IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, *et al.*[1]	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	(Jointly Administered)
RHODIUM JV LLC, RHODIUM 30MW LLC, RHODIUM 2.0 LLC, RHODIUM 10MW LLC, RHODIUM ENCORE LLC, AIR HPC LLC, JORDAN HPC LLC, RHODIUM INDUSTRIES LLC and RHODIUM RENEWABLES LLC,	§	
Plaintiffs,	§	
vs.	§	Adversary No. 25-03047
WHINSTONE US, INC. and RIOT PLATFORMS, INC.	§	
Defendants.	§	

DEFENDANT WHINSTONE US, INC.'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR MORE DEFINITE STATEMENT

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at https://ecf.txsb.uscourts.gov/ within twenty-one days from the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within twenty-one days from the date this motion was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

[1] The "Debtors" in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974) ("*Rhodium Encore*"), Jordan HPC LLC (3683) ("*Jordan HPC*"), Rhodium JV LLC (5323) ("*Rhodium JV*"), Rhodium 2.0 LLC (1013) ("*Rhodium 2.0*"), Rhodium 10MW LLC (4142) ("*Rhodium 10MW*"), Rhodium 30MW LLC (0263) ("*Rhodium 30MW*"), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (3973) ("*Rhodium Technologies*"), Rhodium Renewables LLC (0748) ("*Rhodium Renewables*"), Air HPC LLC (0387) ("*Air HPC*"), Rhodium Shared Services LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771) ("*Rhodium Industries*"), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005. Rhodium Encore, Jordan HPC, Rhodium JV, Rhodium 2.0, Rhodium 10MW, Rhodium 30MW, Rhodium Renewables, Air HPC, and Rhodium Industries are collectively referred to herein as "*Plaintiffs*."

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Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(3), 12(b)(6) and 12(e), Defendant Whinstone US, Inc. ("*Whinstone*") hereby files this Motion to Dismiss or, in the Alternative, Motion for More Definite Statement (the "*Motion*"). Whinstone respectfully requests that this Court dismiss Plaintiffs' Complaint or, in the alternative, order Plaintiffs to amend their Complaint to provide a more definite statement as to the bases for Plaintiffs' claims against Whinstone and their alleged damages.

I. SUMMARY OF MOTION

Plaintiffs' Complaint is riddled with conclusory statements, mischaracterizations, and speculation. The Complaint is also fundamentally flawed such that dismissal of Plaintiffs' claims is warranted. *First*, Rhodium JV's claims in Counts I and V, Jordan HPC's claim in Count II, and Air HPC's claim in Count V must be dismissed because the agreements serving as the bases for those claims contain valid and enforceable arbitration provisions. *Second*, Rhodium JV's breach of contract claim based on Whinstone's alleged breach of the Building D Agreement[2] (Count I) is time-barred. *Third*, Jordan HPC's breach of contract claim for Whinstone's alleged failure to provide adequate power under the Jordan Agreement (Count II) fails as a matter of law because Jordan HPC seeks damages it is not entitled to recover under the plain language of the agreement. *Fourth*, Rhodium 30MW, Rhodium 2.0, Rhodium 10MW, and Rhodium Encore's breach of contract claims for Whinstone's alleged failure to provide adequate power under the 30MW Agreement and 5MW Agreements (Count II) fails because they did not provide Whinstone with written notice of their claims as required by the agreements. *Fifth*, Rhodium 30MW, Rhodium 2.0, Rhodium 10MW, and Rhodium Encore's breach of contract claims for alleged missing power sales proceeds and overcharges under the 30MW Agreement and 5MW Agreements (Count III) similarly

[2] Capitalized terms have the meanings ascribed to them herein.

fails for their failure to provide the requisite written notice. *Sixth*, Rhodium JV, Rhodium 30MW, Rhodium 2.0, Rhodium 10MW, Rhodium Encore, Jordan HPC, and Rhodium Industries seek to recover breach of contract damages barred under the Water Agreement (Count IV). *Seventh*, Rhodium Renewables' breach of contract claim (Count V) fails because Rhodium Renewables is neither a party to nor third-party beneficiary under the December Hosting Agreements, and Rhodium JV and Air HPC lack standing to recover for harms allegedly suffered by Rhodium Renewables. *Eighth*, Rhodium Renewables' tortious interference with prospective business relationship fails as a matter of law because Rhodium Renewables cannot establish that its inclusion in the Tarrant County lawsuit was independently tortious or unlawful. The Court should dismiss all of Plaintiffs' claims.

Alternatively, the Court should order Plaintiffs to amend their Complaint to provide a more definite statement of the suit pursuant to Rule 12(e) because Plaintiffs' Complaint is so vague and ambiguous that Whinstone cannot file a responsive pleading.

II. FACTUAL BACKGROUND[3]

A. Whinstone's Relationship with Plaintiffs

Whinstone hosts cryptocurrency mining operations at its large-scale data center located in Rockdale, Texas (the "*Rockdale Facility*"), where it provides necessary services (e.g., power, cooling, and internet connectivity, etc.) to its customers for housing and operating high volumes of Bitcoin mining equipment. Complaint ¶ 3. Beginning in 2020, Whinstone agreed to provide such services to various Rhodium-related entities. Specifically, Whinstone entered into the following contracts:

[3] The facts contained in this section are largely drawn from the allegations contained in Plaintiffs' Complaint. Whinstone contests the veracity of Plaintiffs' allegations; however, Whinstone accepts these factual allegations as true solely for purposes of this Motion. Should this action proceed, Whinstone will pursue its counterclaims and such other and further relief to which it may be justly entitled.

- New Hosting Service Agreement dated July 7, 2020 between Whinstone and Rhodium 30MW (the "*30MW Agreement*") for 30 megawatts ("*MW*") of power in Building C;[4]

- Twenty identical New Hosting Service Agreements dated July 9, 2020 between Rhodium JV and Whinstone (collectively, the "*5MW Agreements*") each providing for 5MW of power in Building C;[5]

- Colocation Agreement dated November 2, 2020 between Whinstone and Jordan HPC (the "*Jordan Agreement*") for 25MW of power in Building B;[6]

- Hosting Agreement dated December 31, 2020 between Whinstone and Air HPC (the "*Air HPC December Hosting Agreement*"), which superseded the Jordan Agreement and provided for the same 25MW of power in Building B;[7]

- Hosting Agreement dated December 31, 2020 between Whinstone and Rhodium JV ("*Rhodium JV December Hosting Agreement*,"[8] together with the Air HPC December Hosting Agreement, the "*December Hosting Agreements*"), which superseded the 30MW Agreement and 5MW Agreements and provided for the same 130MW of power in Building C;

- Hosting Agreement dated January 7, 2021 between Whinstone and Rhodium JV for up to 100MW of power in Building D (the "*Building D Agreement*");[9] and

- Whinstone Building C Water Supply Services Agreement dated August 12, 2021 between Whinstone and Rhodium Industries, Rhodium JV, Rhodium 30MW, Rhodium Encore, Rhodium 2.0, Jordan HPC, and Rhodium 10MW (the "*Water Agreement*").[10]

Id. ¶¶ 23, 25-26, 30-32 and Exs. B-G.

[4] A true and correct copy of the 30MW Agreement is attached to Plaintiffs' Complaint as Exhibit B.

[5] True and correct copies of the 5MW Agreements are attached to Plaintiffs' Complaint as Exhibit C.

[6] A true and correct copy of the Jordan Agreement is attached to Plaintiffs' Complaint as Exhibit D.

[7] A true and correct copy of the Air HPC December Hosting Agreement is attached to Plaintiffs' Complaint as Exhibit E.

[8] A true and correct copy of the Rhodium JV December Hosting Agreement is attached hereto as **Exhibit 1**. Plaintiffs did not attach a copy of the Rhodium JV December Hosting Agreement to the Complaint; however, the Court may consider it because the agreement is central to the claim asserted in Count V of the Complaint. *See Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498-99 (5th Cir. 2000).

[9] A true and correct copy of the Building D Agreement is attached to Plaintiffs' Complaint as Exhibit F. The parties mutually agreed to the termination of the Building D Agreement in June 2021.

[10] A true and correct copy of the Water Agreement is attached to Plaintiffs' Complaint as Exhibit G.

B. Whinstone's Termination of the Governing Agreements

In May 2023, Whinstone filed suit against Rhodium 30MW, Rhodium JV, Air HPC, and Jordan HPC (collectively, the "*Milam County Defendants*") in the 20th District Court of Milam County, Texas for breach of the December Hosting Agreements and declaratory relief.[11]

In November 2023, faced with persistent, uncured payment defaults and other non-monetary breaches, Whinstone issued a termination notice on November 27, 2023 (the "*November 2023 Termination Notice*"), which terminated the December Hosting Agreements with immediate effect. Complaint ¶ 44-46; *see also* Complaint, Ex. E at § 17.2. Per its terms, the Water Agreement terminated automatically upon termination of the Rhodium JV December Hosting Agreement. Complaint, Ex. G at § 4(B). Because the December Hosting Agreements were properly terminated, Whinstone ceased providing power to the Rhodium-entities' operations in Buildings B and C at the Rockdale Facility. Complaint ¶¶ 46-47.

The Milam County Defendants improvidently obtained a temporary restraining order and temporary injunction requiring Whinstone to restore power to Buildings B and C. *Id.* The Third Court of Appeals subsequently reversed the order and dissolved the temporary restraining order and injunction.[12]

Due to the (vacated) temporary injunction order, Whinstone was prohibited from immediately acting on its November 2023 Termination Notice. Complaint at ¶ 47. However, issues with the Rhodium entities operating at the Rockdale Facility came to a head again in January 2024

[11] A true and correct copy of Whinstone's First Amended Petition in the Milam County lawsuit is attached hereto as **Exhibit 2**. The Court may take judicial notice of Whinstone's petition in the Milam County lawsuit as well as the other pleadings attached hereto because they are a matter of public record and the contents cannot reasonably be disputed. *Defranceschi v. Seterus, Inc.*, No. 4:15-CV-870-O, 2016 WL 6496319, at *2 (N.D. Tex. Apr. 18, 2016) (taking judicial notice of plaintiff's original petition in a prior case for the purpose of establishing the fact of the prior litigation); *see also* FED. R. EVID. 201(b)(2) (a court may take judicial notice of a fact when "it can be accurately and readily determined from sources whose accuracy cannot reasonably be disputed").

[12] A true and correct copy of the Third Court of Appeals Mandate is attached hereto as **Exhibit 3**.

when their improper installation and maintenance of cooling systems caused another large coolant spill at the facility. *Id.* at ¶ 48. As a result of the severity of the spill and the sheer number of prior, similar incidents, Whinstone issued a notice of suspension on January 12, 2024, and informed Rhodium JV that all power and services at Building C would be shut off pending further investigation. *Id.*

Whinstone restored power to Building C after an emergency arbitrator granted Rhodium JV's request for a temporary restraining order. *Id.* at ¶ 50. Whinstone complied with the arbitrator's order while the parties continued to litigate their dispute. *Id.* at ¶ 51.

C. Whinstone's Tarrant County Lawsuit

On July 19, 2024, Whinstone filed suit against Imperium Investments Holdings LLC, Rhodium Enterprises, Inc., Rhodium Technologies, Rhodium Renewables, Nathan Nichols, Chase Blackmon, Cameron Blackmon, and Nicholas Cerasuolo (collectively, the "*Tarrant County Defendants*") in the 153rd Judicial District Court in Tarrant County, Texas.[13] Complaint at ¶ 54. Whinstone's claims in the Tarrant County lawsuit are straightforward: the Tarrant County Defendants made misrepresentations in connection with the purchase of Whinstone's interest in Rhodium JV. Specifically, they promised that Whinstone would receive 12.5% of "all the underlying economics" generated from cryptocurrency mined from Building C at the Rockdale Facility. That promise proved to be false, and Whinstone was damaged as a result. Ex. 4.

On August 30, 2024, Whinstone voluntarily nonsuited its claims against Rhodium Enterprises, Inc., Rhodium Technologies, and Rhodium Renewables without prejudice. **Exhibit 5**, Whinstone's Notice of Nonsuit. The remaining Tarrant County Defendants removed the lawsuit to

[13] A true and correct copy of Whinstone's Original Petition against the Tarrant County Defendants is attached hereto as **Exhibit 4**.

the United States Bankruptcy Court for the Northern District of Texas. The case was later transferred to the United States Bankruptcy Court in the Southern District of Texas (the "*Bankruptcy Court*") and is pending as an adversary proceeding in the Debtors' bankruptcy proceeding as Adversary Proceeding No. 24-03240-swe.[14]

D. The Debtors' Chapter 11 Case

On August 24, 2024, Rhodium Encore, Jordan HPC, Rhodium JV, Rhodium 2.0, Rhodium 10MW, and Rhodium 30MW filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the "*Bankruptcy Court*"). Complaint ¶ 61. On August 29, 2024, the remaining Debtors filed petitions for relief under chapter 11 as well. *Id.*

Shortly thereafter, Debtors sought to assume the 5MW Agreements, 30MW Agreement, Jordan Agreement, December Hosting Agreements, and Water Agreement. [Dkt 7 and 32] (the "*Motions to Assume*"). The Bankruptcy Court recently granted Debtors' Motions to Assume. [Dkt 579, 763, 800]. Whinstone has appealed the Bankruptcy Court's orders granting Debtors' Motions to Assume to the District Court. [Dkt No. 814].

E. Plaintiffs' Claims in this Adversary Proceeding

On February 11, 2025, Plaintiffs filed their Complaint in this Adversary Proceeding against Whinstone and its parent company, Riot Platforms, Inc. [Dkt. 770]. In their Complaint, Plaintiffs assert six causes of action against Whinstone: (1) breach of the Building D Agreement; (2) breach of the 30MW Agreement, 5MW Agreements, and Jordan Agreement based on an alleged failure to provide adequate power; (3) breach of the 30MW Agreement, 5MW Agreements, and Jordan Agreement for alleged missing power sales proceeds and overcharges; (4) breach of the Water

[14] Whinstone moved to withdraw the reference of Adversary Proceeding No. 24-03240-swe.

Agreement; (5) breach of the December Hosting Agreements for failure to arbitrate; and (6) tortious interference with a prospective business relationship. a

III. LEGAL STANDARD

A. Rule 12(b)(1) Standard

Motions filed under Rule 12(b)(1) allow a party to challenge the subject matter jurisdiction of the district court to hear a case. FED. R. CIV. P. 12(b)(1). Lack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. *Barrera-Montenegro v. United States*, 74 F.3d 657, 659 (5th Cir. 1996). The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction. *McDaniel v. United States*, 899 F.Supp. 305, 307 (E.D. Tex. 1995). Thus, the plaintiff constantly bears the burden of proof that jurisdiction exists. *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980). There is a split within the Fifth Circuit (and other circuits) regarding whether motions to dismiss based on arbitration provisions are proper under Rule 12(b)(1) or 12(b)(3) and the Fifth Circuit has not resolved this "enigmatic question." *Lim v. Offshore Specialty Fabricators, Inc.*, 404 F.3d 898, 902 (5th Cir. 2005) (discussing the split). However, some courts have held that Rule 12(b)(1) is the proper mechanism to use to seek dismissal of a claim based on an arbitration provision. *See, e.g., Gilbert v. Donahoe*, 751 F.3d 303, 307 (5th Cir. 2014).

When a motion to dismiss under Rule 12(b)(1) is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) arguments before addressing any other issues. *Hitt v. City of Pasadena*, 561 F.2d 606, 608 (5th Cir. 1977) (per curiam). Doing so prevents a court without jurisdiction from prematurely dismissing a case with prejudice. *Id.* Dismissal of a plaintiff's claim due to the lack of subject matter jurisdiction is not a determination of the merits

of the claim and, therefore, does not prevent the plaintiff from pursuing the claim in a proper forum. *Id.*

B. Rule 12(b)(3) Standard

Under Rule 12(b)(3), claims may be dismissed for improper venue. FED. R. CIV. P. 12(b)(3). "The United States Supreme Court has described an arbitration agreement as a 'specialized kind of forum-selection clause.'" *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519 (1974). Thus, the enforceability of an arbitration agreement may be analyzed under Rule 12(b)(3). *McDonnel Grp., L.L.C. v. Great Lakes Ins. SE, UK Branch*, 923 F.3d 427, 430 n.5 (5th Cir. 2019). And a motion to dismiss claims based on an enforceable arbitration provision may be properly brought under Rule 12(b)(3). *Id.* (acknowledging that while the Fifth Circuit has not decided whether Rule 12(b)(1) or 12(b)(3) is the proper vehicle for a motion to dismiss based on an arbitration clause, it has accepted Rule 12(b)(3) as a proper method for seeking dismissal in favor of arbitration) (citing *Noble Drilling Servs., Inc. v. Certex USA, Inc.*, 620 F.3d 469, 472 n.3 (5th Cir. 2010)).

C. Rule 12(b)(6) Standard

Rule 12(b)(6) authorizes the dismissal of a plaintiff's claim for "failure to state a claim upon which relief may be granted." FED. R. CIV. P. 12(b)(6). A complaint must set forth "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555 (2007), *accord Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). To avoid dismissal, pleadings must demonstrate specific, well-pleaded facts, not merely conclusory allegations. *Guidry v. Bank of LaPlace*, 954 F.2d 278, 281 (5th Cir. 1992); *Middaugh v. InterBank*, 528 F.Supp. 3d 509, 533 (N.D. Tex. 2021). The facts alleged must "raise a right to relief above the speculative level." *Twombly*. 550 U.S. at 555. It is not enough that a claim to relief be merely "possible" or "conceivable"; rather, it must be "plausible on its face."

Iqbal, 556 U.S. at 678; *Twombly*, 550 U.S. at 570 (a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face.").

D. Rule 12(e) Standard

Rule 8 of the Federal Rules of Civil Procedure requires that a pleading stating a claim for relief contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(2). "If a pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement under Rule 12(e) before responding." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002).

IV. ARGUMENTS & AUTHORITIES

A. Rhodium JV, Jordan HPC, and Air HPC's claims based on agreements with arbitration provisions should be dismissed under Rule 12(b)(1) or Rule 12(b)(3).

In Counts I, II, and V, Rhodium JV, Jordan HPC, and/or Air HPC assert claims based on Whinstone's alleged breaches of the Building D Agreement, Jordan Agreement, and/or December Hosting Agreements. Complaint ¶¶ 73-78 (Count I), ¶¶ 79-87 (Count II), ¶¶ 109-118 (Count V). All of these agreements contain enforceable arbitration provisions[15] requiring Rhodium JV, Jordan HPC, and Air HPC to arbitrate their claims against Whinstone in Milam County, Texas. Ex. F at § 22 (Count I – Building D Agreement); Complaint, Ex. D at § 22 (Count II – Jordan Agreement); Complaint, Ex. E at § 22 (Count V – Air HPC December Hosting Agreement); Ex. 1 at § 22 (Count V – Rhodium JV December Hosting Agreement). Whinstone is entitled to arbitrate Rhodium JV, Jordan HPC, and Air HPC's claims against it. *See* 9 U.S.C. § 2.

However, this Court lacks authority to compel the claims to arbitration. The arbitration provisions in the Building D Agreement, Jordan Agreement, and December Hosting Agreements

[15] It would be nonsensical for Plaintiffs to contest the enforceability of the agreements' arbitration provisions considering Count V of the Complaint is predicated on Whinstone's alleged failure to arbitrate its claims under the December Hosting Agreements.

are governed by the Federal Arbitration Act ("*FAA*"). *See* Complaint, Ex. F at § 22; Complaint, Ex. D at § 22; Complaint, Ex. E at § 22; Ex. 1 at § 22. Under the FAA, district courts may only refer cases to arbitration within their own district. *See* 9 U.S.C. § 4 ("The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed."). "The consequences as to jurisdiction under § 4 is that a court may not compel arbitration if the forum for arbitration set out in the agreement is that of another district." *Dealer Comput. Servs., Inc. v. Red Hill Ford, Inc.*, Civil Action No. H-08-2791, 2009 WL 2498483, at *2 (S.D. Tex. Aug. 11, 2009). When a claim is subject to an enforceable arbitration provision in another district, the district court should dismiss the claim without prejudice under either Rule 12(b)(1) or 12(b)(3) so that the plaintiff may pursue its claims in the proper venue.[16]

Because the arbitration provisions at issue require the parties to arbitrate their claims in Milam County, Texas, which is in the Western District of Texas, this Court lacks authority to compel Counts I, II, and V to arbitration. *See* 9 U.S.C. § 4. Accordingly, whether under Rule 12(b)(1) or Rule 12(b)(3), this Court must dismiss Rhodium JV's claims in Counts I and V, Jordan HPC's claim in Count II, and Air HPC's claim in Count V. *See Lim*, 404 F.3d at 902; *Gilbert*, 751 F.3d at 307; *McGee*, 2016 WL 1622632, at *3-4 (N.D. Tex. Apr. 5, 2016).

