counsel**”), or other counsel satisfactory to the Agent, in form and substance reasonably satisfactory to the Agent and its counsel, substantially similar to the form previously provided to the Agent and its counsel, modified, as necessary, to relate to the Registration Statement and the Prospectus as then amended or supplemented; *provided, however*, the Company shall not be required to furnish to the Agents more than one opinion hereunder per calendar quarter; *provided, further*, that in lieu of such opinions for subsequent periodic filings under the Exchange Act, counsel may furnish the Agent with a letter (a “**Reliance Letter**”) to the effect that the Agent may rely on a prior opinion delivered under this Section 7(m) to the same extent as if it were dated the date of such letter (except that statements in such prior opinion shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented as of the date of the Reliance Letter).
- (n) Comfort Letter. (1) On or prior to the date of the first Placement Notice and (2) within five (5) Trading Days of each Representation Date with respect to which the Company is obligated to deliver a certificate pursuant to Section 7(l) for which no waiver is applicable and excluding the date of this Agreement, the Company shall cause its independent registered public accounting firm to furnish the Agent letters (the “**Comfort Letters**”), dated the date the Comfort Letter is delivered, which shall meet the requirements set forth in this Section 7(n); *provided*, that if requested by the Agent, the Company shall cause a Comfort Letter to be furnished to the Agent within ten (10) Trading Days of the date of occurrence of any material transaction or event requiring the filing of a Current Report on Form 8-K containing



financial information (including the restatement of the Company's financial statements). The Comfort Letter from the Company's independent registered public accounting firm shall be in a form and substance satisfactory to the Agent, (i) confirming that they are an independent registered public accounting firm within the meaning of the Securities Act and the PCAOB, (ii) stating, as of such date, the conclusions and findings of such firm with respect to the financial information and other matters ordinarily covered by accountants' "comfort letters" to underwriters in connection with registered public offerings (the first such letter, the "**Initial Comfort Letter**") and (iii) updating the Initial Comfort Letter with any information that would have been included in the Initial Comfort Letter had it been given on such date and modified as necessary to relate to the Registration Statement and the Prospectus, as amended and supplemented to the date of such letter.

- (o) Market Activities; Compliance with Regulation M. The Company will not, directly or indirectly, (i) take any action designed to cause or result in, or that constitutes or would reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of Common Stock or (ii) sell, bid for, or purchase Common Stock in violation of Regulation M, or pay anyone any compensation for soliciting purchases of the Placement Shares other than the Agent.
- (p) Investment Company Act. The Company will conduct its affairs in such a manner so as to reasonably ensure that neither it nor any of its Subsidiaries will be or become, at any time prior to the termination of this Agreement, required to register as an "investment company," as such term is defined in the Investment Company Act.
- (q) No Offer to Sell. Other than an Issuer Free Writing Prospectus approved in advance by the Company and the Agent in its capacity as agent hereunder, neither the Agent nor the Company (including its agents and representatives, other than the Agent in its capacity as such) will make, use, prepare, authorize, approve or refer to any written communication (as defined in Rule 405 under the Securities Act), required to be filed with the Commission, that constitutes an offer to sell or solicitation of an offer to buy Placement Shares hereunder.
- (r) Blue Sky and Other Qualifications. The Company will use its commercially reasonable efforts, in cooperation with the Agent, to qualify the Placement Shares for offering and sale, or to obtain an exemption for the Placement Shares to be offered and sold, under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Agent may designate and to maintain such qualifications and exemptions in effect for so long as required for the distribution of the Placement Shares (but in no event for less than one year from the date of this Agreement); *provided, however*, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject. In each jurisdiction in which the Placement Shares have been



so qualified or exempt, the Company will file such statements and reports as may be required by the laws of such jurisdiction to continue such qualification or exemption, as the case may be, in effect for so long as required for the distribution of the Placement Shares (but in no event for less than one year from the date of this Agreement).

