

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Application of)	
Northeast Ohio Natural Gas Corp.,)	
Ullico Infrastructure Master Fund, L.P., and)	
Ullico Infrastructure Hearthstone Holdco,)	Case No. 21-0093-GA-UNC
LLC for Approval of the Sale and Transfer)	
of GEP Bison Holdings, Inc. and Request)	
for Expedited Approval)	

NOTICE OF FILING OF RE-REDACTED AGREEMENT

Pursuant to the July 29, 2021 Attorney Examiner Entry, Northeast Ohio Natural Gas Corp. (“NEO”) (together with its parent company, Hearthstone Utilities, Inc. (“HUI”)), as well as Ullico Infrastructure Master Fund, L.P. (together with its general partner UIF GP, LLC (collectively, “UIF”)) and Ullico Infrastructure Hearthstone Holdco, LLC (“UIHH”), hereby submit the attached redacted Agreement, incorporated herein by reference. Pursuant to ¶ 15 of the Entry, the attached Agreement “contains redactions tailored to shield sensitive price and quantity terms, as well as confidential business information that could jeopardize negotiations.”

Respectfully submitted,

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***Pro Hac Vice Approved before the Public
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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on August 3, 2021. The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ N. Trevor Alexander

N. Trevor Alexander (0080713)

STOCK PURCHASE AND SALE AGREEMENT

BETWEEN

GEPIF II ECHO AIV, L.P.

and

ULLICO INFRASTRUCTURE HEARTHSTONE HOLDCO, LLC

dated

DECEMBER 22, 2020

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EXHIBITS

Exhibit A – Transferred Interests Assignment Agreement

Exhibit B – Target CapEx

This **STOCK PURCHASE AND SALE AGREEMENT**, dated December 22, 2020, is by and among:

- (1) GEPIF II Echo AIV, L.P., a Cayman Islands exempted limited partnership ("**Seller**"); and
- (2) Ullico Infrastructure Hearthstone Holdco, LLC, a Delaware limited liability company ("**Purchaser**").

RECITALS

WHEREAS, Seller owns 100% of the issued and outstanding common stock, par value \$0.01 (the "**Company Common Stock**") of GEP Bison Holdings, Inc., a Delaware corporation (the "**Company**") (such Company Common Stock, the "**Transferred Interests**");

WHEREAS, Seller wishes to sell the Transferred Interests to Purchaser and Purchaser wishes to purchase the Transferred Interests from Seller, subject to the terms and provisions set forth below and herein; and

WHEREAS, on or prior to the Closing Date, and only if the IRS Certificate is not issued by the IRS to Seller, Seller shall transfer all of the Transferred Interests to US Seller in accordance with the Contribution Agreement (the "**Restructuring**").

NOW, THEREFORE, in consideration of the foregoing premises and the representations, warranties and covenants contained herein, the Parties hereto agree as follows:

ARTICLE I DEFINITIONS

1.01 **Definitions**. As used in this Agreement (including in the Recitals above), the following terms, when capitalized, shall have the following meanings:

"**280G Stockholder Approval**" has the meaning given such term in Section 6.10(b).

"**280G Waiver**" has the meaning given such term in Section 6.10(a).

"**Accounting Firm**" has the meaning given such term in Section 2.04(c).

"**Actual Withholding Amount**" has the meaning given such term in Section 6.04(d)(v).

"**Affiliate**" means any Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with, the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities, by Contract or otherwise. For the avoidance of doubt, the Company Group shall be considered "Affiliates" of (i) Seller prior to, but not after, Closing and (ii) Purchaser after, but not prior to, Closing.

“Agreement” means this Stock Purchase and Sale Agreement by and between Seller and Purchaser, including all of the schedules and exhibits attached hereto (which are hereby incorporated by reference and made a part hereof for all purposes), all as may be amended, modified or supplemented from time to time after the date hereof.

“Bankruptcy and Equity Exceptions” shall have the meaning given such term in Section 3.04.

“Base Purchase Price” means [REDACTED]

“Books and Records” means originals, copies or electronic versions of all books, ledgers, files, reports, operating records and any other material documents of the Company or the Company Subsidiaries.

“Burdensome Effect” has the meaning given such term in Section 5.01(e).

“Business Day” means a day other than (i) a Saturday, Sunday or (ii) any day on which banks located in New York, New York are authorized or obligated to close.

“Calculation Time” means 12:01 A.M. New York time on the Closing Date.

“CapEx Adjustment” means (a) the CapEx Amount *minus* (b) the Target CapEx Amount (it being understood that the CapEx Adjustment may be either a positive or negative number).