B. Plaintiffs' claims should be dismissed because they fail to state a claim upon which relief may be granted.

The Court should dismiss Plaintiffs' claims against Whinstone because (i) Count I is time-barred; (ii) Plaintiffs have not—and cannot—plead or prove one or more elements of each of their

[16] *Lim*, 404 F.3d at 902 (noting that courts in the Fifth Circuit have decided motions to dismiss based on an arbitration provision under Rule 12(b)(3)); *see also McGee v. W. Express Inc.*, No. 3:15-cv-3673-K, 2016 WL 1622632, at *1-3 (N.D. Tex. Apr. 5, 2016) (discussing split and ultimately dismissing claim under Rule 12(b)(3)); *but see Gilbert*, 751 at 307 ("We have held that a district court lacks subject matter jurisdiction over a case and should dismiss it pursuant to Federal Rule of Civil Procedure 12(b)(1) when the parties' dispute is subject to binding arbitration."); *Dealer Comput. Serv.*, 2009 WL 2498483 at *1 (noting that only the district where arbitration is occurring can properly exercise jurisdiction in motions to compel arbitration).

claims; and (iii) Rhodium JV and Air HPC lack standing to seek damages on behalf of Rhodium Renewables (Count V). Therefore, the Court should dismiss Plaintiffs' claims with prejudice.

1. Rhodium JV's time-barred Building D Agreement claim must be dismissed.

Although defenses are generally not the proper subject of a motion to dismiss under Rule 12(b)(6), certain defenses that appear on the face of a plaintiff's complaint may properly be asserted in a Rule 12(b)(6) motion. *Songbyrd, Inc. v. Bearsville Records, Inc.*, 104 F.3d 773, 776 n.3 (5th Cir. 1997) (citing *Kansa Reinsurance Co. v. Cong. Mortgage Corp. of Tex.*, 20 F.3d 1362, 1366 (5th Cir. 1994)). For example, when (as here) a plaintiff asserts a time-barred claim, dismissal under Rule 12(b)(6) is proper. *Id.* (affirmative defense of limitations may properly be asserted in a Rule 12(b)(6) motion); *see also Triplett v. Heckler*, 767 F.2d 210, 211-12 (5th Cir. 1985) (motion to dismiss based on timeliness invoked Rule 12(b)(6)).

Rhodium JV and Whinstone entered into the Building D Agreement on or about January 7, 2021. Complaint, Ex. F at p. 1.[17] Section 22 of the Building D Agreement expressly states that "each party agrees that it shall not bring a claim under the agreement more than two (2) years after the time that the claim accrued." *Id.* at § 22.[18]

In the Complaint, Rhodium JV alleges that shortly after the parties entered into the agreement, "on June 21, 2021, Whinstone's CEO, Chad Harris, sent Rhodium an email rescinding the Building D contract and reneging on all of Whinstone's contractual obligations to provide Rhodium an additional 100MW of power in Building D." Complaint ¶ 76. Accordingly, any claim

[17] The Court may consider the attachments to Plaintiffs' Complaint in determining Whinstone's Motion. *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (for purposes of a Rule 12(b)(6) motion, "pleadings" includes attachments to the complaint); *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000) (same).

[18] Under well-settled Texas law, parties may contractually agree to shorten the limitations period for breach of contract claims to not less than two years. TEX. CIV. PRAC. & REM. CODE § 16.070; *Abedinia v. Lighthouse Prop. Ins. Co.*, No. 12-20-00183-CV, 2021 WL 4898456, at *2 (Tex. App.—Tyler Oct. 20, 2021, pet. denied) (mem. op.) (noting parties may "contractually agree" to shorten limitations period for breach of contract claim.)

that Rhodium JV may have had against Whinstone for breach of the Building D Agreement accrued on June 21, 2021 and had to be asserted no later than June 21, 2023. *See Middaugh*, 528 F.Supp.3d at 538 (quoting *Slusser v. Union Bankers Ins. Co.*, 72 S.W.3d 713, 717 (Tex. App.—Eastland 2002, no pet.)) ("A cause of action for breach of contract is generally regarded as accruing when the contract is breached or when the claimant has notice of facts sufficient to place him on notice of the breach.").

Rhodium JV never performed any of its obligations under the Building D Agreement and agreed to terminate the agreement so that the Rhodium enterprise could invest in its operations at its facility in Temple, Texas. And, Rhodium JV waited until February 11, 2025 to assert—for the very first time—a claim against Whinstone for allegedly breaching the Building D Agreement. Rhodium JV's delay in bringing this claim within the two-year period allowed under the agreement is a product of its own making. Moreover, it is particularly confusing considering that Rhodium JV has been in active litigation with Whinstone since May 2023. *See* Ex. 1. If Rhodium JV had a good-faith basis for its breach of contract claim, Rhodium JV presumably would have asserted the claim at that time. It is too late now. Therefore, the Court should dismiss Count I of the Complaint with prejudice.

2. The Jordan Agreement bars damages requested in Count II.

To establish a claim for breach of contract, a plaintiff must plead (and ultimately prove) a right to the damages sought. *See AKIB Constr. Inc. v. Shipwash*, 582 S.W.3d 791, 806 (Tex. App.—Houston [1st Dist.] 2019, no pet.). If a plaintiff seeks damages it has no right to recover, dismissal under Rule 12(b)(6) is appropriate. *See, e.g., Regalado v. Mgmt. and Training Corp.*, Civil Action No. 4:21-cv-185-O, 2021 WL 5824763, at *4 (N.D. Tex. Dec. 8, 2021) (dismissing plaintiff's claim under Rule 12(b)(6) because he was not entitled to recovery of the damages sought).

In Count II, Rhodium 30MW, Rhodium 2.0, Rhodium Encore, Rhodium 10MW, and Jordan HPC allege that Whinstone breached the 30MW Agreement, 5MW Agreements, and Jordan Agreement "by failing to provide power in an attempt to ruin Rhodium." Complaint ¶ 80. As a result of Whinstone's alleged failure to provide power under the contracts, Rhodium 30MW, Rhodium 2.0, Rhodium Encore, Rhodium 10MW, and Jordan HPC claim they "are entitled to damages equal to the amount of bitcoin they would have mined" each time Whinstone curtailed, terminated, or suspended their power. *Id.* ¶¶ 85-86. The value of the alleged lost Bitcoin is the only damage Rhodium 30MW, Rhodium 2.0, Rhodium Encore, Rhodium 10MW, and Jordan HPC seek in connection with Count II. *See id.* ¶¶ 79-87.

Even if Jordan HPC were to prevail on its breach of contract claim, it is not entitled to the relief it seeks in Count II. Unlike the 30MW Agreement and 5MW Agreements, the Jordan Agreement limits liability between the parties, stating neither party to the agreement (i.e., Whinstone and Jordan HPC):

> shall be liable to the other party under or in connection with this Agreement for any indirect, incidental, special, consequential, exemplary or punitive damages, including lost profits, damage to Customer Equipment, ***loss of any data (including Bitcoins)***, regardless of the form of the action or the theory of recovery, even if such Party has been advised of the possibility of such damages, whether based upon an action or claim in contract, tort, warranty, negligence, intended conduct or otherwise (including any action or claim arising from the acts or omissions, negligent or otherwise, of the liable Party).

Complaint, Ex. D at § 13.1 (emphasis added). This limitation is valid and enforceable. Jordan HPC has not (and cannot) plead otherwise. Jordan HPC's breach of contract claim against Whinstone for an alleged failure to provide adequate power under the Jordan Agreement fails and should be dismissed with prejudice. *See, Regalado*, 2021 WL 5824763, at *4.

3. The 30MW Agreement and 5MW Agreements bar Rhodium 30MW, Rhodium 2.0, Rhodium Encore, and Rhodium 10MW's claims in Counts II and III because they did not satisfy all conditions precedent.

Rhodium 30MW, Rhodium 2.0, Rhodium Encore, and Rhodium 10MW claim that Whinstone breached the 30MW Agreement and 5MW Agreements by (a) "failing to provide power" to them "in an attempt to ruin Rhodium," (Count II); (b) "fail[ing] and refus[ing] to provide the profits of … energy sales" to them (Count III); and (c) overcharging them for power (Count III). Complaint ¶¶ 80, 92, 95.

The 30MW Agreement and 5MW Agreements both state that Whinstone "shall not be held liable for any claim arising under [the] Agreement unless [the Rhodium-specific entity] gives Whinstone written notice of the claim within twelve months of becoming aware of the circumstances giving rise to the claim." Complaint, Ex. B at § 9.10; Complaint, Ex. C at § 8.10. Plaintiffs have not pleaded any facts that show they provided Whinstone with the requisite written notice. *See generally* Complaint. Absent written notice, Rhodium 30MW's claims for breach of the 30MW Agreement and Rhodium 2.0, Rhodium 10MW, and Rhodium Encore's[19] claims for breach of the 5MW Agreements fail as a matter of law because they are not entitled to recover any of the damages they seek in Counts II and III. *See Castle Energy Grp., LLC v. Universal Ensco, Inc.*, Case No. 4:23-cv-04314, 2024 WL 3237540, at *1 (S.D. Tex. June 5, 2024) (noting that plaintiffs must plead more than conclusory allegations that they satisfied all conditions precedent for their breach of contract claim to survive a 12(b)(6) motion). As such, the Counts II and III should be dismissed. *See Regalado*, 2021 WL 5824763, at *4.

[19] Whinstone denies that Rhodium 2.0, Rhodium Encore, and Rhodium 10MW have standing to assert claims under the 5MW Agreements because Whinstone properly terminated those agreements prior to Rhodium JV's purported assignment of the agreements to Rhodium 2.0, Rhodium Encore, and Rhodium 10MW. However, for purposes of this Motion, Whinstone accepts the facts as pleaded by Plaintiffs as true and reserves its right to challenge the effectiveness of Rhodium JV's purported assignments.

4. The Water Agreement bars damages requested in Count IV.

In Count IV, Rhodium JV, Rhodium 30MW, Rhodium Encore, Rhodium 2.0, Jordan HPC, Rhodium 10MW, and Rhodium Industries allege that Whinstone breached the Water Agreement by failing to provide the foregoing entities "with an adequate and viable water system to support Rhodium's immersion cooling systems in Building C." Complaint ¶¶ 102-103. As a result of Whinstone's alleged failure to provide "adequate and viable" water services, Rhodium 30MW, Rhodium 2.0, Rhodium Encore, Rhodium 10MW, and Jordan HPC claim they "are entitled to damages equal to the amount of bitcoin they would have mined" each time Whinstone curtailed, terminated, or suspended their power. *Id.* ¶¶ 85-86. This is the only damage Rhodium 30MW, Rhodium 2.0, Rhodium Encore, Rhodium 10MW, and Jordan HPC seek in connection with Count II. *See id.* ¶¶ 79-87.

As an initial matter, Whinstone was not obligated to provide either "adequate and viable" water *or* a water system under the Water Agreement. *See generally* Complaint, Ex. G. Under the Water Agreement, Whinstone only agreed "to supply, non-potable water for use in Building C from Whinstone's existing water supply source…." *Id.* at p. 1. Nothing in the Water Agreement required Whinstone to treat the water prior to delivering it to Building C, provide water of a specified quality, or build a water-filtering system. *See generally id.* But assuming, *arguendo*, that Whinstone had an obligation to provide Rhodium 30MW, Rhodium 2.0, Rhodium Encore, Rhodium 10MW, and Jordan HPC "with an adequate and viable water system to support Rhodium's immersion cooling systems in Building C," Section 6(A) of the Water Agreement expressly states:

> **(A)** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, DAMAGE TO CUSTOMER EQUIPMENT, LOSS OF ANY DATA (INCLUDING BITCOINS), REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER BASED UPON AN ACTION OR CLAIM IN CONTRACT, TORT, WARRANTY, NEGLIGENCE, INTENDED CONDUCT OR OTHERWISE (INCLUDING ANY ACTION OR CLAIM ARISING FROM THE ACTS OR OMISSIONS, NEGLIGENT OR OTHERWISE, OF THE LIABLE PARTY).

Id. at § 6(A) (emphasis added).

This Court should not countenance Plaintiffs' continued efforts to mischaracterize the parties' agreements as providing rights and remedies that do not exist under the plain and unambiguous terms of the agreements. The Water Agreement (like the Jordan Agreement) is clear: Rhodium JV, Rhodium 30MW, Rhodium Encore, Rhodium 2.0, Jordan HPC, Rhodium 10MW, and Rhodium Industries are not entitled to recover damages for alleged lost Bitcoin under any theory of recovery. *Id.* Therefore, the Court should dismiss Count IV with prejudice. *See, Regalado*, 2021 WL 5824763, at *4.

5. Rhodium Renewables' failure to arbitrate claim fails as a matter of law and Rhodium JV and Air HPC lack standing to assert claims on its behalf.

To plead a breach of contract claim requires four elements: (1) formation of a valid contract; (2) performance by the plaintiff; (3) breach by the defendant; and (4) the plaintiff sustained damages as a result of the defendant's breach. *S & S Emergency Training Sol., Inc. v. Elliott*, 564 S.W.3d 843, 847 (Tex. 2018) (citing *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 501 n.21 (Tex. 2018)). Rhodium Renewables asserts a breach of contract claim based on Whinstone's alleged breach of the December Hosting Agreements' arbitration provisions effectively ignoring these fundamental elements. Complaint ¶¶ 109-118.

There is one glaring problem for Rhodium Renewables—it is ***not*** a party to either of the December Hosting Agreements. Complaint, Ex. E at p. 1; *see also* Ex. 1, at p. 1. Nor is it a third-party beneficiary under either of the December Hosting Agreements. Complaint, Ex. E at § 23.4; Ex. 1 at § 23.4. Indeed, Rhodium Renewables is not a party to any contract with Whinstone that contains an arbitration provision. *See generally* Complaint, Exs. B-G and Ex. 1. Thus, Rhodium Renewables' breach of contract claim fails as a matter of law and should be dismissed with prejudice. *See Muhammad v. Wiles*, EP-19-CV-00051-KC-LS, 2023 WL 3143434, at *4 (W.D. Tex. Feb. 14, 2023) (noting the general rule that a litigant must be either a party to the contract or an intended third-party beneficiary to pursue a breach of contract claim) (quoting *Heartland Holdings, Inc. v. U.S. Tr. Co. of Tex. N.A.*, 316 S.W.3d 1, 7 (Tex. App.—Houston [14th Dist.] 2010, no pet.) and *Esquivel v. Murray Guard, Inc.*, 992 S.W.2d 536, 543 (Tex. App.—Houston [14th Dist.] 1999, pet. denied)).

Count V also fails because Rhodium JV and Air HPC seek damages for the value of the lost sale of Rhodium Renewables' facility in Temple, Texas. Complaint ¶ 116. As Plaintiffs allege, Rhodium Renewables was the only Rhodium-related party involved in that "sale." *Id.* at ¶ 56. Rhodium JV and Air HPC (the Rhodium-related entities who are parties to the December Hosting Agreements) seek only to recover amounts that Rhodium Renewables allegedly lost on the sale of its facility. *See id.* at ¶¶ 109-118. They lack standing to do so. *See S & S Emergency Training Sols.*, 564 S.W.3d at 847 (plaintiff must have sustained damages as a result of the defendant's breach); *see also Burchinal v. PJ Trailers-Seminole Mgmt. Co., LLC*, 372 S.W.3d 200, 218 (Tex. App.—Texarkana 2012, no pet.) (affiliated entities are considered separate and distinct legal entities). The entirety of Count V fails as a matter of law and should be dismissed.

6. Rhodium Renewables cannot satisfy the elements of its tortious interference with a prospective business relationship.

Rhodium Renewables has not pleaded (nor can it plead) facts sufficient to support its tortious interference with a prospective business relationship claim (Count VI). *See* Complaint, ¶¶ 119-123. Specifically, to prevail on its claim, Rhodium Renewables must plead and prove, *inter alia*, that Whinstone's inclusion of Rhodium Renewables as a defendant in the Tarrant County lawsuit was independently tortious or unlawful. *See El Paso Healthcare Sys. v. Murphy*, 518 S.W.3d 412, 421 (Tex. 2017); *see also Wal-Mart Stores v. Sturges*, 52 S.W.3d 711, 726 (Tex. 2001). Rhodium Renewables alleges that Whinstone's inclusion of Rhodium Renewables as a defendant in the Tarrant County lawsuit was "actionable under the recognized tort of malicious prosecution." Complaint ¶ 121. It is not. Malicious prosecution requires that the proceeding be terminated in the plaintiff's favor. *Texas Beef Cattle Co. v. Green*, 921 S.W.2d 203, 207 (Tex. 1996). Whinstone voluntarily nonsuited its claims against Rhodium Renewables. Ex. 5. A voluntary nonsuit does not constitute "termination in the plaintiff's favor." *KT Bolt Mfg. v. Texas Elec. Coops.*, 837 S.W.2d 273, 275 (Tex. App.—Beaumont 1992, writ denied). As a matter of law, Rhodium Renewables cannot satisfy the necessary elements of its claim, and the Court should dismiss Count VI with prejudice. *See, e.g., Lightfoot v. Obim Fresh Cut Fruit Co.*, Civil Action No. 4:07-CV-608-BE, 2008 WL 1882697, at *1 (N.D. Tex. Apr. 28, 2008) (mem. op.) (dismissing complaint under Rule 12(b)(6) because the plaintiff failed to allege the necessary requirements and essential elements in support of their claims).

C. The relief Plaintiffs seek contravenes applicable law.

The faults of Plaintiffs' claims aside, the Complaint has another fatal flaw: in addition to monetary damages Plaintiffs also seek permanent injunctive relief in the form of a "channeling injunction" that would: (1) wipe Plaintiffs' slate clean of all prior defaults and wrongdoing, and

(2) force Whinstone to "seek permission from this Court before issuing or acting upon any future attempt to terminate the contracts or suspend its performance thereunder." Complaint at ¶¶ 130-133.

As it is well settled that "[w]here the debtor assumes an executory contract, it must assume the entire contract, ***cum onere***—the debtor accepts both the obligations and the benefits of the executory contract," *In re National Gypsum Co.*, 208 F.3d 498, 506 (5th Cir. 2000) (emphasis in original) (*citing NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984)), this prospective injunctive relief, which has no basis in the law, effectively subverts the Court's orders on the Motions to Assume by writing new terms into the contracts at issue. *See In re Thornhill Brothers Fitness, LLC*, 85 F.4th 321, 327 (5th Cir. 2023) ("A debtor cannot use § 365 to create a different deal than the one it had originally."). Thus, through this lawsuit, Plaintiffs seek not only to rewrite the contracts they just fought so hard to assume but also to create a world that has never existed and cannot exist. However this dispute ends, Whinstone has rights that it will zealously protect. These rights cannot be taken away under a lawyer-created guise of "permanent injunctive relief."

D. Alternatively, the Court should order Plaintiffs to amend their Complaint to provide a more definite statement.

Should the Court deny Whinstone's motion to dismiss, Whinstone alternatively asks that the Court order Plaintiffs to amend their Complaint with a more definite statement of the suit pursuant to Rule 12(e). Plaintiffs' Complaint is so vague and ambiguous that Whinstone cannot file a meaningfully responsive pleading. Plaintiffs' Complaint is defective in multiple ways.