(s) Sarbanes-Oxley Act. The Company and the Subsidiaries will maintain and keep accurate books and records reflecting their assets and maintain internal accounting controls in a manner designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and including those policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company, (ii) provide reasonable assurance that transactions are recorded as necessary to permit the preparation of the Company's consolidated financial statements in accordance with GAAP, (iii) that receipts and expenditures of the Company are being made only in accordance with management's and the Company's directors' authorization, and (iv) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on its financial statements. The Company and the Subsidiaries will maintain such controls and other procedures, including, without limitation, those required by Sections 302 and 906 of the Sarbanes-Oxley Act, and the applicable regulations thereunder that are designed to ensure that 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 the Commission's rules and forms, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive officer and principal financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure and to ensure that material information relating to the Company or the Subsidiaries is made known to them by others within those entities, particularly during the period in which such periodic reports are being prepared.

(t) Secretary's Certificate; Further Documentation. Prior to the date of the first Placement Notice, the Company shall deliver to the Agent a certificate of the Secretary of the Company and attested to by an executive officer of the Company, dated as of such date, certifying as to (i) the Second Amended and Restated Certificate of Incorporation of the Company, (ii) the By-laws of the Company, (iii) the resolutions of the Board of Directors of the Company authorizing the execution, delivery and performance of this Agreement and the issuance of the Placement Shares and (iv) the incumbency of the officers duly authorized to execute this Agreement and the other documents contemplated by this Agreement. Within five (5) Trading Days of each Representation Date, the Company shall have furnished



to the Agent such further information, certificates and documents as the Agent may reasonably request.

(u) Emerging Growth Company Status. The Company will promptly notify the Agent if the Company ceases to be an Emerging Growth Company at any time during the term of this Agreement.

8. Payment of Expenses. The Company will pay all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation and filing of the Registration Statement, including any fees required by the Commission, and the printing or electronic delivery of the Prospectus as originally filed and of each amendment and supplement thereto, in such number as the Agent shall deem necessary, (ii) the printing and delivery to the Agent of this Agreement and such other documents as may be required in connection with the offering, purchase, sale, issuance or delivery of the Placement Shares, (iii) the preparation, issuance and delivery of the certificates, if any, for the Placement Shares to the Agent, including any stock or other transfer taxes and any capital duties, stamp duties or other duties or taxes payable upon the sale, issuance or delivery of the Placement Shares to the Agent, (iv) the fees and disbursements of the counsel, accountants and other advisors to the Company, (v) the fees and expenses of Agent including but not limited to the fees and expenses of the counsel to the Agent, payable upon the execution of this Agreement, (a) in an amount not to exceed \$75,000 in connection with the execution of this Agreement (b) in an amount not to exceed \$25,000 per calendar quarter thereafter payable in connection with each Representation Date with respect to which the Company is obligated to deliver a certificate pursuant to Section 7(l) for which no waiver is applicable and excluding the date of this Agreement, and (c) in an amount not to exceed \$25,000 for each program “refresh” (filing of a new registration statement, prospectus or prospectus supplement relating to the Placement Shares and/or an amendment of this Agreement) executed pursuant to this Agreement, (vi) the qualification or exemption of the Placement Shares under state securities laws in accordance with the provisions of Section 7(r) hereof, including filing fees, but excluding fees of the Agent’s counsel, (vii) the printing and delivery to the Agent of copies of any Permitted Issuer Free Writing Prospectus and the Prospectus and any amendments or supplements thereto in such number as the Agent shall deem necessary, (viii) the preparation, printing and delivery to the Agent of copies of the blue sky survey, (ix) the fees and expenses of the transfer agent and registrar for the Common Stock, (x) the filing and other fees incident to any review by FINRA of the terms of the sale of the Placement Shares including the fees of the Agent’s counsel (subject to the cap, set forth in clause (v) above), and (xi) the fees and expenses incurred in connection with the listing of the Placement Shares on the Exchange. The Company agrees to pay the fees and expenses of counsel to the Agent set forth in clause (v) above by wire transfer of immediately available funds directly to such counsel upon presentation of an invoice containing the requisite payment information prepared by such counsel.