“CapEx Amount” means the aggregate amount of capital expenditures actually made by the Company and the Company Subsidiaries for the period from and after January 1, 2021 through the Calculation Time.

“CARES Act” means the Coronavirus Aid, Relief, and Economic Security Act of 2020 (H.R. 748).

“Cash Amount” means the sum of (a) all cash and cash equivalents held by the Company or any of the Company Subsidiaries as of the Calculation Time, in each case, including cash resulting from checks deposited prior to the Calculation Time that clear at or after the Calculation Time (but only to the extent that such amounts are not included in the calculation of Net Working Capital) but deducting the aggregate amount of checks outstanding at the Calculation Time but not presented for payment at or after the Calculation Time (but only to the extent that such amounts are not included in the calculation of Net Working Capital), *plus* (b) any Reimbursable Transaction Expenses actually paid by the Company or any Company Subsidiary prior to the Calculation Time that have not been reimbursed prior to the Calculation Time.

“Claim” means any demand, claim, audit, suit, action, charge, lawsuit, litigation, hearing, administrative or legal proceeding (whether at law or in equity) or arbitration brought by or pending before any Governmental Authority.

“Closing” has the meaning given such term in Section 2.03.

“Closing Date” has the meaning given such term in Section 2.03.

“Closing Date Statement” has the meaning given such term in Section 2.04(a).

“Closing Indebtedness” means the aggregate amount of Indebtedness of the Company Group outstanding as of the Calculation Time; provided that Closing Indebtedness shall exclude (a) Indebtedness due solely to and/or from one Company Group member to another and (b) any undrawn obligations under letters of credit, bankers’ acceptances or similar facilities.

“Code” means the Internal Revenue Code of 1986, as amended.

“Company” has the meaning given such term in the Recitals.

“Company Benefit Plan” means each (a) employee benefit plan (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA, including any Multiemployer Plans) or post-retirement or employment welfare plan, program, policy or arrangement, (b) employment, consulting, bonus, incentive or deferred compensation or equity, equity purchase, or equity-based compensation plan, program, policy or arrangement, (c) severance, change-in control, retention or termination plan, program, policy or arrangement or (d) other compensation, pension, retirement, savings, collective bargaining, employee loan, fringe benefit, or other benefit plan, program, policy or arrangement, in each case, (i) sponsored, maintained, contributed to or required to be maintained or contributed to by the Company or any Company Subsidiary or (ii) for which the Company or any Company Subsidiary has any present or future direct or indirect liability.

“Company Commonly Controlled Entity” means any person, corporation, trade or business (whether or not incorporated) or any other entity that is considered a member of a controlled group of organizations within the meaning of Section 414(b), (c), (m), or (o) of the Code and that includes the Company or any Company Subsidiary.

“Company Employee” has the meaning given such term in Section 6.01(a).

“Company Group” means the Company and the Company Subsidiaries.

“Company Indemnified Parties” has the meaning given such term in Section 6.07(a).

“Company Personnel” means any current or former director, officer or employee of the Company or any Company Subsidiary.

“Company Stock Option Plan” means the 2017 FR Bison Holdings, Inc. Stock Option Plan, as amended and in effect from time to time.

“Company Subsidiaries” has the meaning given such term in Section 3.01.

“Company Union Contracts” has the meaning given such term in Section 3.10.

“Confidential Information” means (a) with respect to Purchaser, any information concerning the business, operations and assets of Purchaser or any of its Affiliates (including the

Company Group following the Closing), and (b) with respect to Seller, any information concerning the business, operations and assets of Seller or any of its Affiliates (other than the Company Group following the Closing) not related to the Company Group or its businesses, properties or assets. The term “Confidential Information” shall not include information that (i) is or becomes generally available to the public, other than as a result of disclosure by any Party or its Affiliates or Representatives in violation of this Agreement, or (ii) becomes available to any Party or its Representatives from a Person other than any of the other Parties or their respective Affiliates; provided, that such Person was not known by such Party or any of its Representatives to be bound by any contractual, legal or fiduciary obligation of confidentiality to one of the other Parties or any of their respective Affiliates with respect to such information.

“**Confidentiality Agreement**” has the meaning given such term in Section 5.04(c).

“**Consent**” has the meaning given such term in Section 3.05(b).

“**Constituent Plan**” means any employee benefit plan that is listed on Section 3.09(i) of the Seller Disclosure Letter.

“**Continuation Period**” has the meaning given such term in Section 6.01(a).

“**Contract**” means any legally binding contract, commitment, instrument, arrangement, lease, license, evidence of indebtedness, mortgage, indenture, purchase order, letter of credit, undertaking or other agreement.