First, Plaintiffs continue to resort to their customary practice of using the term "Rhodium" to interchangeably refer to one or more or all Rhodium-related entities when lack of clarity suits their interests. *See, e.g.,* Complaint ¶¶ 3, 6-11, 22, 25-32, 34-42, 44-51, 53, 56-57, 59-60, 67, 74-

76, 80, 83-85, 94-95, 102, 104-107, 111, 122. However, such group pleading deprives Whinstone of fair notice of the actual bases—to the extent there are any—for Plaintiffs' claims.

Second, Plaintiffs seek more than $300 million, not including pre- and post-judgment interest, exemplary damages, and attorneys' fees, in this Adversary Proceeding. *Id.* at ¶ 12. However, they do not plead facts demonstrating the amounts they contend each Plaintiff is entitled to recover or the amounts they seek to recover for each claim. *See generally id.* Indeed, for several claims, Plaintiffs do not plead any damages at all. *See id.* at ¶¶ 73-78 (Count I), 109-118 (Count IV), ¶¶ 119-123 (Count VI). If Plaintiffs cannot even plead their damages then they certainly cannot prove them. Moreover, if Plaintiffs cannot plead their damages—an essential element for each of their claims—Whinstone is deprived of the opportunity to seek dismissal of the claims under Rule 12(b)(6) based on the actual allegations and/or any of its affirmative defenses.

Because Plaintiffs have not pleaded sufficient facts to allow Whinstone to file a responsive pleading, this Court should require Plaintiffs to amend their Complaint with a more definite statement of the suit to identify the specific Rhodium-related entity or entities in their allegations and plead the damages each Plaintiff seeks on a claim-by-claim basis.

V. CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' Complaint. Alternatively, the Court should order Plaintiffs to amend their Complaint to provide a more definite statement. Defendant Whinstone US, Inc. requests such other and further relief, whether at law or in equity, to which it may be justly entitled.

[Signature page to follow]

Dated: March 14, 2025

Respectfully submitted,

/s/ Steven C. Lockhart

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COUNSEL FOR DEFENDANT WHINSTONE US, INC.

CERTIFICATE OF SERVICE

I certify that I caused the foregoing document to be filed on March 17, 2025, using the Court's CM/ECF System which caused it to be served upon those parties registered in the system to receive such service.

/s/ Steven C. Lockhart
Steven C. Lockhart

EXHIBIT 1

Hosting Agreement

This Hosting Agreement (this "**Agreement**") is made as of **December 31, 2020** (the "**Effective Date**") between **Whinstone US, Inc.**, a corporation organized and existing under the laws of the state of Delaware, having its principal office at 2721 Charles Martin Hall Road, Rockdale, Texas 76567, USA (**"Provider"**), and **Rhodium JV LLC** , a limited liability company organized and existing under the laws of Delaware, having its principal office at 7546 Pebble Drive, Fort Worth, Texas 76118 (**"Customer"**). Provider and Customer are hereinafter together referred to as the "**Parties**" and each as a "**Party**."

WHEREAS, Provider operates a hosting data center facility the primary business purposes of which is to make the facilities (e.g., power, cooling, and Internet connectivity) necessary to support high volumes of cryptocurrency mining devices available to customers that have, or desire to obtain, such devices, and are seeking an off-premises location to store and operate such devices;

WHEREAS, Customer currently owns or desires to procure dedicated Bitcoin mining devices, and desires to install such devices in a facility at which Customer may manage and operate such devices remotely;

WHEREAS, Provider is willing to provide such hosting services to Customer, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises in this Agreement, the Parties agree as follows:

1. Key Terms

1.1. The table below sets forth a summary of the principal terms of the hosting arrangement under this Agreement (the "**Key Terms**"). Each of the terms in the leftmost column of this table will have the meaning set forth in the respective row(s) in the column(s) to the right.

Target Ready-for-Use Date	December 31, 2020	
Initial Term Length	120 months	
Customer Equipment	(To be specified in writing by Customer and document here)	
	Unit type: Number of units: Hash rate per unit:* Power usage per unit*:	_____ _____ _____ TH/s _____ W/GH
	Hardware Unit	
	Unit type: Number of units: Hash rate per unit: Power usage per unit:	_____ _____ _____ TH/s _____ W/GH
Specified Power Draw	Up to 130 MW (30 MW as of the Effective Date, which may be increased to up to 130MW pursuant to the requirements of this Agreement)	
Hosting Fees	As defined in Section 6.1 of this Agreement	
Provider Account	_____	
Customer Account	_____	

*The "hash rate per unit" and "power usage per unit" values (i) are estimates included for reference purposes only, (ii) do not constitute a service level, guarantee, or other obligation of Provider, (iii) may vary significantly from time to time and from the estimated values, and (iv) have no impact on pricing or amounts owed under the Agreement.

2. Definitions

2.1. Defined Terms

The terms listed below, when used in this Agreement, shall have the following meaning

"**Advanced Remote Hands Service**" is defined in Section 3.4.

"**Applicable Law**" means, as in effect from time to time, any law, rule, regulation, declaration, decree, directive, statute or other enactment, order, mandate or resolution, interpretation, writ, judgment, injunction, license, or permit, issued or enacted by any Governmental Authority, which is applicable to a Party under this Agreement, including securities laws, tax laws, tariff and trade laws, and data laws.

"**AUP**" or "**Acceptable Usage Policy**" means Provider's then-current acceptable use policy, which may be referenced at www.whinstone.us.

"**Basic Remote Hands Service**" is defined in Section 3.3.

"**Building Unit**" means each separate building within the Facility.

"**Business Day**" means a day which is not a Saturday, Sunday or a public holiday in Texas.

"**Confidential Information**" means the terms of this Agreement and all information whether in written or any other form which has been or may be disclosed in the course of the discussions leading up to the entering into or performance of this Agreement and which is identified as confidential or is clearly by its nature confidential including information relating to this Agreement or the Services, data used or generated in the provision of the Services, or any of Customer's products, operations, processes, plans or intentions, know-how, trade secrets, market opportunities, customers and business affairs.

"**Connection**" means the connection between Customer Equipment and the internet.

"**Customer**" is defined in the preamble to this Agreement.

"**Customer Area**" means the part of the Facility that is designated for the installation of the Customer Equipment.

"**Customer Equipment**" means the hardware equipment (including required PDUs) that is provided by Customer and installed in the Customer Area, including all software and firmware on such equipment other than any software and firmware owned or licensed by Provider.

"**Customer Representative**" means any officer, employee, agent, sub-contractor or other person identified by Customer as acting on Customer's behalf.

"**Data Center Rules**" means the then-current rules and procedures relating to physical access to the Facility.

"**Data Center Specifications**" is defined in Section 3.1.

"**Defaulting Party**" is defined in Section 17.1.

"**Deinstallation Commencement Date**" is defined in Section 17.3.

"**Demand Reduction Benefit Program**" means any scheme initiated by a power supplier, power network supplier or other third party in the power market area managed by the Electric Reliability Council of Texas, under which power consumers receive a benefit in connection with any limitation on their power demand during times of peak power usage.

"**Deposit**" is defined in Section 6.3.

"**Disposal Charge**" is defined in Section 17.3.

"**Engineering Services**" means services relating to Facilities engineering in connection with Customer's increase in power consumption requirements and the related increases in Customer Equipment associated therewith.

"**Facility**" means the data center operated by Provider at 2721 Charles Martin Hall Road, Rockdale, Texas 76567.

"**Force Majeure Event**" means any event beyond the reasonable control of a Party, including, without limitation, war, civil war, armed conflict or acts of terrorism or a public enemy or other catastrophes, riot, civil commotion, malicious damage, compliance with any law, regulation, rule, or any act, order, direction, or ruling of a Governmental Authority coming into force after the date of this Agreement, tornado, hurricane, severe storms, earthquake, lightning, fire, flood or other natural or environmental disaster, temperature and humidity above the cooling capabilities of the Facility, epidemic, quarantine, pressure waves caused by devices traveling at supersonic speeds, nuclear accident, acts of God, failure of a part of the power grid or related substationfailure of the Internet, failure or delay in the performance of Provider's third-party suppliers or of other third-party suppliers, including the supplier under the Power Supply Contract, and strikes, slowdowns, lockouts or other labor stoppages.

"**Governmental Authority**" means any domestic or foreign, supra-national, national, state, county, municipal, local, territorial or other government or bureau, court, commission, board, authority, taxing authority, agency (public or otherwise), or governmental entity or quasi-governmental entity (including any subdivision thereof), in each case anywhere in the world, having competent jurisdiction over a Party.

"**Hardware Control App**" means the application that is made available by Provider to permit Customer to manage the Customer Equipment.

"**Hardware Control Software**" means the software which enables management of the Customer Equipment by Customer and Provider via the Hardware Control App.

"**Hardware Control EULA**" is defined in Section 3.2.

"**Hardware Unit**" means each individual unit of Customer Equipment bearing a separate identification code.

"**Harmful Code**" means any software, hardware or other technologies, devices, or means, the purpose or effect of which is to permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner, (i) any computer, software, firmware, hardware, system (including equipment) or network, (ii) the Facility or portion thereof or (iii) any application or function of any of the foregoing or the integrity, use, or operation of any data processed thereby, and, in each case, includes any virus, malware, bug, Trojan horse, worm, backdoor, or other malicious computer code and any time bomb or drop-dead device.

"**Hosting Services**" is defined in Section 3.1.

"**Maintenance**" means any activity performed by Provider in order to maintain, upgrade or improve the Services, including any modification, change, addition, or replacement of any Provider hardware, or any part of, or machinery or other components of, the Facility.

"**Minimum Hosting Charge**" is defined in Section 6.1.

"**Mining Pool**" means the group of Bitcoin miners to which Customer determines to contribute the processing power of any particular piece of Customer Equipment in order to collaborate in finding new Bitcoin blocks.

"**Non-Defaulting Party**" is defined in Section 17.2.

"**Notice**" is defined in Section 19.

"**Parties**" is defined in the preamble to this Agreement.

"**PDU**" means power distribution unit.

"**Phase-out Period**" is defined in Section 17.3.

"**power**" means electric power.

"**Power Firmware**" means firmware that is made available by a third party, and that may be required in order to enable certain advanced power management functions. In all cases, the Power Firmware is licensed by the third party to Customer and is installed on the Customer Equipment by Provider only at the express direction of Customer.

"**Power Supply Contract**" means Provider's agreements with third parties related to the provision of power to the Facility.

"**Provider**" is defined in the preamble to this Agreement.

"**Racks**" means the racks provided by Provider and configured for installation of the particular Customer Equipment.

"**Related Services**" is defined in Section 3.2.

"**Remote Hands Service**" is defined in Section 3.5.

"**RFU Date**" or "**Ready-for-Use Date**" means December 31, 2020.

"Scheduled Maintenance" means any Maintenance activities for which Provider notified Customer at least 3 days in advance, which notice may be given by publication on the Hardware Control App.

"Service Rates" means Provider's then-current rates for Related Services and Advanced Remote Hands Services, as set forth in Annex 1.

"Service Charges" means amounts owed by Customer in connection with the Services.

"Service Level Default" is defined in Section 8.

"Service Level Credit" is defined in Section 8.

"Services" is defined in Section 3.2.

"Specified Power Draw" means the amount of power that is to be made available to Customer as part of the Hosting Services, as the same may be increased as provided in Sections 3.6 and 6.2.

"Term" is defined in Section 16.

"Termination Date" means the date this Agreement terminates or expires.

"Termination Event" is defined in Section 17.1.

"Ticket" means an electronic request for service generated in the Hardware Control App.

"Unscheduled Maintenance" means Maintenance that is not Scheduled Maintenance.

"Uptime" means the amount of time in the applicable month that the Hosting Services are available to Customer, as determined in accordance with Section 8.

"Uptime Service Level" is defined in Section 8.

"Working Hours" means the hours from 8:00 a.m. to 5:00 p.m., Central Time, on a Business Day.

3. Provider's Services

3.1. Facility

All Services are provided within the Facility, which is designed to meet the following specifications **(the "Data Center Specifications"):**

- power supply up to the Specified Power Draw;

transforming equipment;

-

- evaporative cooling;
- limited air filtration; and
- internet connectivity.

it being understood that each of the foregoing is made available to the Customer Area on a shared, non-exclusive and non-redundant basis.

Within the Facility, Provider does not guaranty that the Customer Area will be contiguous. The Customer Area may spread over several Building Units, and is not physically separated from areas in the Facility in which the equipment of other customers is hosted. Provider has the right to change the location of the Customer Area within the Facility and to relocate Customer Equipment, subject to the maintenance and service level obligations set forth in this Agreement.

3.2. Services

Provider shall provide Customer with the Hosting Services and the Related Services (together the **"Services") during the Term.**

The "Hosting Services" consist of:

- providing the Customer Area in accordance with the Data Center Specifications;
- providing Racks in the Customer Area;
- hosting the provided Customer Equipment in the Racks;
- hosting the Customer-provided PDUs installed in the Racks, as may be required by the particular Customer Equipment;
- making available the Hardware Control Software and Hardware Control App (it being understood that these components are subject to a separate license agreement (the "**Hardware Control EULA**"), but for which no separate license fee is payable);
- monitoring the fire detection and alarm system provided by Customer
- providing monthly reports to the Customer that will contain a summary of monthly power draw in the Customer Area as measured from power consumption meters; and
- providing basic physical security and physical access control for the Facility.

The "Related Services" consist of

- installation of Customer Equipment (as more particularly described in Section 3.3);
- the Basic Remote Hands Service (as more particularly described in Section 3.4); and
- deinstallation of Customer Equipment.

For the avoidance of doubt, the Related Services **are not optional, and the Customer's receipt of** and payment for the Related Services is a requirement for hosting the Customer Equipment in the Facility.

3.3. Installation

Customer agrees to pay hourly for installation services as defined in Annex 1 and includes, as it relates to the Customer Equipment, PDUs, and any other Customer-provided materials (e.g., the fire detection and alarm system, specific air filtration equipment, single phase liquid cooling units, etc.):

- unpacking;
- labelling;
- positioning in the Racks;
- installation and management of cables (power and LAN connection);
- inventorization and inventory management;
- installation of the Hardware Control Software and Power Firmware, if applicable;
- initial setting;
- disposal of packing materials; and
- installation of any Customer-provided fencing or other physical security devices that are agreed by the Parties

Installation does not include the provision or installation of any software other than the Hardware Control Software. In certain cases, a particular Hardware Unit may require an update to its firmware (as determined and designated by the manufacturer thereof). In such case, Provider will apply such firmware update in accordance with the instructions provided by such manufacturer. CUSTOMER HEREBY AGREES THAT PROVIDER SHALL HAVE NO LIABILITY OF ANY KIND FOR, AND DOES HEREBY WAIVE AND RELEASE ANY CLAIM IN CONNECTION WITH, ANY DAMAGE TO ANY

HARDWARE UNIT, ANY SOFTWARE OR FIRMWARE INSTALLED THEREON, OR ANY MANUFACTURER WARRANTY RIGHTS RELATING THERETO (INCLUDING ANY VOIDED WARRANTIES) ARISING OUT OF OR RESULTING FROM THE APPLICATION OF ANY SUCH MANUFACTURER-PROVIDED FIRMWARE UPDATE OR THE POWER FIRMWARE. IT IS THE EXPRESS INTENT OF THE PARTIES THAT THE FOREGOING APPLY EVEN IN RESPECT OF PROVIDER'S NEGLIGENCE.

The installation of any individual Hardware Unit is deemed completed when such Hardware Unit connects and sends computations to the Customer-designated Mining Pool. If Customer has not designated a Mining Pool, installation will be deemed complete when the applicable Hardware Unit powers up without fault (it being understood that in no event will Provider be required or requested to select a Mining Pool on Customer's behalf). In the case of faulty Hardware Units, installation is completed when Provider diagnoses the fault and provides a report to Customer.

Except as may otherwise be determined by Provider in its sole discretion, Customer shall not have any rights to install, uninstall, or otherwise physically access any Hardware Units in the Facility.

3.4. Basic Remote Hands Service

The basic Remote Hands Service (the "**Basic Remote Hands Service**") consists of the following tasks, as applicable, which will be performed by Provider based on the specific instructions of Customer with a cost defined in Annex 1 and billed weekly.

- pushing a button;
- switching a toggle;
- turning on/off of Customer Equipment;
- switching back on any breakers that have tripped during the 8am to 8pm CT time period;
- securing cabling connections;
- observing, describing and/or reporting of indicator lights or display information on machines or consoles;
- cable organization;
- modifying basic cable layout, labelling and/or re-labelling of Customer Equipment;
- cable patching;
- checking alarms for faults; and/or
- inserting/removing discs or equivalent storage devices provided by Customer into/from the Customer Equipment (it being understood that Provider shall not be responsible for, or have any obligation to verify, the contents of such devices).

Performance of these services will be available on a 24/7 basis. For the avoidance of doubt, the Basic Remote Hands Service is included as part of the Variable Hosting Rate and will not be subject to separate charges or invoices.

3.5. Advanced Remote Hands Service

The following activities, which require software or hardware changes requested by Customer (the "**Advanced Remote Hands Service**" and, together with the Basic Remote Hands Service, the "**Remote Hands Service**"), may be requested by Customer and provided by Provider on an "as-is" basis, subject to the prior mutual agreement of the Parties with a cost defined in Annex 1 and billed weekly.

- installation of applications or software on Customer Equipment;
- uploading of data to Customer Equipment;

- configuration of Customer Equipment operating system;
- hardware fault diagnosis;
- software fault diagnosis;
- rectification of problems caused by Customer Equipment or software;
- rectification of problems caused by Customer;
- cleaning of Customer Equipment;
- any service requiring the opening of the outer casing of any Customer Equipment; and
- providing support for customer installed IT security for the Facility, including the installation, maintenance and operation of a firewall and implementation and administration of an IT security policy to prevent unauthorized access, viruses, and ransomware; and
- monitoring and performing routine and as-required maintenance of the single phase liquid cooling units provided by Customer;
- managing the Customer-provided air filtration equipment;
- any other activity not expressly listed as a Related Service.

Performance of these services will be available on a 24/7 basis. Any particular Advanced Remote Hands Service that is commissioned by Customer and performed by Provider shall be deemed to be part of the "Services" under this Agreement. Customer hereby acknowledges that Provider makes no warranties of any kind in connection with the provision of the Advanced Remote Hands Services. Any software or firmware installed on any Hardware Unit as part of the Advanced Remote Hands Service must be pre-approved by Provider. Provider will install such software or firmware in accordance with Customer's instructions, and Provider shall have no obligation to install any software or firmware without, or not in accordance with, Customer's instructions. CUSTOMER HEREBY AGREES THAT IN THE ABSENCE OF PROVIDER'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, PROVIDER SHALL HAVE NO LIABILITY OF ANY KIND FOR, AND DOES HEREBY WAIVE AND RELEASE ANY CLAIM IN CONNECTION WITH, ANY DAMAGE TO ANY HARDWARE UNIT, ANY SOFTWARE INSTALLED THEREON, AND ANY RIGHT TO MANUFACTURER WARRANTY SERVICE RELATING THERETO, ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF ADVANCED REMOTE HANDS SERVICES. PROVIDER SHALL HAVE NO LIABILITY OF ANY KIND ARISING OUT OF ANY APPLICATIONS, SOFTWARE, DATA, OR OTHER MATERIALS PROVIDED BY CUSTOMER, AND IT IS THE EXPRESS INTENT OF THE PARTIES THAT THE FOREGOING APPLY EVEN IN RESPECT OF PROVIDER'S NEGLIGENCE.