9. Conditions to Agent’s Obligations. The obligations of the Agent hereunder with respect to a Placement will be subject to the continuing accuracy and completeness of the representations and warranties made by the Company herein (other than those representations and warranties made as of a specified date or time), to the due performance by the Company of its obligations hereunder to the completion by the Agent of a due

by the Company or its obligations hereunder, to the completion by the Agent of a due



diligence review satisfactory to it in its reasonable judgment, and to the continuing satisfaction (or waiver by the Agent in its sole discretion) of the following additional conditions:

- (a) Registration Statement Effective. The Registration Statement shall have become effective and shall be available for the (i) resale of all Placement Shares issued to the Agent and not yet sold by the Agent and (ii) sale of all Placement Shares contemplated to be issued by any Placement Notice.
- (b) No Material Notices. None of the following events shall have occurred and be continuing: (i) receipt by the Company of any request for additional information from the Commission or any other federal or state Governmental Authority during the period of effectiveness of the Registration Statement, the response to which would require any post-effective amendments or supplements to the Registration Statement or the Prospectus; (ii) the issuance by the Commission or any other federal or state Governmental Authority of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (iii) receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Placement Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; or (iv) the occurrence of any event that makes any statement of a material fact made in the Registration Statement or the Prospectus or any material document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in the Registration Statement, the Prospectus or documents so that, in the case of the Registration Statement, it will not contain any materially untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and, that in the case of the Prospectus, it will not contain any materially untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.
- (c) No Misstatement or Material Omission. Agent shall not have advised the Company that the Registration Statement or Prospectus, or any amendment or supplement thereto, contains an untrue statement of fact that in the Agent's reasonable opinion is material, or omits to state a fact that in the Agent's reasonable opinion is material and is required to be stated therein or is necessary to make the statements therein not misleading.
- (d) Material Changes. Except as contemplated in the Prospectus, or disclosed in the Company's reports filed with the Commission, there shall not have been any material adverse change in the authorized capital stock of the Company or any Material Adverse Effect or any development that would cause a Material Adverse Effect, or a downgrading in or withdrawal of the rating assigned to any of the Company's securities (other than asset backed securities) by any rating organization or a public announcement by any rating organization that it has under surveillance



or review its rating of any of the Company's securities (other than asset backed securities), the effect of which, in the case of any such action by a rating organization described above, in the reasonable judgment of the Agent (without relieving the Company of any obligation or liability it may otherwise have), is so material as to make it impracticable or inadvisable to proceed with the offering of the Placement Shares on the terms and in the manner contemplated in the Prospectus.

- (e) Legal Opinions. The Agent shall have received the opinions and negative assurance letters required to be delivered pursuant to Section 7(m) on or before the date on which such delivery of such opinions is required pursuant to Section 7(m).
- (f) Comfort Letter. The Agent shall have received the Comfort Letter required to be delivered pursuant to Section 7(n) on or before the date on which such delivery of such Comfort Letter is required pursuant to Section 7(n).
- (g) Representation Certificate. The Agent shall have received the certificate required to be delivered pursuant to Section 7(l) on or before the date on which delivery of such certificate is required pursuant to Section 7(l).
- (h) No Suspension. Trading in the Common Stock shall not have been suspended on the Exchange and the Common Stock shall not have been delisted from the Exchange.
- (i) Other Materials. On each date on which the Company is required to deliver a certificate pursuant to Section 7(l), the Company shall have furnished to the Agent such appropriate further information, opinions, certificates, letters and other documents as the Agent may reasonably request. All such opinions, certificates, letters and other documents will be in compliance with the provisions hereof.
- (j) Securities Act Filings Made. All filings with the Commission required by Rule 424 under the Securities Act to have been filed prior to the issuance of any Placement Notice hereunder shall have been made within the applicable time period prescribed for such filing by Rule 424.
- (k) Approval for Listing. The Placement Shares shall either have been (i) approved for listing on the Exchange, subject only to notice of issuance, or (ii) the Company shall have filed an application for listing of the Placement Shares on the Exchange at, or prior to, the issuance of any Placement Notice and the Exchange shall have reviewed such application and not provided any objections thereto.
- (l) FINRA. If applicable, FINRA shall have raised no objection to the terms of this offering and the amount of compensation allowable or payable to the Agent as described in the Prospectus.
- (m) No Termination Event. There shall not have occurred any event that would permit the Agent to terminate this Agreement pursuant to Section 12(a).