“**Contribution Agreement**” means the Contribution Agreement, dated as of the date hereof, between Seller, US Seller and the other parties thereto.

“**Credit Agreement**” means that certain Credit Agreement, date as of October 19, 2016, by and among Hearthstone Utilities, Inc., the lenders party thereto, and Bank of America, N.A., as administrative agent, as amended by the First Amendment to Credit Agreement, dated as of November 26, 2018, by and among Hearthstone Utilities, Inc., the lenders party thereto, and Bank of America, N.A., as administrative agent, the Second Amendment to Credit Agreement and First Amendment to Guaranty, dated as of October 21, 2019, by and among Hearthstone Utilities, Inc., the guarantors party thereto, the lenders party thereto, and Bank of America, N.A., as administrative agent and the Third Amendment to Credit Agreement, dated as of December 20, 2019, by and among Hearthstone Utilities, Inc., the lenders party thereto, and Bank of America, N.A., as administrative agent, and as further amended, restated, supplemented or otherwise modified from time to time.

“**Current Assets**” means, with respect to the Company Group, as of the Calculation Time, the current assets of such Persons in the categories set forth on Section 1.01(a) of the Seller Disclosure Letter, as determined in accordance with GAAP, in a manner consistent with the accounting policies, procedures, principles and classifications used in the preparation of the Financial Statements (calculated without giving effect to any purchase accounting adjustments resulting from the consummation of the transactions contemplated by this Agreement) and as adjusted in accordance with the methodology set forth in Section 1.01(a) of the Seller Disclosure Letter, including all current tax assets; provided, however, that Current Assets shall exclude (i) all Cash Amounts and (ii) all deferred Taxes.

“Current Liabilities” means, with respect to the Company Group, as of the Calculation Time, the current liabilities of such Persons in the categories set forth on Section 1.01(b) of the Seller Disclosure Letter (which, for the avoidance of doubt, include obligations of such Persons arising from cash/book overdrafts or pursuant to vendor advances), as determined in accordance with GAAP, in a manner consistent with the accounting policies, procedures, principles and classifications used in the preparation of the Financial Statements (calculated without giving effect to any purchase accounting adjustments resulting from the consummation of the transactions contemplated hereby) and as adjusted in accordance with the methodology set forth in Section 1.01(b) of the Seller Disclosure Letter, including all Transaction Expenses that are unpaid through the Closing and all current tax liabilities; provided, however, that Current Liabilities shall exclude all liabilities for (i) Closing Indebtedness, (ii) Reimbursable Transaction Expenses, (iii) all deferred Taxes except those described in the following proviso, and (iv) all liabilities related to capital expenditures; provided, further, however, that Current Liabilities shall include any (x) applicable employment Taxes the payment of which has been deferred pursuant to Section 2302 of the CARES Act, (y) outstanding amounts payable to the North Carolina Department of Transportation arising from the 2015 movement of pipe, and (z) any accrued but unpaid interest, in the case of each of (x) and (y), regardless of whether such Taxes or amounts would constitute current liabilities under GAAP.

“Dollars” and the symbol **\$** mean the lawful currency of the United States of America.

“Environmental Claim” means any Claim by or against, or any investigation as to which Seller (or any of its Affiliates), the Company or any Company Subsidiary has received written notice of involving, the Company or any Company Subsidiary asserted by any Person alleging Obligations (including potential Obligations for investigatory costs, cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) or responsibility arising out of, based on or resulting from any actual or alleged (a) presence or Release of or exposure to any Hazardous Materials at any location, whether or not owned or operated by the Company or any Company Subsidiary, (b) damage, injury, threat or harm to health, safety, natural resources or the environment or (c) violation of Environmental Law or any Environmental Permit.

“Environmental Laws” means all applicable Laws relating to pollution or protection of or damage to the environment (including ambient air, surface water, groundwater, land surface, subsurface and sediments), natural resources, endangered or threatened species, or human health and safety as it relates to exposure to hazardous or toxic materials, substances or wastes, including Laws relating to the exposure to Hazardous Materials.

“Environmental Permit” has the meaning given such term in Section 3.13(a)(i).

“Equity Commitment Letter” has the meaning given such term in Section 4.07.

“Equity Financing” has the meaning given such term in Section 4.07.

“Equity Securities” has the meaning given such term in Section 3.03(b).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Escrow Account” has the meaning given such term in Section 2.03(b)(iii).

“Escrow Agent” means the escrow agent under the Escrow Agreement.