CUSTOMER HEREBY ACKNOWLEDGES THAT ADVANCED REMOTE HANDS SERIVICE, INCLUDING ANY DISASSEMBLING OR OPENING OF THE OUTER CASING OF ANY CUSTOMER EQUIPMENT AND THE INSTALLATION OF ANY SOFTWARE OR FIRMWARE ON ANY HARDWARE UNIT, MAY VOID SOME OR ALL OF THE MANUFACTURER WARRANTIES RELATING TO SUCH HARDWARE UNIT (INCLUDING ANY SOFTWARE OR FIRMWARE INSTALLED THEREON). CUSTOMER HEREBY AGREES THAT PROVIDER SHALL HAVE NO LIABILITY OF ANY KIND FOR, AND DOES HEREBY WAIVE AND RELEASE ALL CLAIMS IN CONNECTION WITH, ANY SUCH VOIDED MANUFACTUER WARRANTIES ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF ADVANCED REMOTE HANDS SERVICES.

3.6. Engineering Services

The Engineering Services may be requested by Customer and provided by Provider on an "as-is" basis, subject to the prior mutual agreement of the Parties with a cost defined in Section 5. For the avoidance of doubt, Provider shall not be required to perform any Engineering Services unless and until (i) there is a written authorization executed by authorized representatives of each Party that sets forth the scope of the services and the charges to be paid therefor, and (ii) Customer has

executed a written acknowledgement of and express agreement with respect to the increase to the Specified Power Draw that will be applicable for the then-remaining Term and the Deposit that is payable in respect thereof.

3.7. Service Orders

Customer shall place all orders for Remote Hands Service through the Hardware Control App. Such orders are placed by opening a Ticket specifying the relevant Hardware Unit, the requested action, and all other information requested by the Hardware Control App. All such Tickets shall be deemed to be orders for such services, and Customer shall be obligated to pay all fees arising out of Provider's performance thereof.

Under certain circumstances the Hardware Control App has the ability to open Tickets automatically in response to certain performance characteristics and failure modes relating to the Customer Equipment, to the extent that such functionality is enabled by Customer. Any such Tickets that call for Basic Remote Hands Service shall be deemed to have been opened by the Customer, and be conclusive orders for such Basic Remote Hands Service. For the avoidance of doubt, the performance of this functionality under the Hardware Control App shall be governed by the Hardware Control EULA and not this Agreement.

4. Power Supply

4.1. Provider will make power available to and in connection with the Customer Area up to the amount of the then-applicable Specified Power Draw, subject to Sections 4.5 and 4.6.

4.2. Customer acknowledges that the Specified Power Draw will be allocated to the Customer Area for the power usage of the Customer Equipment, the evaporative cooling of the Customer Area, as well as any other components that may be installed in the Customer Area that require power, such as additional cooling, air filtration, and monitoring equipment (i.e., it is allocated to the collective requirements of all components in the Customer Area that draw power).

4.3. Customer acknowledges that Provider may, but is under no obligation to, provide power beyond the Specified Power Draw. Provider has the right to power down Customer Equipment in the event that (i) the power draw of the Customer Area (including the evaporative cooling therefor) is, in the aggregate, reasonably likely to exceed the Specified Power Draw, or (ii) individual Hardware Units are reasonably likely to draw beyond the power usage per unit set forth in Section 1.

4.4. If a Ramp-Up Period is provided in Section 1, then for the applicable periods set forth therein the Specified Power Draw shall be deemed to be replaced with the values of the Temporary Power Draw.

4.5. Customer acknowledges that the power to the Facility is ultimately provided by third parties, whose provision and transmission of power is governed by Applicable Law, including but not limited to rules and regulations promulgated by the Electric Reliability Council of Texas, Inc., and the Public Utility Commission of Texas (collectively, the "Power Regulations"). To the extent that the available power to the Facility is reduced pursuant to Power Regulations, and such reductions are not due to the wrongful actions of Provider, Provider may reduce the power available to Customer to an amount that is less than the Specified Power Draw; provided that in such case, Provider shall not treat Customer, in any respect, less favorably than any similarly situated Provider customer. Any such reductions, and any unavailability of the Hosting Services arising out of such reductions, shall not be deemed to be unavailability for purposes of calculating Uptime under the Uptime Service Level.

4.6. Customer hereby expressly consents to Provider's participation in any Demand Reduction Benefit Programs, as determined by Provider in its sole discretion. Customer acknowledges that any such participation may result in partial or complete reduction in power available to Customer from time to time, and that Provider may reduce the power available to Customer to an amount that is less than

the Specified Power Draw. Any such reductions, and any unavailability of the Hosting Services arising out of such reductions, shall not be deemed to be unavailability for purposes of calculating Uptime under the Uptime Service Level.

4.7. **Customer acknowledges that Provider's right to participate in any Demand Reduction Benefit** Programs, as determined by Provider in its sole discretion, forms an essential basis of the agreements set forth in this Agreement, and that, absent such right, the terms of this Agreement, including the Hosting Charges, would be substantially different.

4.8. Customer hereby expressly consents to the use of the Power Firmware in connection with the foregoing Demand Reduction Benefit Programs.

5. Access to the Facility; Data Center Rules

5.1. Customer Representatives may access the Customer Area of the Facility during Working Hours, in accordance with the Data Center Rules, for equipment inspections, installation, removal, additions, subtractions or physical maintenance or otherwise by prior appointment as mutually agreed. To obtain such access, Customer must provide prior notice to Provider in accordance with the Data Center Rules, and coordinate with Provider so that all such access may be escorted. Notwithstanding anything to the contrary, Provider shall have the right to remove any Customer **Representative from the Facility premises in Provider's sole discretion, at any** time, and without any liability to Customer or any Customer Representative.

5.2. Customer, and the Customer Representatives, shall comply with all Data Center Rules in connection with such access. Customer shall inform each applicable Customer Representative of the Data Center Rules prior to such Customer Representative accessing the Facility. Customer shall be liable for the acts and omissions of all Customer Representatives who access, or attempt to access, the Facility, including for their violation of the Data Center Rules, at least to the same extent as if such **acts and omissions were Customer's own**.

6. Hosting and Service Charges; Payments; Deposit

6.1. Charges for Hosting Services

In consideration of Provider's performance of the Hosting Services, Customer shall pay Provider each of the following fees (the "Hosting Fees"):

Power Charges

Each month, the *greater of* (i) the Power Charge for the aggregate amount of power actually consumed (expressed in kWh) by all power-consuming devices in the Customer Area, and (ii) the Power Charge for the volume of power represented by the then-current Specified Power Draw (expressed in kWh).

The "Power Charge" in respect of a stated amount of power (expressed in kWh) shall be determined based on a per-kWh cost that is equal to the effective per-kWh cost of power **to the Facility as a whole for the subject month (i.e., the Facility's wholesale p**ower cost (including both supply and delivery charges, including any retail adders) *less* any credit amounts actually received by Provider under applicable ERCOT load response programs); provided, however, that in the event that such effective per-kWh cost exceeds $0.01705, the Power Charge shall be determined using $0.01705 as the assumed Facility per-kWh power cost.

The Hosting Services charge is inclusive of any and all value added taxes, sales, use, excise and other similar transactional taxes or duties.

Hosting Share Payment

An amount equal to approximately 12.5% of customer EBITDAmeasured over a calendar-year basis. **The precise** "12.5% Rev Share Payment" which approximated customer EBITDA is defined in Annex 2.

6.2. Charges for Related Services, Advanced Remote Hands Services, and Engineering Services

Customer shall pay for Engineering Services as the Parties mutually agree, both as to scope thereof and the specific charges to be paid in respect thereof. As of the Effective Date, the Parties believe that such charges are likely to be approximately $160,000-200,000 USD per increase in committed megawatt, or $1.6mm to $2.0mm per 10-megawatt phase. The preliminary planning of the Parties indicates as phased build-out to a total of 130 committed megawatts, as follows:

- Phase 1 Engineering Services for 30 MW -$6,000,000.00
- Phase 2 Engineering Services for 30 MW -$6,000,000.00
- Phase 3 Engineering Services for 30 MW -$6,000,000.00
- Phase 4 Engineering Services for 30 MW -$6,000,000.00
- Phase 5 Engineering Services for 10 MW -$2,000,000.00

The Related Services and Advance Remote Hands Services shall be paid by Customer at the Service Rates, billed in half-hour (0.5h) increments. The Service Rates are exclusive of any value added taxes, sales, use, excise and other similar transactional taxes or duties. Customer will pay the value added tax and such other taxes referenced in the foregoing at the rate and in the manner prescribed by Applicable Law.

6.3. Deposit

Customer will pay to Provider as security for any obligations of Customer one or more security **deposits (the "Deposits") in amounts that are equal to any deposit amounts or other similar payments providing security for Provider's obligations to the supplier under any Power Supply** Contract, to the extent that such payment arises out of the Specified Power Draw or any increases **thereto. Provider's obligation to provide the Specified Power Draw shall be excused during any** period that Customer is in default of the obligations relating to the payment of Deposits.

Each Deposit will be paid to Provider on or before the date that such amounts are due under the Power Supply Contract and will be returned to Customer within six (6) months following the end of the Term, unless used by Provider to set off claims against Customer.

Customer acknowledges that the Deposits do not need to be segregated from other funds of Provider and that, in particular, Provider is authorized to use the Deposits to make any deposit payments it is required to make with its power provider or other suppliers.

6.4. Invoicing; Payments

Customer shall pay Provider the Hosting Fee relating to Power Charges each month, no later than ten (10) Business Days after the end of such month. Customer shall pay Provider the Hosting Fee relating to the 12.5% Rev Share Payment on a monthly, quarterly, or annually, with such payment interval to be selected by Customer, but provided, however, that in any case, payment shall be made within ninety (90) Business Days following the **closing of Customer's books for such period, but in** any event no later than one hundred twenty (120) calendar days following the endl of such period.

No later than ten (10) Business Days after the end of each month during the Term, Provider will invoice Customer for any Related Services, Advanced Remote Hands Services, or any Engineering Services, plus any applicable taxes.

Customer shall make such payment within ten (10) Business Days following the date of such invoice.

If Customer should become delinquent in the payment of any invoice, Provider shall have the right thereafter to request pre-payments for Service Charges, charges for Advanced Remote Hands Services, or Engineering Services, at its reasonable discretion.

All Payments among the Parties will be made in United States Dollars by wire transfer of immediately available funds into the Provider Account or Customer Account, as applicable, unless agreed otherwise by the Parties.

6.5. No Off-Set

Customer shall not set-off any amount owed or alleged to be owed by Provider to Customer against any other payments due to Provider.

6.6. Change of Hosting Charges

In the event of changes in or the establishment of laws, regulations, orders or policies by Governmental Authorities, including any adverse change to any Demand Reduction Benefit Program (but excluding a wholesale power price increase to Provider), Provider shall have the right to make corresponding increases in the Hosting Fees and the Services Rate, upon written notice and mutual agreement by the Customer.. Any such change shall become effective upon the next billing cycle.

7. Suspension of Services

7.1. Provider may suspend the Services, in whole or in part, for any of the following reasons, and in each case to the extent required by or mandated in respect of such underlying reason:

- to conduct Maintenance;
- to prevent, mitigate, or cease damage to Customer Equipment, any portion of the Facility, **Provider's systems (including equipment), or the equipment of other Provider customers;**
- as required in connection with a Force Majeure Event;
- in response to a request under a Demand Reduction Benefit Program;
- to comply with an order, instruction, or request of any Governmental Authority;
- suspension caused by the acts or omissions of Customer, including as requested by Customer;
- in the event Customer fails to pay Provider any amounts owed and overdue within three (3) Business Days of being notified that such payment is overdue; or
- the occurrence of a Termination Event giving Provider the right to terminate the Agreement.

7.2. Provider shall use commercially reasonable efforts to give prior notice, to the extent possible, to Customer before suspending the Services in whole, other than in situations where the suspension of Services occurs due to Scheduled Maintenance or the acts or omissions of Customer. Provider shall use commercially reasonable efforts to perform all Maintenance as Scheduled Maintenance.

7.3. **During any suspension of Services pursuant to this Section, Customer's access through the Hardware Control App will be "read only", w**hich will provide system status and other related information only, and Customer will not have the ability to open Tickets or control the Customer

Hardware. In no event shall such inability be deemed to be a breach of this Agreement or of the Hardware Control EULA.

8. Service Level Agreement

For each month that Provider provides the Hosting Services to Customer, Provider will make commercially reasonable efforts to provide the Hosting Services with an Uptime of at least 97.0% (the "Uptime Service Level").

For purposes of the determination of Uptime, the Hosting Services shall be considered to be "available" if power, cooling, and internet connectivity are available to the Customer Area (in accordance with the Data Center Specifications, and subject to the obligations and rights of Provider under this Agreement), independent of Customer's actual ability to operate the Customer Equipment for any particular purpose. Any unavailability caused by (i) Force Majeure Events, (ii) Scheduled Maintenance, (iii) Demand Reduction Benefit Programs, or (iv) other environmental factors (e.g., temperature or humidity), notwithstanding the Facility operating in accordance with the Data Center Specifications, will, in each case, not be considered unavailability for the purposes of calculating Uptime.

During any period of unavailability caused by any suspension of Services permitted by Section 6.1, other than any total suspension of the Hosting Services due to Unscheduled Maintenance, the Hosting Services shall be deemed to be available for purposes of calculating Uptime.

Customer's termination right set out in Section 17.1.4 of this Agreement shall be Customer's sole and exclusive remedy in connection with the occurrence of any Uptime Service Level defaults.

9. Customer Responsibilities

9.1. Use of Services

Customer's use of the Hosting Services shall at all times comply with the AUP. For the avoidance of doubt, Customer expressly acknowledge that the Facility has been purpose-built to support the physical requirements of devices that perform Bitcoin mining activities, and that such activities are the sole permitted use of the Hosting Services. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT PROVIDER SHALL NOT HAVE, AND THAT CUSTOMER HEREBY EXPRESSLY AND KNOWINGLY RELEASES AND WAIVES ANY CLAIMS FOR, ANY LIABILITY ARISING IN CONNECTION WITH CUSTOMER'S MINING ACTIVITIES, AND THAT ALL SUCH ACTIVITIES, INCLUDING BUT NOT LIMITED TO THE CHOICES RELATING TO MINING POOL PARTICIPATION, ARE AT CUSTOMER'S SOLE DISCRETION.

9.2. Designated Mining Pool

It is Customer's responsibility to determine and designate a Mining Pool for each Hardware Unit, and Customer is free to designate any Mining Pool, in its sole discretion. In no event shall Provider be obligated to designate any Mining Pool on Customer's behalf.

If Customer designates a Provider-sponsored private Mining Pool to be the Mining Pool, Customer acknowledges that Provider may receive remuneration in connection with the applicable Hardware Units' contribution to the mining conducted by such Provider-sponsored private Mining Pool.

Customer acknowledges that Provider may choose to operate its own or any other third party's cryptocurrency mining equipment in the Facility at any time during the Term.

9.3. Customer Equipment.

Customer shall be responsible for providing the Customer Equipment, and for causing it to arrive at **Provider's loading dock at the Facility**. **All costs associated with the foregoing, including but not** limited to shipping costs, hardware costs, software license costs, and import duties, shall be borne exclusively by Customer. In the event that Provider agrees to procure any such Customer **Equipment on Customer's behalf and for the account of Customer, such procurement shall be** governed by a separate written agreement between Customer and Provider.

Customer shall further be solely responsible for maintaining the Customer Equipment in operable condition by requesting Advanced Remote Hands Service in accordance with Section 3.7 (*Service Orders*) hereof. Customer acknowledges that Provider will not conduct maintenance of the **Customer Equipment, except to the extent Provider agrees to Customers' requests for Advanced** Remote Hands Service.

9.4. Hardware Control Software; Hardware Control App; Access

Customer hereby directs Provider to register each Hardware Unit in the Hardware Control Software and acknowledges that the Service Charges for Related Services and Remote Hands Service are based on the availability of the Hardware Control Software in relation to the Customer Equipment. For purposes of clarity, the Hardware Control Software is for purposes of management convenience only, and notwithstanding any information or analytics that may be or become available therein, at no point shall the Hosting Control Software be the system of record for purposes of determining the power consumption of Hardware Units, individually, or the Customer Equipment, in the aggregate. Further, Customer shall at all times maintain the ability to report to Provider through automated means, and for Provider to affirmatively query, in respect of each Hardware Unit (i) the designated Mining Pool, and (ii) the hash rate (current and cumulative over the applicable period) thereof.

9.5. Availability

Customer shall have a Customer Representative available for communication through the Hardware Control App at all times.

9.6. Insurance

Customer shall maintain insurance coverage consistent with prevailing industry practices, but in any event, during the Term of this Agreement, Customer shall insure and keep insured (i) the Customer Equipment against all manner of loss in an amount not less than the replacement cost of the Customer Equipment, including during shipping to or from the Facility and (ii) all Customer Representatives against their acts and omissions, injury, or death in connection with any visits to the Facility or this Agreement. Customer shall maintain such insurance coverage during the Term, but in no event starting later than the first delivery of such Customer Equipment and the first arrival of a Customer Representative at the Facility, respectively. CUSTOMER HEREBY AGREES THAT PROVIDER SHALL HAVE NO LIABILITY OF ANY KIND, AND DOES HEREBY WAIVE AND RELEASE ALL CLAIMS IN CONNECTION WITH THE CUSTOMER EQUIPMENT OR THE CUSTOMER REPRESENTATIVES, IN THE EVENT CUSTOMER DOES NOT OBTAIN SUCH INSURANCE COVERAGE, OR IN THE EVENT SUCH INSURANCE COVERAGE IS **INSUFFICIENT TO COVER CUSTOMER'S LOSSES IN CONNECTION WITH THE CUSTOMER** EQUIPMENT OR THE CUSTOMER REPRESENTATIVES.

9.7. Information; Know Your Customer

Customer will provide Provider with any information required under any laws and regulations or orders by any Governmental Authority, in particular, but not limited to, information required for so-**called "know your customer" checks under laws and** regulations for the prevention of money laundering and terrorism finance.

9.8. Compliance with Law

Customer is solely responsible for ensuring that its use of the Services and its operations in connection with this Agreement comply with all Applicable Law.

10. Ownership

10.1. Customer Equipment

The parties acknowledge and agree that the Customer Equipment is the sole property of the Customer. In no event shall Provider claim ownership of any of the Customer Equipment.

10.2. Ownership of Generated Assets

The Parties acknowledge and agree that any generated digital assets, including but not limited to blockchains, hash and digital currencies, generated from the operation of the Customer Equipment, are the sole property of the Customer. The foregoing shall not **impair in any way Customer's** obligations to pay the Fees hereunder, including the Hosting Fees arising out of Customer EBITDA, or any claims that Provider may make in connection therewith.

10.3. Liens / Encumbrances

Provider shall not sell any mortgage, lien, or any kind of encumbrance on the Customer Equipment,

11. Provider's Warranties

11.1. Capacity

Provider represents and warrants, as of the date hereof and as of the RFU Date that Provider is validly formed as the type of legal entity it purports to be in the jurisdiction of its formation and has the power to enter into this Agreement and perform the transactions contemplated thereunder.

11.2. Disclaimer

PROVIDER DOES NOT AND CUSTOMER ACKNOWLEDGES THAT PROVIDER DOES NOT GIVE ANY IMPLIED, EXPRESS OR STATUTORY WARRANTIES OR REPRESENTATIONS, INCLUDING ANY WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR NON-INFRINGEMENT.

12. Customer's Representations

Customer represents and warrants, as of the date hereof and as of the RFU Date that:

12.1. Capacity

Customer is validly formed as the type of legal entity it purports to be in the jurisdiction of its formation and has the power to enter into this Agreement and perform the transactions contemplated thereunder.

12.2. Customer Equipment

Unless specifically disclosed otherwise, Customer Equipment is owned by Customer and is free of any lien or other interest or encumbrance of any third-party. Customer Equipment, is free of any defects or Harmful Code which could cause any harm to the Facility or the systems, including equipment, of Provider or any other customer. The Customer Equipment does not, and its operation does not, infringe (or result from the misappropriation of) any intellectual property right, including any patent, copyright, trademark, trade secret, or other intellectual property right, of a third party.

12.3. No judgment or governmental order

There is no judgment, decree or order by any Governmental Authority applicable to Customer, which limits Customer in pursuing Customer Purpose or otherwise restricts Customer in performing its obligations under this Agreement or the transactions contemplated thereunder.