10. Indemnification and Contribution.

- (a) Company Indemnification. The Company agrees to indemnify and hold harmless the Agent, its affiliates and their respective partners, members, directors, officers, employees and agents and each person, if any, who controls the Agent or any affiliate within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act as follows:
- (i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, joint or several, arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, or arising out of any untrue statement or alleged untrue statement of a material fact included in any related Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;
  - (ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, joint or several, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any Governmental Authority, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; *provided* that (subject to Section 10(d) below) any such settlement is effected with the written consent of the Company, which consent shall not unreasonably be delayed or withheld; and
  - (iii) against any and all expense whatsoever, as incurred (including the reasonable and documented fees and disbursements of counsel), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any Governmental Authority, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission (whether or not a party), to the extent that any such expense is not paid under (i) or (ii) above, *provided, however*, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made solely in reliance upon and in conformity with the Agent Information (as defined below).
- (b) Agent Indemnification. Agent agrees to indemnify and hold harmless the Company and its directors and each officer of the Company who signed the Registration Statement and each person, if any, who controls the Company within the meaning



of Section 15 of the Securities Act or Section 20 of the Exchange Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in Section 10(a), as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendments thereto), the Prospectus (or any amendment or supplement thereto) or any Issuer Free Writing Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with information relating to the Agent and furnished to the Company in writing by the Agent expressly for use therein. The Company hereby acknowledges that the only information that the Agent has furnished to the Company expressly for use in the Registration Statement, the Prospectus, any Prospectus Supplement or any Issuer Free Writing Prospectus (or any amendment or supplement thereto) are the statements set forth in the seventh and eighth paragraphs under the caption “Plan of Distribution” in the Prospectus (the “**Agent Information**”).

- (c) Procedure. Any party that proposes to assert the right to be indemnified under this Section 10 will, promptly after receipt of notice of commencement of any action against such party in respect of which a claim is to be made against an indemnifying party or parties under this Section 10, notify each such indemnifying party of the commencement of such action, enclosing a copy of all papers served, but the omission so to notify such indemnifying party will not relieve the indemnifying party from (i) any liability that it might have to any indemnified party otherwise than under this Section 10 and (ii) any liability that it may have to any indemnified party under the foregoing provision of this Section 10 unless, and only to the extent that, such omission results in the forfeiture of substantive rights or defenses by the indemnifying party. If any such action is brought against any indemnified party and it notifies the indemnifying party of its commencement, the indemnifying party will be entitled to participate in and, to the extent that it elects by delivering written notice to the indemnified party promptly after receiving notice of the commencement of the action from the indemnified party, jointly with any other indemnifying party similarly notified, to assume the defense of the action, with counsel reasonably satisfactory to the indemnified party, and after notice from the indemnifying party to the indemnified party of its election to assume the defense, the indemnifying party will not be liable to the indemnified party for any other legal expenses except as provided below and except for the reasonable costs of investigation subsequently incurred by the indemnified party in connection with the defense. The indemnified party will have the right to employ its own counsel in any such action, but the fees, expenses and other charges of such counsel will be at the expense of such indemnified party unless (1) the employment of counsel by the indemnified party has been authorized in writing by the indemnifying party, (2) the indemnified party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, (3) a conflict or potential conflict exists (based on advice of counsel to the indemnified party) between the indemnified party and the indemnifying party (in which case the indemnifying party will not have the right to direct the defense of such action on





behalf of the indemnified party) or (4) the indemnifying party has not in fact employed counsel to assume the defense of such action or counsel reasonably satisfactory to the indemnified party, in each case, within a reasonable time after receiving notice of the commencement of the action; in each of which cases the reasonable fees, disbursements and other charges of counsel will be at the expense of the indemnifying party or parties. It is understood that the indemnifying party or parties shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements and other charges of more than one separate firm (plus local counsel) admitted to practice in such jurisdiction at any one time for all such indemnified party or parties. All such fees, disbursements and other charges will be reimbursed by the indemnifying party promptly after the indemnifying party receives a written invoice relating to fees, disbursements and other changes in reasonable detail. An indemnifying party will not, in any event, be liable for any settlement of any action or claim effected without its written consent. No indemnifying party shall, without the prior written consent of each indemnified party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated by this Section 10 (whether or not any indemnified party is a party thereto), unless such settlement, compromise or consent (1) includes an express and unconditional release of each indemnified party, in form and substance reasonably satisfactory to such indemnified party, from all liability arising out of such litigation, investigation, proceeding or claim and (2) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