“Escrow Agreement” means the escrow agreement to be mutually agreed and entered into on or before the Closing Date by Purchaser, Seller and the Escrow Agent, which will provide that the Escrow Amount (together with any accrued interest thereon) will be released to Purchaser to the extent required to satisfy the payment obligations of Seller pursuant to Section 2.04(e) and that any amount remaining in the escrow account following satisfaction of such payment obligations, if any, will be released to Seller and that the fees owed to the Escrow Agent will be borne 50% by Purchaser and 50% by Seller.

“Escrow Amount” means [REDACTED]

“Estimated Purchase Price” has the meaning given such term in Section 2.02.

“Expected Withholding Amount” has the meaning given such term in Section 6.04(d)(iv).

“FERC” has the meaning given such term in Section 3.19(a).

“Filing” has the meaning given such term in Section 3.05(b).

“Final CapEx Adjustment” has the meaning given such term in Section 2.04(c).

“Final Closing Date Statement” has the meaning given such term in Section 2.04(c).

“Final Net Closing Indebtedness” has the meaning given such term in Section 2.04(c).

“Final Purchase Price” means an amount equal to (a) the Base Purchase Price, *plus* (b) Final Working Capital Adjustment, *minus* (c) Final Net Closing Indebtedness *plus* (d) Final CapEx Adjustment.

“Final Working Capital Adjustment” has the meaning given such term in Section 2.04(c).

“Financial Statements” has the meaning given such term in Section 3.06(a).

“Fraud” means, with respect to any Person, such Person intentionally making, or causing to be made, a statement of fact in the express representations and warranties set forth in this Agreement or in any certificate delivered pursuant hereto with the intent to deceive or mislead another party to this Agreement, when such Person intentionally making, or causing to be made, such statement has actual personal knowledge that such statement of fact is untrue.

“GAAP” means United States generally accepted accounting principles as in effect during the applicable periods, consistently applied.

“Governmental Authority” means any U.S. or foreign federal, state, provincial or local governmental authority, court, government or self-regulatory organization, commission, tribunal

or organization or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, including any governmental, quasi-governmental or nongovernmental body administering, regulating, or having general oversight over gas, power or other energy-related markets, or any court, arbitrator, arbitration panel or similar judicial body.

“Hazardous Materials” means (a) petroleum, coal tar, crude oil, natural gas, and other petroleum hydrocarbons and any derivatives, fractions, components or by-products thereof, explosive or radioactive materials (including naturally occurring radioactive materials) or wastes, radon, asbestos in any form, polychlorinated biphenyls, per- and polyfluoroalkyl substances, urea formaldehyde insulation, chlorofluorocarbons and other ozone-depleting substances and (b) any other chemical, material, substance or waste that is regulated as a pollutant, a contaminant, hazardous or toxic under, or that would reasonably be expected to result in Obligations pursuant to, any Environmental Law.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“Indebtedness” means, with respect to any Person, without duplication, (a) all obligations of such Person for borrowed money, including any accrued and unpaid interest and any premiums, costs or penalties due upon repayment of any such obligations to the extent payable as a result of the consummation of the transactions contemplated by this Agreement, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person evidenced by letters of credit, bankers’ acceptances or similar facilities, (d) all capitalized lease obligations of such Person, (e) all obligations under swaps, options, derivatives and other hedging arrangements (other than any such agreements relating to the ordinary course purchase or sale of natural gas or any other commodity that are physically settled) valued at the termination value thereof, (f) obligations for the deferred purchase price of stock, assets, property or services (including earn-out or other contingent payment obligations) (other than trade payables incurred in the Ordinary Course of Business), (g) all guarantees or other assumptions of Obligations for any of the foregoing, (h) any of the foregoing indebtedness of other Persons secured in whole or in part by a Lien on any asset or property of such Person and (i) all obligations in the nature of accrued fees, interest, premiums, penalties, late charges and collection fees for any of the foregoing that are accrued or owed as of the date of determination; provided that, for the avoidance of doubt, in no event shall (w) applicable employment Taxes the payment of which has been deferred pursuant to Section 2302 of the CARES Act, (x) outstanding amounts payable to the North Carolina Department of Transportation arising from the 2015 movement of pipe, (y) any other amounts included in the calculation of Current Liabilities, or (z) any liabilities related to capital expenditures be included in the calculation of Indebtedness, in each case, regardless of whether any such amount would otherwise constitute Indebtedness under any clause of this definition.

“Insurance Policies” has the meaning given such term in Section 3.18(a).

“Intellectual Property” means all intellectual property and industrial property rights of any kind or nature, including all U.S. and foreign trademarks, service marks, service names, internet domain names, trade dress and trade names, and all goodwill associated therewith and

symbolized thereby, patents and all related continuations, continuations-in-part, divisionals, reissues, reexaminations, substitutions, and extensions thereof, trade secrets, registered and unregistered copyrights and works of authorship, proprietary rights in databases to the extent recognized in any given jurisdiction, and registrations and applications for registration of any of the foregoing.