12.4. Export Matters

Customer is not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons and is not otherwise a person to whom Provider is legally prohibited to provide the Services. Customer shall not provide administrative access to the Services to any person (including any natural person or government or private entity) that is located in or is a national of any country that is embargoed or highly restricted under United States export regulations.

12.5. No Inducements

Neither Customer, any affiliate of Customer, nor any of its or their employees, officers, directors, or representatives acting on their behalf, have provided or offered, or will provide or offer, any illegal or improper bribe, kickback, payment, gift or anything of value (but excluding any reasonable and ordinary business entertainment or gifts of an unsubstantial value, that are customary in local business relationships and permitted by Applicable Law) to Provider, any affiliate of Provider, nor any of its or their employees, officers, directors, or representatives acting on their behalf, in each case in connection with this Agreement.

13. Exclusion and Limitation of Liability

13.1. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, DAMAGE TO CUSTOMER EQUIPMENT, LOSS OF ANY DATA (INCLUDING BITCOINS), REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER BASED UPON AN ACTION OR CLAIM IN CONTRACT, TORT, WARRANTY, NEGLIGENCE, INTENDED CONDUCT OR OTHERWISE (INCLUDING ANY ACTION OR CLAIM ARISING FROM THE ACTS OR OMISSIONS, NEGLIGENT OR OTHERWISE, OF THE LIABLE PARTY).

13.2. THE TOTAL AGGREGATE LIABILITY OF PROVIDER (FOR ANY AND ALL CLAIMS) FOR DIRECT DAMAGES UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER TO PROVIDER FOR THE SERVICES IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE EVENT(S) THAT FIRST GAVE RISE TO A CLAIM. PROVIDER SHALL NOT BE DEEMED TO BE A BAILEE IN RESPECT OF ANY CUSTOMER EQUIPMENT.

13.3. **Notwithstanding anything in this agreement to the contrary, Provider's liability in connection with this Agreement for or arising from Provider's recklessness, gross negligence, fraud, or wilful misconduct** shall be unlimited.

13.4. **Notwithstanding anything in this Agreement to the contrary, Customer's liability in connection with this Agreement for or arising from : (i) Customer's recklessness, gross negligence, fraud, or wilful** misconduct ; (ii) damage to the Facility, Provider**'s systems (including equipment), or any equipment of Provider's other customers, suppliers, contractors or other third parties caused by Customer, any Customer Representative, or Customer Equipment; (iii) Customer's breach of any of its** representations or warranties under this Agreement, or of its confidentiality or intellectual property **obligations hereunder; (iv) Customer's indemnification obligations hereunder; or (v) Customer's**

breach of, or non-compliance with, the AUP or the Data Center Rules, shall, in each case, be unlimited in type and amount.

14. Force Majeure

A Party shall not be in breach of this Agreement and shall not be liable to the other Party for any loss or other damages suffered by reason of any failure or delay of such Party in the performance of its obligations hereunder due to a Force Majeure Event; provided that under no circumstances will a Force Majeure Event excuse any failure or delay in the performance of a Party's payment obligations hereunder.

If a Party becomes aware of circumstances in which a Force Majeure Event affects or will affect such Party's ability to perform any of its obligations hereunder, it shall notify the other Party in writing as soon as reasonably possible, specifying the nature of the Force Majeure Event and its effect on the performance of such Party's obligations hereunder.

15. Indemnity

Customer shall indemnify and hold harmless Provider, its affiliates, and each of its and their respective officers, stockholders, directors, employees, and agents (collectively, the "Provider Indemnified Parties") from and against any and all liabilities, obligations, losses, damages, allegations, claims, demands, suits, actions, deficiencies, penalties, charges, taxes, levies, fines, judgments, settlements, costs, expenses, interest, attorneys' fees and disbursements, and accountants' fees and disbursements (collectively, "Losses") or threatened Losses due to third-party claims arising out of or relating to any of the following: (i) Customer's breach of, or non-compliance with, any of its agreements with third parties, the AUP, the Data Center Rules, the Hardware Control EULA, or any of Customer's representations or warranties under this Agreement; (ii) actual or alleged infringement or misappropriation of any intellectual property right, including any patent, copyright, trademark, trade secret, or other intellectual property right related to Customer Equipment, including any acquisition, provision, or use of Customer Equipment, or Customer's use of the Hosting Services; (iii) Customer Equipment, including all software and firmware thereon, or Provider's acquisition, provision, or use of Customer Equipment in accordance with this Agreement, except to the extent directly related to the Hardware Control App or Hardware Control Software; (iv) Customer's violation of Applicable Law; or (v) Customer's use of the Hosting Services.

Customer's obligations under this Section 15 include claims arising out of the acts or omissions of any Customer representative or Customer's users, any other person to whom Customer has given physical or virtual access to the Customer Equipment, and any person who gains access to the Customer Equipment or any of Provider's systems or Provider's other customers as a result of Customer's failure to use reasonable security precautions, even if the acts or omissions of such persons were not authorized by Customer.

If Provider receives notice of a claim that is covered by this Section 16, Provider shall promptly give Customer written notice thereof. Provider shall be allowed to conduct the defense of such claim at any time, including choosing legal counsel to defend such claim, provided that such choice is reasonable and is communicated to Customer in writing. Customer shall comply with Provider's reasonable requests for assistance and cooperation in the defense of such claim. Provider shall not settle the claim without Customer's written consent, which may not be unreasonably withheld, delayed or conditioned. Customer shall pay costs and expenses due under this Section 15 as Provider incurs them. There shall be no express or implied requirement of a judgment, final judgment on the merits, or other event occurring prior to Customer paying Provider such costs and expenses as Provider incurs them.

In the event Provider notifies Customer in writing that Provider does not desire to defend, or to continue to defend, such claim, Customer shall defend such claim using legal counsel of Customer's choice, provided that such choice is reasonable and is communicated to Provider in writing. Customer shall not settle the claim without Provider's written consent.

IT IS THE INTENTION OF THE PARTIES THAT CUSTOMER PROVIDE INDEMNIFICATION RIGHTS TO A PROVIDER INDEMNIFIED PARTY IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT EVEN FOR THE CONSEQUENCES OF THE INDEMNIFIED PARTY'S OWN NEGLIGENCE.

16. Term

The term of this Agreement will commence on the Effective Date and will continue until the expiration or termination of this Agreement in accordance with its terms (the "Term"). The Term may include, as applicable, the period between the Effective Date and the RFU Date, the Initial Term, and any Renewal Terms.

The Initial Term will commence on the RFU Date and will continue for the length of time indicated in the Key Terms. Neither Party shall have the right to terminate this Agreement prior to the end of the Initial Term; provided that each Party may terminate this Agreement for cause due to the occurrence of an applicable Termination Event.

If neither Party delivers Notice to the other Party at least three (3) months prior to the end of the Initial Term or then-current Renewal Term, then the Term shall be extended automatically for another twelve (12) months (each such twelve (12)-month period, a "Renewal Term").

Notwithstanding the foregoing or anything to the contrary, in no event shall the Term extend beyond the term of Provider's lease to the Facility. Upon the expiration or termination of such lease, the Term, if still in effect, shall be automatically terminated. To the extent applicable, Provider shall provide Customer with Notice of such expiration or termination, and of the resulting termination of this Agreement (i) at least three (3) months prior to such termination of this Agreement or (ii) as soon as practicable after Provider becomes aware of such termination of this Agreement, whichever is later.

17. Termination; Removal of Customer Equipment

17.1. Termination Events

Other than at the end of the Term, the non-breaching Party may terminate this Agreement upon the occurrence of one of the following events (each a "Termination Event"), as may be applicable to such non-breaching Party:

17.1.1. Payment Default

If a Party fails to make a payment to the other Party owed under this Agreement when due, unless such default is remedied within three (3) Business Days following the breaching Party's receipt of notice by the non-breaching Party of such failure.

17.1.2. Insolvency

If a Party is unable to pay its financial obligations when due, becomes subject to insolvency proceedings, applies for or institutes insolvency proceedings or offers or makes an arrangement with its creditors generally, or if a third-party applies for insolvency proceedings against such Party and such proceedings are not stayed or discharged within thirty (30) days, unless such proceeding is dismissed due to insufficiency of assets.

17.1.3. Material Breach

If a Party fails to perform or otherwise breaches a material obligation under this Agreement and such breach is either not susceptible to being cured or is not being cured within ten (10) Business Days after the breaching Party becomes aware of such breach. The Parties agree that any Force Majeure Event can never result in a material breach.

17.1.4. Service Level Defaults

If Provider suffers Service Level Defaults in three (3) consecutive months, in respect of which the Uptime during each such month was less than 80%.

17.2. Termination

Upon the occurrence of a Termination Event, the Party not having given rise to such Termination Event (the "Non-Defaulting Party") may terminate this Agreement with immediate effect as of the date set forth in a written notice thereof provided to the Defaulting Party.

17.3. Deinstallation and Removal of Customer Equipment

Customer (i) acknowledges that all Customer Equipment must be dismantled and removed from the Facility by the Termination Date and (ii) shall deliver to Provider (x) written shipping instructions for the Customer Equipment, (y) packaging materials suitable for the Customer Equipment, and (z) standard containers in which packaged Customer Equipment can be stored until it is shipped, in each case, in accordance with the following:

Within five (5) Business Days from receiving a Notice of termination from Customer, or having issued a notice of termination to Customer, Provider shall provide Customer with a written estimate of the number of days required for Provider to deinstall and package the Customer Equipment for shipment to Customer, and of the date on which such work is expected to begin (the "Deinstallation Commencement Date"). Provider shall use commercially reasonable efforts to begin such work on or around the Deinstallation Commencement Date, and in any event within a reasonable number of days from the Termination Date. In no event shall Provider begin deinstallation of the Customer Equipment prior to the Deinstallation Commencement Date. The period between the Deinstallation Commencement Date and the Termination Date is herein referred to as the "Phase-out Period."

During the Phase-Out Period Provider will deinstall the Customer Equipment, package it in Customer-provided packaging materials, and ship it to Customer in accordance with Customer's shipping instructions, all of which shall be at Customer's expense (at the Service Rates for Provider's work, and at the actual cost for all third party costs such as shipping). For the avoidance of doubt, all deinstallation must be performed by Provider, and Customer shall have no right to deinstall or remove Customer Equipment from the Facility.

During the Phase-out Period the Specified Power Draw will be adjusted downward on a straight-line basis, based on the assumption that an equal number of Hardware Units will be deinstalled on each Working Day during the Phase-out Period.

In the event Customer does not deliver the shipping instructions, packaging materials and containers to Provider in accordance with this Section 17.3, the deinstallation and removal of the Customer Equipment may be delayed beyond the Termination Date. To the extent such a delay occurs, all Hosting Charges shall be due and owing until such time as all Customer Equipment is deinstalled and removed from the Facility (for which Customer's provision of such instructions, materials and containers is a condition precedent). Provider will use commercially reasonable efforts to deinstall, remove and pack the Customer Equipment without damage; provided, however, that CUSTOMER HEREBY AGREES THAT EXCEPT FOR CLAIMS BASED ON PROVIDER'S RECKLESSNESS, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, PROVIDER SHALL HAVE NO LIABILITY OF ANY KIND FOR, AND DOES HEREBY WAIVE AND RELEASE ANY CLAIM IN CONNECTION

WITH, ANY DAMAGE TO ANY HARDWARE UNIT, ANY SOFTWARE INSTALLED THEREON, AND ANY RIGHT TO MANUFACTURER WARRANTY SERVICE RELATING THERETO, ARISING **OUT OF OR RESULTING FROM PROVIDER'S DEINSTALLATION, PACKAGING, AND** SHIPMENT OF THE CUSTOMER EQUIPMENT.

At the request of the Customer, the Provider can dispose of the Customer Equipment for a fixed **charge (the "Disposal Charge"). The Customer acknowledges that such Disposal Charge is** dependent on environmental and other regulations applicable during the Phase-out Period. The Provider will inform the Customer of the Disposal Charge upon request after a Notice of termination has been issued under this Agreement.

18. Confidentiality

18.1. The Parties agree that Confidential Information shall be used solely for the purpose for which it was furnished in connection with the performance of this Agreement and that they shall each hold confidential all Confidential Information and not disclose it to any third-parties, except that the Parties may disclose Confidential Information to their affiliates, to their auditors and legal advisors and to such Customer Representatives who need access to Confidential Information to perform their duties in connection with this Agreement. At the expiration of the Term, the Parties shall return any Confidential Information to the disclosing party or destroy such Confidential Information.

18.2. Any disclosure of Confidential Information permitted by Section 18.1 shall only be to the extent that any person who Confidential Information is provided to needs to know the same for the performance of their duties, and shall only be under the condition that such person acknowledges and agrees to be bound by, the confidentiality obligation under this Section.

18.3. The restrictions set out in Sections 18.1 and 18.2 above shall not apply to Confidential Information that:

18.3.1. was previously known to the receiving Party, independent from any disclosure under or in connection with this Agreement and free from any obligation to keep confidential;

18.3.2. is or becomes generally available to the public other than as a (direct or indirect) result of any unauthorised disclosure by the receiving Party or its representatives;

18.3.3. is shown to have been independently developed by the receiving Party;

18.3.4. the Parties agree in writing need not be kept confidential;

18.3.5. is required to be disclosed by law or regulation or by an order of any Governmental Authority.

In the case of Section 18.3.5, the receiving Party shall, to the extent legally and practically possible, inform the disclosing Party of the information to be disclosed and the timing and circumstances of such disclosure, providing the disclosing Party with an opportunity to avoid and limit any such disclosure.

19. Notices

Any Party can give notice under this Agreement (each **a "Notice") by sending an email or by mailing** a physical writing by FedEx Priority Overnight or registered mail, return receipt requested, to the

applicable email or mailing address listed below; provided that any Termination Notice, and any notice for breach, indemnification, or other legal matter, shall be given by mailing a physical writing by FedEx Priority Overnight or registered mail, return receipt requested, to the applicable mailing address listed below, sending an electronic copy of said physical writing via email to the applicable email address listed below.

To Provider:

Address:	Whinstone US Corporation 2721 Charles Martin Hall Road Rockdale, Texas 76567, USA
email:	c.harris@whinstone.us
Attention:	Chad Everett Harris

To Customer:

Address:	Rhodium JV LLC 7546 Pebble Drive Fort Worth, Texas 76118
email:	[email address]
Attention:	[representative]

Notices by email are deemed received as of the time sent, and notices by mail (and all notices required to be by mail) are deemed received as of the time delivered. If such time does not fall within a Business Day, as of the beginning of the first Business Day following such time. For purposes of counting days for notice periods, the Business Day on which the notice is deemed received counts as the first day. Notices shall be given in the English language.

Either Party may change its notice addresses for future Notices by providing the other Party with Notice of such change.

20. Assignment; Subcontracting

This Agreement shall be binding upon, and shall inure to the benefit of, the permitted successors and assigns of each Party hereto. Neither Party may assign this Agreement, in whole or in part, without the prior written consent of the other Party, except that either Party may assign this Agreement, in whole or in part, to an affiliate or successor or wholly-owned subsidiary of such Party as part of a corporate reorganization or a sale of some or all of its business; provided that the assigning Party notifies the other Party of such assignment in writing.

Provider may use subcontractors or affiliates to perform some or all of its obligations under this Agreement; provided that Provider shall remain responsible under this Agreement for work performed by its subcontractors and affiliates to the same extent as if Provider had performed such work itself.

21. Right of Publicity; Use of Marks

Customer agrees that Provider may publicly disclose that it is providing Services to Customer and **may use Customer's name and logo to identify Customer in** promotional materials, including press releases. Customer may not issue any press release or publicity regarding the Agreement, use the Provider name or logo, or any other trademarks, service marks, or other identifying indicia, or publicly disclose that it **is using the Services without first obtaining Provider's prior written approval of each** such disclosure.

22. Governing Law; Arbitration

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES. THE AGREEMENT SHALL NOT BE GOVERNED BY THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS. ALL DISPUTES HEREUNDER, WHETHER BASED IN STATUTORY, CONTRACT OR TORT CLAIMS, SHALL BE SUBMITTED TO BINDING ARBITRATION. THE ARBITRATION SHALL BE CONDUCTED IN MILAM COUNTY, TEXAS, AND SHALL BE CONDUCTED IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES **OF THE AMERICAN ARBITRATION ASSOCIATION (THE "AAA") IN EFFECT AT SUCH TIME**. THE ARBITRATION SHALL BE CONDUCTED BY ONE ARBITRATOR APPOINTED BY THE AAA, AND WHO IS SELECTED PURSUANT TO THE APPLICABLE RULES OF THE AAA. THE ARBITRATOR SHALL ISSUE A DECISION WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ANY JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING APPROPRIATE JURISDICTION. EITHER PARTY MAY BRING AN ACTION IN ANY COURT OF COMPETENT JURISDICTION TO COMPEL SUCH ARBITRATION, OR TO ENFORCE A PROPERLY ENTERED ARBITRATION AWARD.

NO CLAIM MAY BE BROUGHT AS A CLASS OR COLLECTIVE ACTION. CUSTOMER SHALL NOT ASSERT SUCH A CLAIM AS A MEMBER OF A CLASS OR COLLECTIVE ACTION THAT IS BROUGHT BY ANOTHER CLAIMANT. EACH PARTY AGREES THAT IT SHALL NOT BRING A CLAIM UNDER THE AGREEMENT MORE THAN TWO (2) YEARS AFTER THE TIME THAT THE CLAIM ACCRUED.

23. Miscellaneous

23.1. Survival

The following provisions shall survive termination or expiration of this Agreement: Confidential Information, Indemnification, Limitation on Damages, Notice, Governing Law / Arbitration, Miscellaneous, all provisions requiring Customer to pay any amounts (i) owed for Services provided under this Agreement prior to the Termination Date or otherwise (ii) otherwise owed by Customer hereunder, and any other provisions of this Agreement that, by their nature, would continue beyond termination or expiration of this Agreement.

23.2. No Lease

This Agreement does not create any real property interest for Customer in the Customer Area or the Facility, and Customer shall not, shall not attempt to, and shall not encourage any third party to file or otherwise create any liens or other property interest or liability on the Facility or any portion thereof.

23.3. Independent Contractor

Each Party is an independent contractor to the other Party in connection with this Agreement, and personnel used or supplied by a Party in the performance of this Agreement shall be and remain employees or agents of such Party and under no circumstances shall be considered employees or agents of the other Party. Each Party shall have the sole responsibility for supervision and control of it**s personnel. Except with to the extent Provider purchases Hardware Units on Customer's behalf** in accordance with this Agreement, Neither Party is an agent for the other Party, and neither Party has the right to bind the other Party in connection with any agreement with a third party.

23.4. No Third Party Beneficiaries

This Agreement is for the sole and exclusive benefit of the Parties hereto and their respective permitted successors and assigns. Nothing herein, express or implied, shall confer, or shall be construed to confer, any rights or benefits in or to any other person.

23.5. Remedies

The rights and remedies of either Party under this Agreement shall be cumulative and not exclusive or alternative.

23.6. Waiver

No failure or delay by either Party in requiring strict performance of any provision of this Agreement, no previous waiver or forbearance of the provisions of this Agreement by either Party, and no course of dealing between the Parties will in any way be construed as a waiver or continuing waiver of any provision of this Agreement.

23.7. Severability

In the event any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision will be enforced to the maximum extent possible under law and will, to the extent possible, be replaced by such enforceable provision most closely mirroring the Parties' intentions. All other provisions of this Agreement will remain unaffected by such invalidity or unenforceability and will remain in full force and effect. The Parties acknowledge and agree that the pricing and other terms in this Agreement reflect, and are based upon, the intended allocation of risk between the Parties and form an essential part of this Agreement.

23.8. Conflict

To the extent there is a conflict between or among the terms of this Agreement, the AUP, the Data Center Rules, and the Hardware Control EULA, the following shall be the order of precedence: (i) AUP; (ii) Hardware Control EULA; (iii) Agreement; (iv) Data Center Rules.