- (d) Settlement Without Consent if Failure to Reimburse. If an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for reasonable and documented fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 10(a)(ii) effected without its written consent if (1) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (2) such indemnifying party shall have received written notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (3) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.
- (e) Contribution. In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in the foregoing paragraphs of this Section 10 is applicable in accordance with its terms but for any reason is held to be unavailable or insufficient from the Company or the Agent, the Company and the Agent will contribute to the total losses, claims, liabilities, expenses and damages (including any investigative, legal and other expenses reasonably incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claim asserted) to which the Company and the Agent may be subject in such proportion as shall be appropriate to reflect the relative benefits received by the Company on the one hand and the Agent on the



other hand. The relative benefits received by the Company on the one hand and the Agent on the other hand shall be deemed to be in the same proportion as the total net proceeds from the sale of the Placement Shares (before deducting expenses) received by the Company bear to the total compensation received by the Agent from the sale of Placement Shares on behalf of the Company. If, but only if, the allocation provided by the foregoing sentence is not permitted by applicable law, the allocation of contribution shall be made in such proportion as is appropriate to reflect not only the relative benefits referred to in the foregoing sentence but also the relative fault of the Company, on the one hand, and the Agent, on the other hand, with respect to the statements or omission that resulted in such loss, claim, liability, expense or damage, or action in respect thereof, as well as any other relevant equitable considerations with respect to such offering. Such relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or the Agent, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Agent agree that it would not be just and equitable if contributions pursuant to this Section 10(e) were to be determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, liability, expense, or damage, or action in respect thereof, referred to above in this Section 10(e) shall be deemed to include, for the purpose of this Section 10(e), any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim to the extent consistent with Section 10(c) hereof. Notwithstanding the foregoing provisions of this Section 10(e), the Agent shall not be required to contribute any amount in excess of the commissions received by it under this Agreement and no person found guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 10(e), any person who controls a party to this Agreement within the meaning of the Securities Act, any affiliates of the Agent and any officers, directors, partners, employees or agents of the Agent or any of its affiliates, will have the same rights to contribution as that party, and each director of the Company and each officer of the Company who signed the Registration Statement will have the same rights to contribution as the Company, subject in each case to the provisions hereof. Any party entitled to contribution, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made under this Section 10(e), will notify any such party or parties from whom contribution may be sought, but the omission to so notify will not relieve that party or parties from whom contribution may be sought from any other obligation it or they may have under this Section 10(e) except to the extent that the failure to so notify such other party materially prejudiced the substantive rights or defenses of the party from whom contribution is sought. Except for a settlement entered into pursuant to the last sentence of Section 10(c) hereof, no party will be liable for



contribution with respect to any action or claim settled without its written consent if such consent is required pursuant to Section 10(c) hereof.

11. Representations and Agreements to Survive Delivery. The indemnity and contribution agreements contained in Section 10 of this Agreement and all representations and warranties of the Company herein or in certificates delivered pursuant hereto shall survive, as of their respective dates, regardless of (i) any investigation made by or on behalf of the Agent, any controlling persons, or the Company (or any of their respective officers, directors, employees or controlling persons), (ii) delivery and acceptance of the Placement Shares and payment therefor or (iii) any termination of this Agreement.

12. Termination.

(a) The Agent may terminate this Agreement, by notice to the Company, as hereinafter specified at any time (1) if there has been, since the time of execution of this Agreement or since the date as of which information is given in the Prospectus, any change, or any development or event involving a prospective change, in the condition, financial or otherwise, or in the business, properties, earnings, results of operations or prospects of the Company and its Subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, which individually or in the aggregate, in the sole judgment of the Agent is material and adverse and makes it impractical or inadvisable to market the Placement Shares or to enforce contracts for the sale of the Placement Shares, (2) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Agent, impracticable or inadvisable to market the Placement Shares or to enforce contracts for the sale of the Placement Shares, (3) if trading in the Common Stock has been suspended or limited by the Commission or the Exchange, or if trading generally on the Exchange has been suspended or limited, or minimum prices for trading have been fixed on the Exchange, (4) if any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market shall have occurred and be continuing, (5) if a major disruption of securities settlements or clearance services in the United States shall have occurred and be continuing, or (6) if a banking moratorium has been declared by either U.S. Federal or New York authorities. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8 (Payment of Expenses), Section 10 (Indemnification and Contribution), Section 11 (Representations and Agreements to Survive Delivery), Section 17 (Governing Law and Time; Waiver of Jury Trial) and Section 18 (Consent to Jurisdiction) hereof shall remain in full force and effect notwithstanding such termination. If the Agent elects to terminate this Agreement as provided in this Section 12(a), the Agent shall provide the required notice as specified in Section 13 (Notices).