23.9. Interpretation

The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party. The words "include," "includes," and "including" (or similar terms) shall be deemed to be followed by the words "without limitation." The captions, titles, and section headings are for convenience only and are not intended to aid or otherwise affect the interpretation of this Agreement. The words "written" or "in writing" are used for emphasis in certain circumstances and shall not reduce or eliminate the notice requirements set forth in this Agreement. The use of a term defined herein in its plural form includes the singular and vice versa. The terms defined herein shall be inclusive of all tenses. All references to "days" shall be deemed to refer to calendar days, except as expressly stated otherwise.

23.10. Entire Agreement; Amendment

This Agreement is the only agreement between the Parties relating to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, and negotiations, whether written or oral, between the Parties relating to such subject matter. Unless otherwise expressly permitted in this Agreement, no modification, amendment, or waiver of this Agreement is effective or binding unless made in a writing that references this Agreement and is signed by both Parties.

The Key Terms and Services may be amended to modify, add, or remove Key Terms and Services by a writing that references this Agreement and that is signed by both Parties. In no event will the terms of Customer's purchase order or business form, or other standard or pre-printed terms that

Customer provides, be of any force or effect as between the Parties.

23.11. Counterparts

This Agreement and each exhibit or attachment hereto may be executed in counterparts, each of which shall constitute an original but all of which together shall constitute one and the same instrument, and if so executed in counterparts shall be enforceable and effective upon the exchange of executed counterparts or the exchange electronic transmissions of executed counterparts.

[Signature Page Follows.]

Rockdale, **December 31**, 2020

Chad Everett Harris

Whinstone US, INC

RHODIUM JV LLC

by: Cameron Blackmon

title: Manager

Annex 1

Services Rates

The hourly rates listed below include costs associated with essential equipment, such as cranes, heavy machinery, forklifts, hand tools, fuel, insurance, software, transportation, and handling. Provider will also handle administrative matters such as timekeeping, performance tracking, safety enforcement and incident response, payroll, and employee complaints.

Engineers

Lead Engineer - $425.00 per hour

Assistant Engineer - $250.00 per hour

Junior Engineer - $175.00 per hour

Administrators

Administrator - $135.00 per hour

Supervisors

Construction Supervisor - $85.00 per hour

Equipment Operation Supervisor - $85.00 per hour

Laborers

Skilled Laborers - $45.00 per hour

IT Service

Basic Remote Hand Service $70.00 per hour

Advance Remote Hand Service $140.00 per hour

Annex 2

12.5% Rev Share Payment

The "12.5% Rev Share Payment" as described in section 6.1 of this agreement shall be calculated based on what is effectively earnings before interest, taxes, depreciation, and amortization (EBITDA), adjusted for certain cashflow adjustments as indicated below. For avoidance of doubt in preparing such calculation, the formula and mechanical steps to calculate the **12.5% Rev Share Payment** shall be applied as follows:

- Step 1: Customer shall prepare its books and records based on its internal accounting policies and procedures for the Measurement Period in order to calculate Net Income.
- Step 2: Customer shall make certain tax adjustments, as prescribed by and in accordance with US tax law, to its Net Income in order to accurately estimate its annual federal, state and local **tax liability for the Measurement Period ("Cash Tax Estimate").**
- Step 3: Customer make certain deductions from Net Income for any forecasted working capital **and capital expenditure needs (excluding dividends) of the Customer for the future ("Retained Cash").**
- Step 4: Customer shall deduct from Net Income any contractual debt obligations service obligations Customer pays prior to the Lump Sum Hosting Pay**ment ("Debt Service")**
- Step 5: The result of Customer adjusting Net Income in Step 1 for steps 2, 3 and 4, shall be **defined as the preliminary cash available for payment ("Preliminary**-Cash-Available-For-**Payment").**

EXHIBIT 2

CAUSE NO. CV41873

WHINSTONE US, INC.	§	IN THE DISTRICT COURT OF
PLAINTIFF,	§	
	§	
V.	§	
	§	MILAM COUNTY, TEXAS
RHODIUM 30MW LLC, RHODIUM JV, LLC, AIR HPC LLC, AND JORDAN HPC LLC,	§	
	§	
	§	
	§	
DEFENDANTS.	§	JUDICIAL DISTRICT

FIRST AMENDED PETITION

Plaintiff Whinstone US, Inc. ("Whinstone") files this First Amended Petition against Defendants Rhodium30mw LLC ("Rhodium 30mw"), Rhodium JV, LLC ("Rhodium JV"), Air HPC, LLC ("Air HPC"), and Jordan HPC LLC ("Jordan HPC") (collectively, "Rhodium" or "Defendants") and states as follows:

I. PRELIMINARY STATEMENT

1. Whinstone has developed a Bitcoin mining data center located outside of Rockdale, Texas (the "Rockdale Facility") that is one of the largest Bitcoin mining data centers, by developed capacity, in North America. Pursuant to a series of hosting agreements with Whinstone, Rhodium uses part of the Rockdale Facility to mine Bitcoin. In exchange, Rhodium is contractually obligated to pay Whinstone hosting and service fees as calculated by the aforementioned agreements. Defendants refuse to pay Whinstone the full amounts owed—despite being provided notice and an ample opportunity to cure—and owe ***over $26 million*** to Whinstone in total. As a result, Whinstone sues Rhodium JV and Air HPC for breach of these agreements—seeking benefit-of-the-bargain damages consisting of the full amount of the past and future hosting fees owed and the amount of the outstanding and invoiced service fees—and a declaration that Whinstone has a right to terminate the hosting agreements.

2. Separately, Rhodium relies on a strained interpretation of prior agreements that have been superseded and/or novated by the parties' current hosting agreements to claim it must receive certain payments from Whinstone because of certain power credits allegedly accrued under the same. Even when ignoring those agreements are stale, the clear and unambiguous terms of the agreements simply do not entitle Rhodium to these alleged payments, which Rhodium has stated publicly are due to it under such agreements. Whinstone therefore asks the Court to declare that the prior agreements are no longer in effect and, in any event, that no money is owed to Rhodium under any agreement.

II. DISCOVERY CONTROL PLAN

3. Discovery shall be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

III. PARTIES

4. Plaintiff Whinstone is a Delaware corporation with its principal place of business in Rockdale, Texas.

5. Defendant Rhodium 30mw is a Delaware limited liability company with its principal place of business in Rockdale, Texas. The entity may be served with process through its registered agent: Corporation Service Company dba CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701. Alternatively, Rhodium 30mw may be served through its counsel: Peter Stris, Stris & Maher LLP, 777 S. Figueroa Street, Suite 3850, Los Angeles, California 90017.

6. Defendant Rhodium JV is a Delaware limited liability company with its principal place of business in Rockdale, Texas. The entity may be served with process through its registered agent: Corporation Service Company dba CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701. Alternatively, Rhodium JV may be served through its counsel: Peter Stris, Stris & Maher LLP, 777 S. Figueroa Street, Suite 3850, Los Angeles, California 90017.

7. Defendant Air HPC is a Delaware limited liability company with its principal place of business in Rockdale, Texas. The entity may be served with process through its registered agent: Corporation Service Company dba CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701. Alternatively, Air HPC may be served through its counsel: Peter Stris, Stris & Maher LLP, 777 S. Figueroa Street, Suite 3850, Los Angeles, California 90017.

8. Defendant Jordan HPC is a Delaware limited liability company with its principal place of business in Rockdale, Texas. The entity may be served with process through its registered agent: Corporation Service Company dba CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701. Alternatively, Air HPC may be served through its counsel: Peter Stris, Stris & Maher LLP, 777 S. Figueroa Street, Suite 3850, Los Angeles, California 90017.

IV. JURISDICTION AND VENUE

9. This Court has jurisdiction over this case as the amount in controversy is within the jurisdictional limits of this Court and this is an action for declaratory judgment.

10. This Court has personal jurisdiction over Rhodium 30mw, Rhodium JV, Air HPC, and Jordan HPC because they have purposefully availed themselves of the benefits and protections of Texas law and are Texas residents.

11. Venue is proper in this Court pursuant to: (1) Texas Civil Practice and Remedies Code § 15.002(1) because all or a substantial part of the omissions giving rise to Whinstone's claim occurred in Milam County; and (2) Texas Civil Practice and Remedies Code § 15.002(3) because Milam County is the county in which Rhodium 30mw, Rhodium JV, Air HPC, and Jordan HPC are principally located. Additionally, because Whinstone's claims arise from the same transaction, occurrence, or series of transactions or occurrences, there are multiple defendants in this suit, and venue in this Court is proper as to one defendant, venue is proper in this Court for all defendants pursuant to Texas Civil Practice and Remedies Code § 15.005.

V. RULE 47 STATEMENT

12. Pursuant to Texas Rule of Civil Procedure 47, Whinstone seeks non-monetary relief, monetary relief over $1,000,000, attorneys' fees, and court costs incurred in connection with this dispute.

VI. FACTS

A. EACH DEFENDANT AGREED TO A HOSTING AGREEMENT.

13. On December 31, 2020, Whinstone and Rhodium JV entered into a written hosting agreement ("Rhodium JV Agreement"), which, by its express terms, superseded the parties' prior agreements and understandings, including the parties' prior hosting agreements entered into on or around April 3, 2020 and July 9, 2020 (the "Prior Rhodium JV Agreements") and replaced (by novation) the written hosting agreement between Whinstone and Rhodium 30mw ("Rhodium 30mw Agreement") entered into on or around July 7, 2020.[1] Under the Rhodium JV Agreement, Whinstone agreed to allow Rhodium JV to utilize the Rockdale Facility for Bitcoin mining and provide certain services in support of the same. In exchange, Rhodium JV agreed to pay Whinstone certain hosting fees ("Rhodium JV Hosting Fees") and service fees ("Rhodium JV Service Fees") as dictated in the Rhodium JV Agreement.

14. On December 31, 2020, Whinstone and Air HPC entered into a written hosting agreement ("Air HPC Agreement"), which replaced (by novation) the written colocation agreement between Whinstone and Jordan HPC ("Jordan HPC Agreement") entered into on or around November 2, 2020.[2] Under the Air HPC Agreement, Whinstone agreed to allow Air HPC to utilize the Rockdale Facility for Bitcoin mining and provide certain services in support of the same. In exchange, Air HPC agreed to pay Whinstone certain hosting fees ("Air HPC Hosting Fees") and service fees ("AIR HPC Service Fees") as dictated in the Air HPC Agreement.

[1] These agreements contain confidentiality clauses, so they are not attached to this petition.

[2] *Id*.

B. WHINSTONE PERMITS RHODIUM USE OF THE ROCKDALE FACILITY.

15. After executing the Rhodium JV and Air HPC Agreements, Whinstone allowed Rhodium to use the Rockdale Facility to mine Bitcoin.

16. Throughout the course of the parties' relationship, Rhodium used the Rockdale Facility to mine Bitcoin, substantially benefitting from the same.

C. RHODIUM REFUSES TO PAY THEIR HOSTING AND SERVICE FEES.

17. Under their respective agreements, Rhodium JV and Air HPC were to pay Whinstone Hosting and Service Fees based upon the terms therein.

18. Despite profiting from the Rhodium JV and Air HPC Agreements, Rhodium JV and Air HPC deliberately miscalculated the Rhodium JV and Air HPC Hosting Fees—which are meant to provide Whinstone with a share of Rhodium's net revenue from its mining operations at the Rockdale Facility—due for the years 2021 and 2022 and the first quarter of 2023. Specifically, Whinstone estimates approximately $27.6 million, $10 million, and $1.3 million in Hosting Fees are due under the agreements for these time periods, respectively. However, Rhodium has only paid approximately $8.5 million, $3.5 million, and $500,000 in Hosting Fees for these respective time periods—a more than $26 million difference. In short, Rhodium drastically understated and underpaid the amount of money rightly due Whinstone.

19. If that were not enough, Whinstone has provided certain services over the past year to Rhodium JV and Air HPC in accordance with their respective agreements. Specifically, Rhodium accrued approximately $25,000 in labor charges. As a result, Whinstone issued invoices to Rhodium JV and Air HPC for these Service Fees. But, again, these invoices have not been paid in full.

20. On or about May 17, 2022, Whinstone sent a letter to Rhodium JV and Air HPC to put them on notice of their improper Hosting Fees calculations (*i.e.*, a material breach) and demand that they cure the same.

21. On April 5, 2023, Whinstone again sent a letter to Rhodium JV and Air HPC: (1) reiterating the improper Hosting Fees calculation; (2) putting them on notice of the 2022 and first quarter 2023 Hosting Fees non-payments and both entities' failure to pay all Service Fees due (*i.e.*, also material breaches); and (3) demanding that they cure the foregoing by paying the full amount due Whinstone.

22. Despite notice and the opportunity to cure, Rhodium JV and Air HPC have failed or refused to pay Whinstone full amounts due and owed under the agreements.

23. Left with no other option, Whinstone files this suit seeking full recovery of the Hosting Fees (both past and future) and Service Fees owed under the Rhodium Agreements and a declaration that Whinstone has the right to terminate the Rhodium JV and Air HPC Agreements.

D. NO POWER CREDITS ARE OWED TO ANY RHODIUM ENTITY.

24. As noted above, Whinstone and Rhodium JV entered into the Prior Rhodium JV Agreements and Whinstone and Rhodium 30mw entered into the Rhodium 30mw Agreement.[3] Under those agreements, Whinstone agreed to allow Rhodium JV and Rhodium 30mw to utilize the Rockdale Facility for Bitcoin mining and to provide a certain amount of electricity to these Rhodium entities to do so. In exchange, these Rhodium entities agreed to pay Whinstone certain hosting fees. Rhodium agreed that the Hosting Fees, including the below-market passthrough cost of power, were only provided to Rhodium on the basis of Whinstone's participation in certain demand-response benefit programs established by Electric Reliability Council of Texas ("ERCOT"). The parties agreed that the benefits of such participation would be applied to Rhodium's passthrough cost of power, reducing it from market rates to no more than a specified price per kilowatt-hour ("kWh"). Additionally, the agreement provided that if Whinstone sells electricity through the ERCOT grid, outside of ERCOT demand-response benefit programs, in lieu of providing electricity to Rhodium JV and Rhodium 30mw, then Rhodium JV and Rhodium 30mw would be entitled to a share of the profit when electricity prices exceeded a specified

[3] *Id.*

percentage of the market rate paid by Whinstone for power provided to the Rockdale Facility (the "Rhodium Power Credits"). There were no such instances while the Prior Rhodium JV Agreements and Rhodium 30mw Agreements were in effect.

25. However, the Rhodium JV Agreement, which as detailed above, superseded the Prior Rhodium JV Agreements and replaced the Rhodium 30mw Agreement, does not provide for Rhodium Power Credits.

26. Separately, under the Jordan HPC Agreement, Whinstone agreed to provide a pro-rata credit to Jordan HPC for the passthrough cost of power component of Rhodium's hosting fees due to Whinstone (the "Jordan HPC Power Credit") for rebates Whinstone received from its participation in ERCOT demand-response benefit programs, to reduce Rhodium's passthrough cost of power to a specified price per kWh. At no point while the Jordan HPC Agreement was in effect did the credits allocated to Rhodium's passthrough cost of power from the rebates Whinstone received from its participation in ERCOT demand-response programs reduce Rhodium's passthrough cost of power below a specified price per kWh.

27. However, the Air HPC Agreement—which replaced the Rhodium JV Agreement (as detailed above)—does not provide for the Jordan HPC Power Credit.

28. In October 2022, Rhodium—for the first time—requested that Whinstone "verify" Rhodium is "owed" outstanding Power Credits from Whinstone, which, apparently, Rhodium has accrued as an asset on its books, for certain power credits Whinstone received that are unrelated to the aforementioned agreements.[4]

29. Whinstone rejected Rhodium's request, including because no Power Credits exist under the Rhodium JV Agreement and the Air HPC Agreement. Further, even if they had not been superseded and replaced by the Rhodium JV Agreement and the Air HPC Agreement, no Power

[4] Notably, from December 31, 2020 to the present, Whinstone and Rhodium JV performed solely in accordance with the Rhodium JV Agreement. Indeed, not once before its October 2022 demand did Rhodium JV attempt to invoke any rights under the Prior Rhodium JV Agreement.

Credits would have been owed to Rhodium under the plain terms of the Prior Rhodium JV Agreements, the Rhodium 30mw Agreement, and Jordan HPC Agreement. Despite this, Rhodium continues to demand payment.

30. Whinstone thus asks this Court to declare otherwise.

VII. CAUSES OF ACTION

A. COUNT 1 – BREACH OF THE RHODIUM AGREEMENTS

31. Whinstone repeats and incorporates by reference all preceding paragraphs as if fully restated herein.

32. The Rhodium JV and Air HPC Agreements are valid and binding contracts between Whinstone, Rhodium JV, and Air HPC, and represent the full and final understanding of the parties with respect to the Rhodium-Whinstone Bitcoin mining hosting relationship at the Rockdale Facility.

33. Under these agreements, Rhodium JV and Air HPC were to calculate and pay the Rhodium JV and Air HPC Hosting and Service Fees pursuant to the terms stated therein.

34. Rhodium JV and Air HPC improperly understated the Rhodium JV and Air HPC Hosting Fees due Whinstone, and Rhodium JV and Air HPC failed to pay the Hosting and Service Fees. As a result, Rhodium JV and Air HPC have materially breached their respective agreements.

35. Whinstone has been damaged by Rhodium JV and Air HPC's conduct. Whinstone seeks recovery of the benefit-of-the-bargain damages for the true amount of the past and future Hosting Fees owed and the Service Fees invoiced under the Agreements under the agreements, plus reasonable attorneys' fees, pre- and post-judgment interest, and court costs.

B. COUNT 2 – DECLARATORY RELIEF

36. Whinstone repeats and incorporates by reference all preceding paragraphs as if fully restated herein.

37. Whinstone, Rhodium 30mw, Rhodium JV, Air HPC, and Jordan HPC entered into various agreements.

38. Because Whinstone's rights are affected by these agreements, Whinstone is entitled to Texas Civil Practice & Remedies Code § 37.004 to obtain a declaration determining Whinstone's rights and status under the same.

39. Despite being provided notice and an opportunity to cure, Rhodium JV and Air HPC are in material breach of their respective agreements by refusing to pay the true amount of the Hosting Fees to Whinstone and invoiced Services Fees to Whinstone.

40. As a result, Whinstone believes it is permitted to terminate these agreements under the agreements' terms and Texas law.

41. Additionally, Rhodium believes is entitled to the Power Credits under the Prior Rhodium JV Agreements, Rhodium 30mw Agreement, and/or Jordan HPC Agreement. However, Whinstone believes these agreements have been superseded and/or replaced and, in any event, no Power Credit is owed to Rhodium under any agreement.

42. Therefore, a justiciable controversy exists between Whinstone and Rhodium.

43. To resolve this dispute, Whinstone requests that the Court declare:

i. Rhodium JV and Air HPC are in material breach because they did not properly calculate and pay the Rhodium JV and Air HPC Hosting Fees under the terms of their respective agreements nor pay the invoiced Service Fees due and owing under the same;

ii. Whinstone has a contractual and legal right to terminate the Rhodium JV Agreement and Air HPC Agreement;

iii. The Prior Rhodium JV Agreements, Rhodium 30mw Agreement, and Jordan HPC Agreement are no longer in effect because they were superseded and/or replaced by the Rhodium JV or Air HPC Agreements; and

iv. Whinstone is not liable to Rhodium for any Power Credits under the plain and unambiguous terms of the Rhodium JV Agreement, Prior Rhodium JV Agreement, Rhodium 30mw Agreement, Jordan HPC Agreement, and Air HPC Agreement.

VIII. ATTORNEYS' FEES

44. Plaintiffs are entitled to their reasonable attorneys' fees and costs incurred through trial and final appeal in this cause in accordance with Texas Practice and Remedies Code §§ 38.001 and 37.009 and all other applicable law.

IX. CONDITIONS PRECEDENT

45. All conditions precedent to the recovery sought herein have been met, excused, or otherwise have been waived.

X. RELIEF REQUESTED

46. For the reasons set forth herein, Whinstone asks that Rhodium 30mw, Rhodium JV, Air HPC, and Jordan HPC be cited to appear and answer this suit and, upon final trial, the Court render judgment in favor of Whinstone and against Rhodium as follows:

- Enter judgment in favor of Whinstone on each of its claims;
- Declare that Rhodium JV and Air HPC are in material breach of their respective agreements; Whinstone has a contractual and legal right to terminate the Rhodium JV Agreement and Air HPC Agreement; the Prior Rhodium JV Agreements, Rhodium 30mw Agreement, and Jordan HPC Agreement are no longer in effect because they were superseded and/or replaced by the Rhodium JV or Air HPC Agreements; and Whinstone is not liable to Rhodium for any Power Credits under the plain and unambiguous terms of the Rhodium JV Agreement, Prior Rhodium JV Agreements, Rhodium 30mw Agreement, Jordan HPC Agreement, and Air HPC Agreement;
- Award Whinstone the full amount of the past and future Hosting and Service Fees due under the Rhodium JV and Air HPC Agreements, plus its attorneys' fees, pre- and post-judgment interest, and court costs; and
- Award all other relief, general or special, either at law or in equity, to which Whinstone may be justly entitled to receive.

Date: May 3, 2023

Respectfully submitted,

/s/ Robert T. Slovak

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document will be served on all Defendants in accordance with the Texas Rules of Civil Procedure.

/s/ Brandon C. Marx

Brandon C. Marx

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Tanya Durham on behalf of Robert Slovak
Bar No. 24013523
tdurham@foley.com
Envelope ID: 75294719
Filing Code Description: Amended Filing
Filing Description: Plaintiff's First Amended Petition
Status as of 5/4/2023 8:17 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Robert Slovak		rslovak@foley.com	5/3/2023 7:04:33 PM	SENT
Brandon Marx		bmarx@foley.com	5/3/2023 7:04:33 PM	SENT
Tanya Durham		tdurham@foley.com	5/3/2023 7:04:33 PM	SENT

EXHIBIT 3

COURT OF APPEALS

THIRD DISTRICT OF TEXAS
P.O. BOX 12547, AUSTIN, TEXAS 78711-2547
www.txcourts.gov/3rdcoa.aspx
(512) 463-1733

Wednesday, June 19, 2024

The Honorable Karen Berry
District Clerk Milam County
102 Fannin, Suite 5
Cameron, TX 76520
* DELIVERED VIA E-MAIL *

RE: Court of Appeals Number: 03-23-00853-CV
Trial Court Case Number: CV41873

Style: Whinstone US Inc.
v. Rhodium 30MW, LLC; Rhodium JV, LLC; Air HPC, LLC; Jordan HPC, LLC; Rhodium Encore, LLC; Rhodium 2.0, LLC; and Rhodium 10MW, LLC

Dear Ms. Berry:

Enclosed, with reference to the above cause, is the mandate of this Court. Please file and execute in the usual manner. Your cooperation in this regard is appreciated.

In addition, as required by Texas Government Code, Sec. 51.204(d), the trial court clerk is notified that we will destroy all records filed in respect to this case with the exception of indexes, original opinions, minutes and general court dockets no earlier than six (6) years from the date final mandate is issued.

Very truly yours,

Jeffrey D. Kyle, Clerk

cc: Mr. William T. Thompson
Mr. Robert T. Slovak
Ms. Alexis Swartz

M A N D A T E

THE STATE OF TEXAS

TO THE 20TH DISTRICT COURT OF MILAM COUNTY, GREETINGS:

Trial Court Cause No. CV41873

Before our Court of Appeals for the Third District of Texas on March 27, 2024, the cause on appeal to revise or reverse your judgment between

Whinstone US Inc.

No. 03-23-00853-CV v.

Rhodium 30MW, LLC; Rhodium JV, LLC; Air HPC, LLC; Jordan HPC, LLC; Rhodium Encore, LLC; Rhodium 2.0, LLC; and Rhodium 10MW, LLC

Was determined, and therein our Court of Appeals made its order in these words

This is an appeal from the interlocutory order signed by the trial court on December 12, 2023. Having reviewed the record and the parties' arguments, the Court holds that there was reversible error in the order. Therefore, the Court reverses the trial court's interlocutory order and renders judgment dissolving the order. Appellees shall pay all costs relating to this appeal, both in this Court and in the court below.

Wherefore, we command you to observe the order of our Court of Appeals in this behalf and in all things have the order duly recognized, obeyed, and executed.

Witness the Honorable Darlene Byrne, Chief Justice of the Court of Appeals for the Third District of Texas, with the seal of the Court affixed in the City of Austin on Wednesday, June 19, 2024.

JEFFREY D. KYLE, CLERK

By: Courtland Crocker, Deputy Clerk

BILL OF COSTS

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

No. 03-23-00853-CV

Whinstone US Inc.

v.

Rhodium 30MW, LLC; Rhodium JV, LLC; Air HPC, LLC; Jordan HPC, LLC; Rhodium Encore, LLC; Rhodium 2.0, LLC; and Rhodium 10MW, LLC

(No. CV41873 IN 20TH DISTRICT COURT OF MILAM COUNTY)

Type of Fee	Charges	Paid	By
FILING	$10.00	E-PAID	WILL THOMPSON
FILING	$10.00	E-PAID	WILL THOMPSON
SUPP. REPORTER'S RECORD	$5,631.30	UNKNOWN	UNKNOWN
CLERK'S RECORD	$749.00	UNKNOWN	UNKNOWN
FILING	$25.00	E-PAID	TANYA DURHAM
FILING	$100.00	E-PAID	TANYA DURHAM
STATEWIDE EFILING FEE	$30.00	E-PAID	TANYA DURHAM
SUPREME COURT CHAPTER 51 FEE	$50.00	E-PAID	TANYA DURHAM
MOTION FEE	$10.00	E-PAID	WILL THOMPSON
MOTION FEE	$10.00	E-PAID	TANYA DURHAM
MOTION FEE	$10.00	E-PAID	TANYA DURHAM
REPORTER'S RECORD	$182.00	UNKNOWN	UNKNOWN

Balance of costs owing to the Third Court of Appeals, Austin, Texas: 0.00

Court costs in this cause shall be paid as per the Judgment issued by this Court.

I, **JEFFREY D. KYLE, CLERK** OF THE THIRD COURT OF APPEALS OF THE STATE OF TEXAS, do hereby certify that the above and foregoing is a true and correct copy of the cost bill of THE COURT OF APPEALS FOR THE THIRD DISTRICT OF TEXAS, showing the charges and payments, in the above numbered and styled cause, as the same appears of record in this office.

IN TESTIMONY WHEREOF, witness my hand and the Seal of the **COURT OF APPEALS** for the Third District of Texas on June 19, 2024.

JEFFREY D. KYLE, CLERK

By: Courtland Crocker, Deputy Clerk

EXHIBIT 4

CAUSE NO. 153-354718-24

WHINSTONE US, INC.,	§	IN THE DISTRICT COURT OF
	§	
PLAINTIFF,	§	
	§	
V.	§	
	§	
IMPERIUM INVESTMENT HOLDINGS LLC, NATHAN NICHOLS, CHASE BLACKMON, CAMERON BLACKMON, NICHOLAS CERASUOLO, RHODIUM ENTERPRISES, INC., RHODIUM TECHNOLOGIES, LLC, AND RHODIUM RENEWABLES, LLC,	§	TARRANT COUNTY, TEXAS
	§	
DEFENDANTS	§	_____ JUDICIAL DISTRICT

WHINSTONE US, INC.'S ORIGINAL PETITION

Plaintiff Whinstone US, Inc. files this Original Petition against the above-named defendants.

I. PARTIES

1. Plaintiff Whinstone US, Inc. ("Whinstone") is a Delaware corporation with its principal place of business in Rockdale, Texas.

2. Defendant Imperium Investment Holdings LLC ("Imperium"), a Wyoming limited liability corporation formed in 2020, touts itself as "a private equity group that aims to bring worldwide application of high-performance computing through immersion cooling." Its managing partners—Nathan Nichols, Chase Blackmon, Cameron Blackmon and Nicholas Cerasuolo (collectively, the "Individual Defendants")—boast "a combined 40+ years of experience in industrial scale project management, venture capital, and private equity" having "completed over 1,200 projects/transactions ranging from $5MM to $7B with successful exits >$300MM." By virtue of owning 100% of the Class B common stock of Rhodium Enterprises, Imperium controls the voting power of Rhodium Enterprises and, thus, controls Rhodium

Technologies which is owned by Imperium (~62%) and Rhodium Enterprises (~38%). On information and belief, through its control of Rhodium Enterprises, Rhodium Technologies and Rhodium Renewables (collectively the "Rhodium Defendants"), Imperium directed, participated in, authorized, and/or ratified the complained of actions and conduct of the Rhodium Defendants. Although it has not qualified to transact business in Texas, Imperium maintains a principal office located at 7546 Pebble Drive, Fort Worth, Texas 76118. Imperium may be served with process through its registered agent: Corporation Service Company, 1821 Logan Avenue, Cheyenne, Wyoming 82001.

3. Defendant Rhodium Enterprises, Inc. ("Rhodium Enterprises"), a Delaware corporation formed April 22, 2021, characterizes itself as "a founder-led, Texas based, digital asset technology company utilizing proprietary tech to self-mine bitcoin." In reality, Rhodium Enterprises is but a holding company, its only assets being 100% control over, and an approximately 38% ownership interest in the economic value of, Rhodium Technologies. Rhodium Enterprises maintains its principal place of business in Rockdale, Texas and may be served with process through its registered agent: Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

4. Defendant Rhodium Technologies, LLC f/k/a Rhodium Enterprises, LLC ("Rhodium Technologies"), a Delaware limited liability company formed October 23, 2020, now directly or indirectly owns all outstanding equity interests in various subsidiaries through which the Rhodium Defendants operate. Rhodium Technologies maintains its principal place of business in Rockdale, Texas and may be served with process through its registered agent: Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

5. Defendant Rhodium Renewables, LLC, a Delaware limited liability company formed March 17, 2021, engages in cryptocurrency mining operations at a facility leased from Temple Green Data LLC. Rhodium Renewables is, upon information and belief, a wholly-owned subsidiary of Rhodium Technologies. Rhodium Renewables maintains its principal place of business in Rockdale, Texas and may be served with process through its registered agent: Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

6. Nathan Nichols ("Nichols"), a Texas resident, controls 25% of the voting interests in Imperium. Through Imperium, Nathan Nichols indirectly owns voting and/or non-voting equity interests in Rhodium Enterprises and Rhodium Technologies. He also serves as an officer and/or director of Rhodium Enterprises and Rhodium Technologies. On information and belief, Nathan Nichols personally directed, participated in, authorized, and/or ratified the complained of actions and conduct of Imperium and the Rhodium Defendants. Nathan Nichols can be served at his residence located at 3000 Gracie Kiltz Lane #307, Austin, Texas 78758.

7. Chase Blackmon ("Ch. Blackmon"), a Texas resident, controls 25% of the voting interests in Imperium. Through Imperium, Chase Blackmon indirectly owns voting and/or non-voting equity interests in Rhodium Enterprises and Rhodium Technologies. He also serves as an officer and/or director of Rhodium Enterprises and Rhodium Technologies. On information and belief, Chase Blackmon personally directed, participated in, authorized, and/or ratified the complained of actions and conduct of Imperium and the Rhodium Defendants. Chase Blackmon can be served at his residence located at 4412 Summercrest Ct., Fort Worth, Texas 76109.

8. Cameron Blackmon ("Ca. Blackmon"), a Texas resident, controls 25% of the voting interests in Imperium. Through Imperium, Cameron Blackmon indirectly owns voting

and/or non-voting equity interests in Rhodium Enterprises and Rhodium Technologies. He also serves as an officer and/or director of Rhodium Enterprises and Rhodium Technologies. On information and belief, Cameron Blackmon personally directed, participated in, authorized, and/or ratified the complained of actions and conduct of Imperium and the Rhodium Defendants. Cameron Blackmon can be served at his residence located at 2204 Mistletoe Blvd., Fort Worth, Texas 76110.

9. Nicholas Cerasuolo ("Cerasuolo"), a Puerto Rican resident, controls 25% of the voting interests in Imperium. Through Imperium, Nicholas Cerasuolo indirectly owns voting and/or non-voting equity interests in Rhodium Enterprises and Rhodium Technologies. At all relevant times, he also served as an officer and/or director of Rhodium Enterprises and Rhodium Technologies. On information and belief, Nicholas Cerasuolo personally directed, participated in, authorized, and/or ratified the complained of actions and conduct of Imperium and the Rhodium Defendants. Nicholas Cerasuolo can be served at his residence located at 655 Ave., Roberto H. Todd, Suite 187, San Juan, Puerto Rico 00907.

II. JURISDICTION AND VENUE

10. The Court has jurisdiction over the petition because: (1) the Court has jurisdiction over the parties (who have purposefully availed themselves of the benefits and protections of Texas law as detailed herein); (2) the Court has jurisdiction over the subject matter of the petition; and (3) the Court has jurisdiction to enter the relief requested herein. Further, the amount in controversy exceeds this Court's minimum jurisdictional limits.

11. Venue is proper in this Court because: (1) the subject matter of this Petition involves claims in which all or a substantial part of the events or omissions giving rise to the potential claim or suit occurred in Tarrant County; (2) the witnesses for Defendants reside in

and/or work in the State of Texas and within the jurisdiction of this Court; and (3) because there are multiple defendants, Whinstone's claims arise out of the same transaction, occurrence, or series of transaction or occurrences, and venue is proper as to one defendant, venue is proper as to all defendants. *See* TEX. CIV. PRAC. & REM. CODE § 15.002(a)(l),15.005. Further still, Whinstone asserts two or more claims arising from the same transaction, occurrence, or series of occurrences and one of the claims is subject to a mandatory venue provision contained in the at-issue redemption pursuant to the Withdrawal, Dissociation, and Membership Interest Redemption Agreement dated December 31, 2020 (the "Redemption Agreement"):

> "The Parties agree that any litigation arising in connection with this Agreement shall be conducted in Tarrant County, Texas."

TEX. CIV. PRAC. & REM. CODE § 15.004.

III. DISCOVERY CONTROL PLAN AND RULE 47 DISCLOSURE

12. Whinstone will conduct discovery under Texas Rule of Civil Procedure 190.4, Level 3. Pursuant to Texas Rule of Civil Procedure 47, Whinstone seeks monetary relief of more than $1,000,000.00. The requested monetary relief will likely increase after discovery is completed.

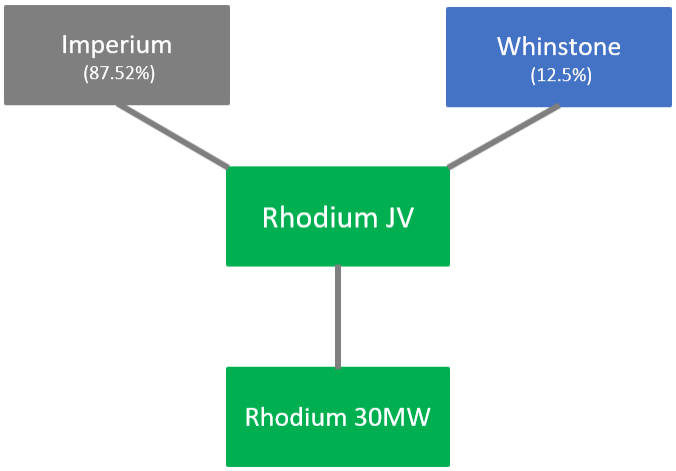
IV. FACTUAL BACKGROUND

13. In 2019, Whinstone commenced development of the largest Bitcoin hosting facility in North America (the "Facility"). After securing power agreements at below market rates to power the Facility's operations, Whinstone constructed preeminent infrastructure to support cryptocurrency hosting operations. With below market power rates and its best-in-class construction, development, and operations organization, Whinstone supports high volumes of cryptocurrency mining equipment available to customers that have, or desire to obtain, such equipment at an off-premises location.

14. In 2020, Imperium and Whinstone agreed to joint venture (Rhodium JV LLC ("Rhodium JV")) to mine cryptocurrency in Building C of the Facility. Imperium would fund the infrastructure build-out and acquire the equipment necessary to mine. In return, Whinstone agreed to contribute a portion of the Facility, provide services and make available up to 130 megawatts ("MW") of electricity at a rate below Whinstone's own discounted rate. Imperium and Whinstone would receive an 87.5% and 12.5% of "all the underlying economics", respectively, in Rhodium JV.

15. To memorialize their joint venture, Imperium and Whinstone executed that Operating Agreement for Rhodium JV LLC ("Operating Agreement") dated effective as of March 6, 2020. With supermajority voting control, Imperium designated itself Manager of Rhodium JV.

16. Consistent with the Operating Agreement, Whinstone executed a series of hosting agreements that provided for up to 130MW of electrical capacity at Building C. Specifically, Whinstone and Rhodium JV executed twenty hosting agreements, each for up to 5 megawatts ("MW") of power. Another hosting agreement executed by Whinstone and Rhodium 30mw LLC ("Rhodium 30MW") (believed to be a wholly owned subsidiary of Rhodium JV) provided for up to 30MW of electrical capacity. The below diagram illustrates the structure of the deal:

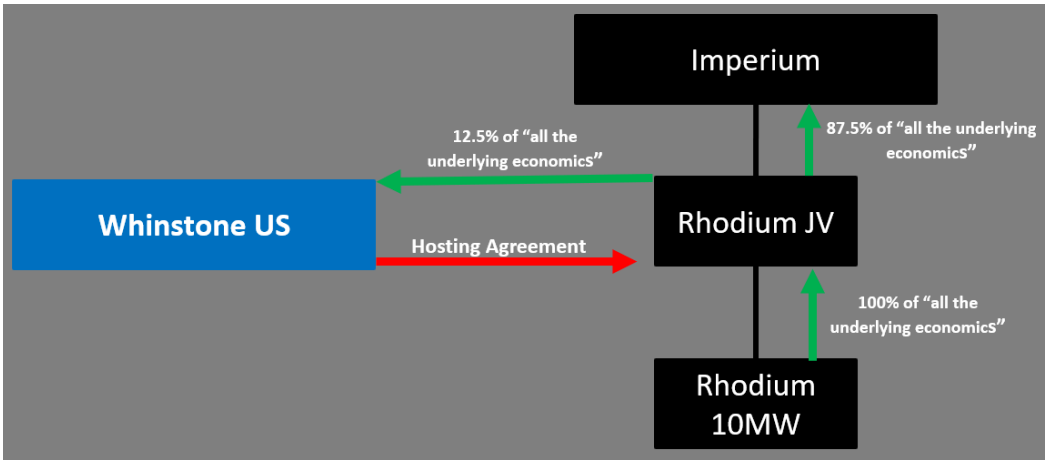


17. On information and belief, Imperium contributed little, if any, of its own capital to the joint venture. Instead, to fund the infrastructure build-out and acquire the necessary equipment, Imperium and the Individual Defendants (collectively, the "Imperium Defendants") sought capital from investors. But with no existing operations nor any track record in cryptocurrency mining, the Imperium Defendants could not quickly raise the needed capital from investors.

18. In December 2020, Whinstone agreed to redeem its voting and non-voting units and withdraw from membership in the joint venture, leaving the Imperium Defendants, whether directly or indirectly, the sole members of Rhodium JV.

19. Critical to its decision to withdraw as a member of Rhodium JV was the Imperium Defendants' assurance that, going forward, Whinstone would receive 12.5% of "all the underlying economics" generated from cryptocurrency mined from Building C. In exchange, Whinstone agreed to continue providing services and up to 130MW of electricity capacity at a rate below Whinstone's own discounted rate.