- (b) The Company shall have the right, by giving ten (10) days' notice as hereinafter specified to terminate this Agreement in its sole discretion at any time after the date of this Agreement. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8, Section 10, Section 11, Section 17 and Section 18 hereof shall remain in full force and effect notwithstanding such termination.
  - (c) The Agent shall have the right, by giving ten (10) days' notice as hereinafter specified to terminate this Agreement in its sole discretion at any time after the date of this Agreement. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8, Section 10, Section 11, Section 17 and Section 18 hereof shall remain in full force and effect notwithstanding such termination.
  - (d) This Agreement shall remain in full force and effect unless terminated pursuant to Sections 12(a), (b), or (c) above or otherwise by mutual agreement of the parties; *provided, however*, that any such termination by mutual agreement shall in all cases be deemed to provide that Section 8, Section 10, Section 11, Section 17 and Section 18 shall remain in full force and effect.
  - (e) Any termination of this Agreement shall be effective on the date specified in such notice of termination; *provided, however*, that such termination shall not be effective until the close of business on the date of receipt of such notice by the Agent or the Company, as the case may be. If such termination shall occur prior to the Settlement Date for any sale of Placement Shares, such Placement Shares shall settle in accordance with the provisions of this Agreement.
13. Notices. All notices or other communications required or permitted to be given by any party to any other party pursuant to the terms of this Agreement shall be in writing, unless otherwise specified, and if sent to the Agent, shall be delivered to:

Cantor Fitzgerald & Co.  
110 East 59<sup>th</sup> Street, 4<sup>th</sup> Floor  
New York, NY 10022  
Attention: Capital Markets  
Facsimile: (212) 307-3730

and:

Cantor Fitzgerald & Co.  
110 East 59<sup>th</sup> Street, 4<sup>th</sup> Floor  
New York, NY 10022  
Attention: General Counsel  
Facsimile: (212) 829-4708

with a copy to:





Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.  
One Financial Center  
Boston, Massachusetts 02111  
Attention: John T. Rudy, Esq.  
Email: JRudy@mintz.com

and if to the Company, shall be delivered to:

BigBear.ai Holdings, Inc.  
6811 Benjamin Franklin Drive, Suite 200  
Columbia, Maryland 21046  
Attention: Carolyn Blankenship  
Email: carolyn.blankenship@bigbear.ai

with a copy to:

Latham & Watkins LLP  
1271 Avenue of the Americas  
New York, NY 1271  
Attention: Keith Halverstan, Esq.  
Alison Haggerty, Esq.  
Email: [keith.halverstan@lw.com](mailto:keith.halverstan@lw.com)  
[alison.haggerty@lw.com](mailto:alison.haggerty@lw.com)

Each party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose. Each such notice or other communication shall be deemed given (i) when delivered personally or by verifiable facsimile transmission (with an original to follow) on or before 4:30 p.m., New York City time, on a Business Day or, if such day is not a Business Day, on the next succeeding Business Day, (ii) by Electronic Notice, as set forth below, (iii) on the next Business Day after timely delivery to a nationally-recognized overnight courier and (iv) on the Business Day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid). For purposes of this Agreement, “**Business Day**” shall mean any day on which the Exchange and commercial banks in the City of New York are open for business.

An electronic communication (“**Electronic Notice**”) shall be deemed written notice for purposes of this Section 13 if sent to the electronic mail address specified by the receiving party under separate cover. Electronic Notice shall be deemed received at the time the party sending Electronic Notice receives verification of receipt by the receiving party. Any party receiving Electronic Notice may request and shall be entitled to receive the notice on paper, in a nonelectronic form (“**Nonelectronic Notice**”) which shall be sent to the requesting party within ten (10) days of receipt of the written request for Nonelectronic Notice.

14. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Company and the Agent and their respective successors and the parties referred to in Section 10 hereof. References to any of the parties contained in this Agreement shall be



deemed to include the successors and permitted assigns of such party. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party; *provided, however*, that the Agent may assign its rights and obligations hereunder to an affiliate thereof without obtaining the Company's consent.

15. Adjustments for Stock Splits. The parties acknowledge and agree that all share-related numbers contained in this Agreement shall be adjusted to take into account any stock split, stock dividend or similar event effected with respect to the Placement Shares.

16. Entire Agreement; Amendment; Severability; Waiver. This Agreement (including all schedules and exhibits attached hereto and Placement Notices issued pursuant hereto) constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof. Neither this Agreement nor any term hereof may be amended except pursuant to a written instrument executed by the Company and the Agent. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable as written by a court of competent jurisdiction, then such provision shall be given full force and effect to the fullest possible extent that it is valid, legal and enforceable, and the remainder of the terms and provisions herein shall be construed as if such invalid, illegal or unenforceable term or provision was not contained herein, but only to the extent that giving effect to such provision and the remainder of the terms and provisions hereof shall be in accordance with the intent of the parties as reflected in this Agreement. No implied waiver by a party shall arise in the absence of a waiver in writing signed by such party. No failure or delay in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, or privilege hereunder.

17. GOVERNING LAW AND TIME; WAIVER OF JURY TRIAL. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS. SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

18. CONSENT TO JURISDICTION. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH ANY TRANSACTION CONTEMPLATED HEREBY, AND HEREBY IRREVOCABLY WAIVES AND AGREES NOT TO ASSERT IN ANY SUIT ACTION OR



PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, THAT SUCH SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR THAT THE VENUE OF SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF (CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed Agreement by one party to the other may be made by facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docuSign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.
20. Construction. The section and exhibit headings herein are for convenience only and shall not affect the construction hereof. References herein to any law, statute, ordinance, code, regulation, rule or other requirement of any Governmental Authority shall be deemed to refer to such law, statute, ordinance, code, regulation, rule or other requirement of any Governmental Authority as amended, reenacted, supplemented or superseded in whole or in part and in effect from time to time and also to all rules and regulations promulgated thereunder.
21. Permitted Free Writing Prospectuses. As of the date hereof, the Company is an “ineligible issuer” in connection with the offering of the Placement Shares pursuant to Rules 164, 405 and 433 under the Securities Act. The Company represents, warrants and agrees that, and the Agent represents, warrants and agrees that, it has not made and will not make any offer relating to the Placement Shares that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405, required to be filed with the Commission until such time that the Company becomes eligible to use an Issuer Free Writing Prospectus. The Company also represents, warrants and agrees that, when and if the Company becomes eligible to use an Issuer Free Writing Prospectus, unless it obtains the prior written consent of the Agent, and the Agent also represents, warrants and agrees that, when and if the Company becomes eligible to use an Issuer Free Writing Prospectus, unless it obtains the prior written consent of the Company, it will not make any offer relating to the Placement Shares that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Agent or by the Company, as the case may be, is hereinafter

prospectus consented to by the Agent or by the Company, as the case may be, is hereinafter

referred to as a “Permitted Free Writing Prospectus.” The Company represents and warrants that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus,” as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely filing with the Commission where required, legending and record keeping.