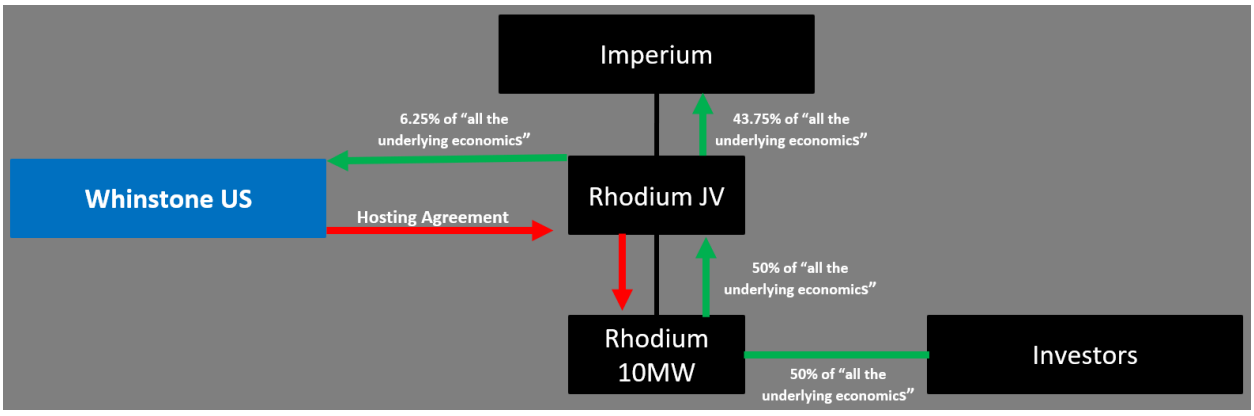
20. By way of illustration, below is a depiction of how "all the underlying economics" for Rhodium JV's operations should work following the redemption of Whinstone's membership stake:



21. Absent the Imperium Defendants' promises to pay Whinstone 12.5% of "all the underlying economics" generated from cryptocurrency mined from Building C, Whinstone would never agree to provide 130MW of power at a rate below its own cost of power—effectively subsidizing the Imperium Defendants' operation. After all, without "all the underlying economics" the Imperium Defendants promised, providing power to Building C results in approximately $2 million per month net loss to Whinstone. That neither makes economic sense, nor is it sustainable.

22. But, when the Imperium Defendants made this representation—repeatedly—they had no intention of honoring it. Instead, unbeknownst to Whinstone, the Imperium Defendants were laying the groundwork to dilute Whinstone's share of "all the underlying economics." The Imperium Defendants used newly and later formed entities to divert revenue away from Whinstone.

23. For example, the Imperium Defendants purportedly sold to investors 50% of the membership interests in Rhodium 10MW LLC ("Rhodium 10MW"), an entity formed after the redemption. If true, the illustration below reflects the ownership structure and flow of the underlying economic value of Rhodium 10MW:



24. The result—Whinstone does not receive 12.5% of "all the underlying economics"

as represented. Rather, it only receives, at best, 6.25% (not 12.5%) of "all the underlying economics" generated from operations conducted in Building C.

25. The Imperium Defendants repeated this exercise again and again. Using Rhodium 30MW, the Imperium Defendants stripped Whinstone of 30% of "all the underlying economics" from cryptocurrency mining operations conducted in part of Building C. That reduced Whinstone's 12.5% share to 8.75% for the profits generated by Rhodium 30MW. Next, the Imperium Defendants used Rhodium 2.0 LLC ("Rhodium 2.0"), formed immediately prior to the redemption, to gut 35% of "all the underlying economics" from cryptocurrency mining operations conducted in another portion of Building C. That dropped Whinstone's 12.5% share to 8.125% for the profits generated by Rhodium 2.0. Then, Rhodium Encore LLC ("Rhodium Encore"), formed after the redemption, was used to divert 50% of "all the underlying economics" due Whinstone from cryptocurrency mining operations conducted in a different part of Building C. The effect is, instead of 12.5%, Whinstone receives, at most, 6.25% for the profits generated by Rhodium Encore.

26. The Individual Defendants directed and/or controlled these transactions or were otherwise involved in the scheme to dilute Whinstone. But, by their own admissions, Whinstone never received, and the Imperium Defendants never intended for Whinstone to receive, 12.5% of the underlying economic value generated from cryptocurrency mining operations conducted in any portion of Building C.

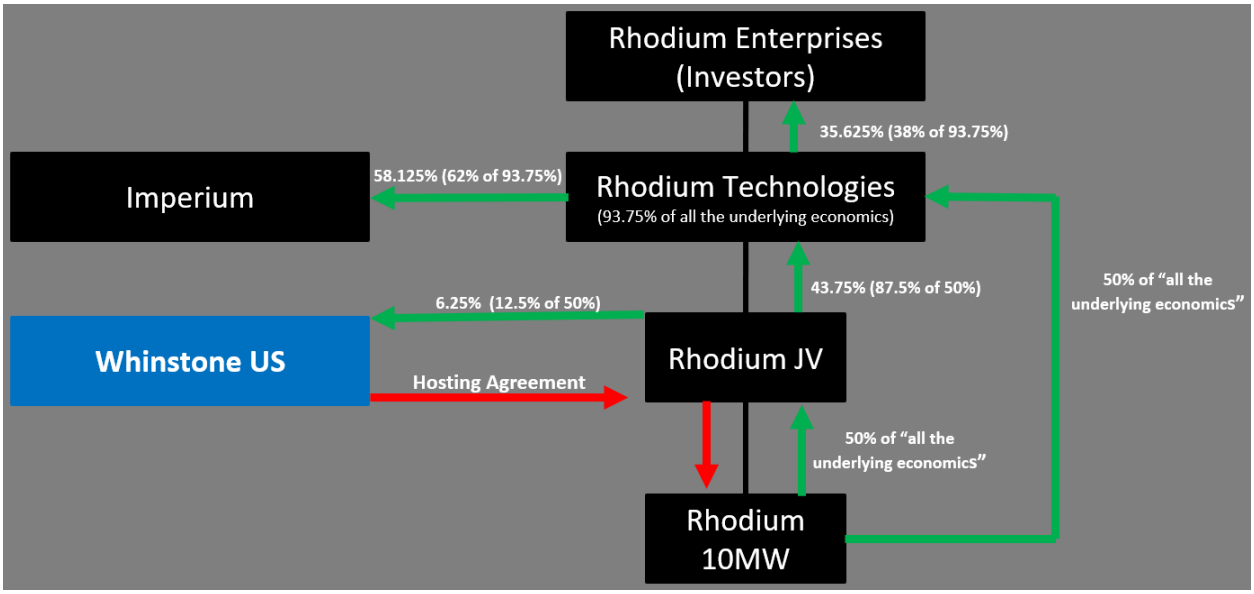
27. But just diluting Whinstone was not enough for the Imperium Defendants; they wanted more. To that end, the Imperium Defendants intended to (and did) restructure the Rhodium organization (the "Rollup Transaction") to further enrich themselves.

28. Prior to the Rollup Transaction, the Imperium Defendants, directly or indirectly,

held economic interests in cryptocurrency generated from mining operations conducted in Building C ranging from 43.75% (Rhodium Encore, Rhodium 10MW) to 56.875% (Rhodium 2.0) to 61.25% (Rhodium 30MW). Collectively, upon information and belief, that economic interest stood at approximately 55.5%.

29. Using Rhodium Enterprises, the Imperium Defendants orchestrated the divestment of the individual investors' economic interests in, at least, Rhodium 30MW, Rhodium 2.0, Rhodium Encore, and Rhodium 10MW—membership interests that were transferred to Rhodium Technologies, an entity which the Imperium Defendants controlled and, directly or indirectly, maintained a membership interest. After completing the Rollup Transaction, the Imperium Defendants, directly or indirectly, held economic interests in cryptocurrency generated from mining operations conducted in Building C totaling approximately 62%, an approximately 6.5% increase.

30. As illustrated below, while leaving Whinstone at a diluted 6.25%, the Imperium Defendants used the Rollup Transaction to increase their economic interest in Rhodium 10MW's operations from 43.75% to 58.125% — a 32.86% increase:



31. Not satisfied, Defendants further diluted Whinstone by, upon information and belief, funneling revenues generated from cryptocurrency mining operations conducted in Building C to prop up other financially distressed and floundering Rhodium Enterprises subsidiaries. For instance, Defendants used revenue generated from operations at the Facility to keep Rhodium Renewables operations at its Temple, Texas cryptocurrency mining facility afloat. Without that support, Rhodium Renewables—which experienced devasting losses believed to run in excess of $2 million per month—could not have survived with pre-halving Bitcoin prices at or below $40,000.00. Even now, with post-halving Bitcoin prices hovering around $60,000.00, upon information and belief, Defendants continue to siphon revenues generated at the Facility to provide life-support to Rhodium Renewables.

V. CAUSES OF ACTION

A. Count I – Primary Liability under Section 33(B) of the Texas Securities Act (Against Imperium)

32. Whinstone incorporates and re-alleges in full the preceding paragraphs, as applicable.

33. Whinstone's 12.5% passive membership interest in Rhodium JV constitutes a security under Section 2(a)(1) of the Securities Act (*i.e.*, an investment contract).

34. Pursuant to the Redemption Agreement, Imperium "bought" (as defined by the Texas Securities Act) Whinstone's interest in Rhodium JV by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statements made true.

35. Specifically, Imperium's promise that Whinstone would receive 12.5% of "all the underlying economics" generated from cryptocurrency mined from Building C was false when made.

36. Imperium further failed to disclose its scheme to use affiliated or subsidiary companies to circumvent Rhodium JV's payment obligations to Whinstone so that it could prop up other failing business ventures and enrich itself and the Individual Defendants.

37. Imperium's promises and omissions of fact were material.

38. Whinstone has suffered damages as a result of Imperium's false promises. Whinstone is entitled to recover its damages, costs, attorneys' fees, and pre- and post-judgement interest arising from Whinstone's sale of its membership interests in Rhodium JV to Imperium via the Redemption Agreement.

B. Count II – Control Liability under Section 33(F) of the Texas Securities Act (Against the Individual Defendants)

39. Whinstone incorporates and re-alleges in full the preceding paragraphs, as applicable.

40. Whinstone's 12.5% membership interest in Rhodium JV constitutes a security under Section 2(a)(1) of the Securities Act.

41. The Individual Defendants qualify as control persons under Section 33(F) of the Texas Securities Act. Through their positions of control over Imperium as directors, officers, shareholders, and/or members, they had the power to (and did) directly or indirectly influence and control the activities of Imperium.

42. While in their positions of control, the Individual Defendants caused Imperium to violate Section 33(B) of the Texas Securities Act by making false promises to Whinstone in the acquisition of Whinstone's 12.5% interest in Rhodium JV.

43. Therefore, the Individual Defendants are jointly and severally liable to Whinstone for damages, costs, attorneys' fees, and pre- and post-judgement interest arising from the Whinstone's Rhodium JV membership interests sold to Imperium via the Redemption

Agreement.

C. Count III – Aiding Liability under Section 33(F) of the Texas Securities Act (Against the Individual Defendants)

44. Whinstone incorporates and re-alleges in full the preceding paragraphs, as applicable.

45. Whinstone's 12.5% membership interest in Rhodium JV constitutes a security under Section 2(a)(1) of the Securities Act.

46. The Individual Defendants qualify as control persons under Section 33(F) of the Texas Securities Act. Through their positions Imperium as directors, officers, shareholders, and/or members, they had the power to (and did) directly or indirectly influence and control the activities of Imperium.

47. While in their positions of control, the Individual Defendants caused Imperium to violate Section 33(B) of the Texas Securities Act by making false promises to Whinstone in the acquisition of Whinstone's 12.5% interest in Rhodium JV pursuant to the Redemption Agreement.

48. Therefore, the Individual Defendants are jointly and severally liable to Whinstone for damages, costs, attorneys' fees, and pre- and post-judgement interest.

D. Count IV – Fraud/Fraudulent Inducement (Against the Imperium Defendants)

49. Whinstone incorporates and re-alleges in full the preceding paragraphs, as applicable.

50. Each of the Imperium Defendants misrepresented to Whinstone that Whinstone would receive 12.5% of "all the underlying economics" generated from cryptocurrency mined from Building C. The Imperium Defendants made these misrepresentations so that Whinstone

would agree to transfer its interest in Rhodium JV to Whinstone via the Redemption Agreement.

51. The Imperium Defendants' (mis)representations were material because without them, Whinstone would not have agreed to provide the "Rhodium" entities rent-free access to the Facility, continued to provide the "Rhodium" entities below-market power, or have agreed to transfer its ownership interest in Rhodium JV to Imperium and entered into the Redemption Agreement.

52. Each of the Imperium Defendants knew that their representations were false or recklessly disregarded the truth of their representations when they made them.

53. Each of the Imperium Defendants intended for Whinstone to rely upon their representations and Whinstone justifiably relied on the Imperium Defendants' (mis)representations.

54. As a result of the Imperium Defendants' fraud, Whinstone has been significantly harmed in an amount to be proven at trial and Whinstone is entitled to damages, including benefit-of-the-bargain damages.

E. Count V – Conspiracy (Against all Defendants)

55. Whinstone incorporates and re-alleges in full the preceding paragraphs, as applicable.

56. Defendants combined to accomplish an unlawful purpose, and had a meeting of the minds as to that purpose—namely to obtain Whinstone's interest in Rhodium JV through a fraudulent promise that Whinstone would still receive the economic benefit of its ownership in Rhodium JV as described herein.

57. Defendants committed an unlawful, overt act to further the course of action by fraudulently inducing Whinstone into transferring its interest in Rhodium JV to Imperium, and,

as a result, Whinstone experienced injury.

58. Defendants are jointly and severally liable because they conspired together to accomplish their unlawful purpose.

VI. CONDITIONS PRECEDENT

59. All conditions precedent to Whinstone's claims for relief have been performed or have occurred.

VII. PUNITIVE DAMAGES

60. Whinstone also invokes Texas Civil Practice and Remedies Code Section 41.003 and seeks recovery of punitive damages against the Defendants for their fraud, malice, and/or gross negligence.

VIII. ATTORNEYS' FEES

61. Whinstone is entitled to its reasonable attorneys' fees and costs incurred through trial and final appeal in accordance with Texas Civil Practice and Remedies Code § 38.001 and Section 12 of the Redemption Agreement.

IX. RULE 193.7 NOTICE

62. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, this shall serve as actual notice that Whinstone intends to use produced documents against the Imperium Defendants in pretrial proceedings and at trial. Accordingly, production of a document or documents in response to discovery requests by Whinstone authenticates the document or documents for use against the Imperium Defendants in any pretrial proceeding or at trial unless they object to the authenticity of any produced document or documents within the time limits particularly set out in Rule 193.7 of the Texas Rules of Civil Procedure.

X. PRAYER

63. For the foregoing reasons, Whinstone US, Inc. prays that this:

(i) Enter judgment against the Imperium Defendants on a joint and several basis on all of Whinstone's claims and award Whinstone damages, punitive damages, costs, attorneys' fees, and pre- and post-judgment interest; and

(ii) Award Whinstone all such other and further relief that law and equity require.

Date: July 19, 2024

Respectfully submitted,

/s/ Robert T. Slovak

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Attorneys for Plaintiff Whinstone US, Inc.

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Barbara Hodges on behalf of Robert Slovak
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Envelope ID: 89995259
Filing Code Description: Petition
Filing Description: Whinstone v Enterprises et al Original Petition
Status as of 7/22/2024 9:30 AM CST

Associated Case Party: Whinestone US, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Rob Slovak		rslovak@foley.com	7/19/2024 9:18:31 PM	SENT
Steven Lockhart		slockhart@foley.com	7/19/2024 9:18:31 PM	SENT
Jonathan MichaelThomas		jmthomas@foley.com	7/19/2024 9:18:31 PM	SENT
Brandon C.Marx		bmarx@foley.com	7/19/2024 9:18:31 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Tanya Durham		tdurham@foley.com	7/19/2024 9:18:31 PM	SENT
Barbara Hodges		bhodges@foley.com	7/19/2024 9:18:31 PM	SENT

EXHIBIT 5

153-354718-24

FILED
TARRANT COUNTY
8/30/2024 1:02 PM
THOMAS A. WILDER
DISTRICT CLERK

CAUSE NO. 153-354718-24

WHINSTONE US, INC.,	§	IN THE DISTRICT COURT OF
	§	
PLAINTIFF,	§	
	§	
V.	§	
	§	
IMPERIUM INVESTMENT HOLDINGS LLC, NATHAN NICHOLS, CHASE BLACKMON, CAMERON BLACKMON, NICHOLAS CERASUOLO, RHODIUM ENTERPRISES, INC., RHODIUM TECHNOLOGIES, LLC, AND RHODIUM RENEWABLES, LLC,	§	TARRANT COUNTY, TEXAS
	§	
DEFENDANTS	§	153RD JUDICIAL DISTRICT

WHINSTONE US, INC.'S NOTICE OF NONSUIT OF CLAIMS AGAINST RHODIUM ENTITIES ONLY

Pursuant to Texas Rule of Civil Procedure 162, Plaintiff Whinstone US, Inc. ("Whinstone") files this notice of nonsuit that dismisses its claims against Defendants Rhodium Enterprises, Inc., Rhodium Technologies, LLC, and Rhodium Renewables, LLC (collectively, "Rhodium") only without prejudice. All other claims by and against all other parties shall proceed without interruption.

WHEREFORE, Whinstone requests that the Court enter the order attached hereto, non-suiting without prejudice as detailed herein all of Whinstone's claims brought against Rhodium only and all other claims by and against all other parties shall proceed without interruption.

Date: August 30, 2024

Respectfully submitted,

/s/ Robert T. Slovak

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Facsimile: 214.999.3334

Attorneys for Plaintiff Whinstone US, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record and parties in accordance with the Texas Rules of Civil Procedure on August 30, 2024.

/s/ Brandon C. Marx
Brandon C. Marx

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Tanya Durham on behalf of Robert Slovak
Bar No. 24013523
tdurham@foley.com
Envelope ID: 91522917
Filing Code Description: Notice
Filing Description: Whinstone US, Inc.'s Notice of Nonsuit of Claims Against Rhodium Entities Only
Status as of 8/30/2024 2:00 PM CST

Associated Case Party: CAMERONBLACKMON

Name	BarNumber	Email	TimestampSubmitted	Status
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William Thompson		will@lkcfirm.com	8/30/2024 1:02:35 PM	SENT

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Jonathan MichaelThomas		jmthomas@foley.com	8/30/2024 1:02:35 PM	SENT

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, *et al.*[1]	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	(Jointly Administered)
RHODIUM JV LLC, RHODIUM 30MW LLC, RHODIUM 2.0 LLC, RHODIUM 10MW LLC, RHODIUM ENCORE LLC, AIR HPC LLC, JORDAN HPC LLC, RHODIUM INDUSTRIES LLC and RHODIUM RENEWABLES LLC,	§	
Plaintiffs,	§	
vs.	§	Adversary No. 25-03047
WHINSTONE US, INC. and RIOT PLATFORMS, INC.	§	
Defendants.	§	

ORDER GRANTING MOTION TO DISMISS

On this day the Court considered *Defendant Whinstone US, Inc.'s Motion to Dismiss or, in the Alternative, Motion for More Definite Statement* (the "Motion"). After considering the Motion, the Court is of the opinion that the Motion should be GRANTED.

[1] The "Debtors" in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974) ("*Rhodium Encore*"), Jordan HPC LLC (3683) ("*Jordan HPC*"), Rhodium JV LLC (5323) ("*Rhodium JV*"), Rhodium 2.0 LLC (1013) ("*Rhodium 2.0*"), Rhodium 10MW LLC (4142) ("*Rhodium 10MW*"), Rhodium 30MW LLC (0263) ("*Rhodium 30MW*"), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (3973) ("*Rhodium Technologies*"), Rhodium Renewables LLC (0748) ("*Rhodium Renewables*"), Air HPC LLC (0387) ("*Air HPC*"), Rhodium Shared Services LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771) ("*Rhodium Industries*"), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005. Rhodium Encore, Jordan HPC, Rhodium JV, Rhodium 2.0, Rhodium 10MW, Rhodium 30MW, Rhodium Renewables, Air HPC, and Rhodium Industries are collectively referred to herein as "*Plaintiffs*."

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED;

2. The Plaintiffs' Complaint is hereby dismissed with prejudice.

Signed: _____

Alfredo R. Perez
United States Bankruptcy Judge