22. Absence of Fiduciary Relationship. The Company acknowledges and agrees that:
- (a) the Agent is acting solely as agent in connection with the public offering of the Placement Shares and in connection with each transaction contemplated by this Agreement and the process leading to such transactions, and no fiduciary or advisory relationship between the Company or any of its respective affiliates, stockholders (or other equity holders), creditors or employees or any other party, on the one hand, and the Agent, on the other hand, has been or will be created in respect of any of the transactions contemplated by this Agreement, irrespective of whether or not the Agent has advised or is advising the Company on other matters, and the Agent has no obligation to the Company with respect to the transactions contemplated by this Agreement except the obligations expressly set forth in this Agreement;
  - (b) it is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement;
  - (c) neither the Agent nor its affiliates have provided any legal, accounting, regulatory or tax advice with respect to the transactions contemplated by this Agreement and it has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate;
  - (d) it is aware that the Agent and its affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and the Agent and its affiliates have no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship or otherwise; and
  - (e) it waives, to the fullest extent permitted by law, any claims it may have against the Agent or its affiliates for breach of fiduciary duty or alleged breach of fiduciary duty in connection with the sale of Placement Shares under this Agreement and agrees that the Agent and its affiliates shall not have any liability (whether direct or indirect, in contract, tort or otherwise) to it in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on its behalf or in right of it or the Company, employees or creditors of Company.
23. Definitions. As used in this Agreement, the following terms have the respective meanings set forth below:





**“Applicable Time”** means (i) each Representation Date, (ii) the time of each sale of any Placement Shares pursuant to this Agreement and (iii) each Settlement Date.

**“Governmental Authority”** means (i) any federal, provincial, state, local, municipal, national or international government or governmental authority, regulatory or administrative agency, governmental commission, department, board, bureau, agency or instrumentality, court, tribunal, arbitrator or arbitral body (public or private); (ii) any self-regulatory organization; or (iii) any political subdivision of any of the foregoing.

**“Issuer Free Writing Prospectus”** means any “issuer free writing prospectus,” as defined in Rule 433, relating to the Placement Shares that (1) is required to be filed with the Commission by the Company, (2) is a “road show” that is a “written communication” within the meaning of Rule 433(d)(8)(i) whether or not required to be filed with the Commission, or (3) is exempt from filing pursuant to Rule 433(d)(5)(i) because it contains a description of the Placement Shares or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g) under the Securities Act Regulations.

**“Rule 164,” “Rule 172,” “Rule 405,” “Rule 415,” “Rule 424,” “Rule 424(b),” “Rule 430B,”** and **“Rule 433”** refer to such rules under the Securities Act Regulations.

All references in this Agreement to financial statements and schedules and other information that is “contained,” “included” or “stated” in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information that is incorporated by reference in the Registration Statement or the Prospectus, as the case may be.

All references in this Agreement to the Registration Statement, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to EDGAR; all references in this Agreement to any Issuer Free Writing Prospectus (other than any Issuer Free Writing Prospectuses that, pursuant to Rule 433, are not required to be filed with the Commission) shall be deemed to include the copy thereof filed with the Commission pursuant to EDGAR; and all references in this Agreement to “supplements” to the Prospectus shall include, without limitation, any supplements, “wrappers” or similar materials prepared in connection with any offering, sale or private placement of any Placement Shares by the Agent outside of the United States.

*[Signature Page Follows]*



If the foregoing correctly sets forth the understanding between the Company and the Agent, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between the Company and the Agent.

Very truly yours,

BIGBEAR.AI HOLDINGS, INC.

By: /s/ Mandy Long

Name: Mandy Long

Title: Chief Executive Officer

ACCEPTED as of the date first-above written:

CANTOR FITZGERALD & CO.

By: /s/ Sameer Vasudev

Name: Sameer Vasudev

Title: Managing Director





**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**

I, Amanda Long, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of BigBear.ai Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 10, 2024

By: /s/ Amanda Long

Amanda Long

Title: Chief Executive Officer (Principal Executive Officer)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**

I, Julie Pepper, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of BigBear.ai Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 10, 2024

By: /s/ Julie Pepper

Julie Pepper

Title: 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**

In connection with the Quarterly Report on Form 10-Q for the period ended March 31, 2024 of ligBear.ai Holdings, Inc. (the "Company"), as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Amanda Long, the Chief Executive Officer of the Company, certify pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that;

- (i) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (ii) 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, 2024

By: /s/ Amanda Long

Amanda Long

Title: Chief Executive Officer (Principal Executive Officer)



**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 on Form 10-Q for the period ended March 31, 2024 of ligBear.ai Holdings, Inc. (the "Company"), as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Julie Peffer, the Chief Financial Officer of the Company, certify pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

- (i) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (ii) 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, 2024

By:     /s/ Julie Peffer    

Julie Peffer

Title: Chief Financial Officer (Principal Financial Officer)