“**Interim Period**” has the meaning given such term in Section 5.02(a).

“**IRS**” has the meaning given such term in Section 3.09(b).

“**IRS Certificate**” has the meaning given such term in Section 6.04(d)(i).

“**Key Employees**” means [REDACTED] and any other employee of the Company or any Company Subsidiary whose aggregate annual base compensation is in excess of \$200,000.

“**Knowledge**” means (a) in the case of Seller, the actual knowledge of David Cerotzke, George Behrens, Kevin Degenstein, Jim VanderBiezen, Kenneth Oostman, Jr., Jed Henthorne, John Stenger, Jerry Livengood and/or Fred Steele without any duty to make an independent investigation or inquiry, and (b) in the case of Purchaser, the actual knowledge of Rohit Syal and Reed Singer, without any duty to make an independent investigation or inquiry.

“**Law**” means any domestic or foreign, federal, state, provincial or local statute, law (including common law), ordinance, rule, binding administrative interpretation, code, rule, regulation, Order, writ, injunction, directive, judgment, decree or other requirement of any Governmental Authority, including the rules and regulations of the State Utilities Commissions.

“**Legal Restraint**” has the meaning given such term in Section 7.01(b).

“**Lien**” means any pledges, liens, leases, deeds of trust, conditional sale contracts, privileges, reservations, charges, mortgages, easements, encroachments, rights of ways, encumbrances, security interests, options and restrictions on transfer or voting of any kind or nature whatsoever.

“**Material Adverse Effect**” means any fact, circumstance, effect, change, event or development (an “**Effect**”) that, individually or taken together with all other Effects, has or would reasonably be expected to have a material adverse effect on the business, assets, liabilities, properties, operations, condition (financial or otherwise) or results of operations of the Company and the Company Subsidiaries, taken as a whole; provided that, no Effect to the extent resulting from or arising out of any of the following, individually or in the aggregate, shall constitute or be taken into account in determining whether a Material Adverse Effect has occurred: (a) any Effect affecting any industry in which the Company or any Company Subsidiary operates, including natural gas distribution, production or transmission industries (including, in each case, any changes in the operations thereof); (b) any system-wide changes or developments in natural gas distribution, production or transmission systems; (c) any change in customer usage patterns or customer selection of third-party suppliers for natural gas; (d) any Effect affecting any economic, legislative or political condition or affecting any securities, credit, financial or other capital

markets condition, in each case in the United States, in any foreign jurisdiction or in any specific geographical area; (e) any failure in and of itself by the Company or any Company Subsidiary to meet any internal or public projection, budget, forecast, estimate or prediction in respect of revenues, earnings or other financial or operating metrics for any period (it being understood that the events, changes, circumstances, effects or other matters underlying or relating to any such failure that are not otherwise excluded from the definition of a “Material Adverse Effect” may be considered, along with the effects or consequences thereof, in determining whether there has been Material Adverse Effect); (f) any change attributable to the announcement (in accordance with the terms of this Agreement), execution or delivery of this Agreement or the pendency of the transactions contemplated by this Agreement (it being understood that the exception in this clause (f) shall not apply to the references to Material Adverse Effect in the representations and warranties contained in Section 3.05(a) and, to the extent related to such portions of such representations and warranties, the condition in Section 7.03(a)), including (i) any action taken by the Company or any Company Subsidiary that is expressly required or expressly contemplated pursuant to this Agreement, or is consented to by Purchaser in writing, or any action taken by Purchaser or any Affiliate thereof, to obtain any Consent from any Governmental Authority to the consummation of the transactions contemplated by this Agreement and the result of any such actions, (ii) any Effect in supplier, employee, financing source, shareholder, regulatory, partner or similar relationships resulting therefrom, (iii) any reduction in the credit rating of the Company or any of the Company Subsidiaries or (iv) any Effect that arises out of or relates to the identity of Purchaser or any of its Affiliates as the acquirer of the Company; (g) any Effect affecting the market for oil, gas, natural gas, natural gas liquids or other commodities, including any change in the price or availability of commodities; (h) any change in applicable Law, regulation or GAAP (or authoritative interpretation thereof) adopted by any Governmental Authority after the date of this Agreement; (i) geopolitical conditions, the outbreak or escalation of hostilities, any act of war, sabotage or terrorism, or any escalation or worsening of any such act of war, sabotage or terrorism threatened or underway as of the date of this Agreement; (j) any Effect resulting from or arising out of or affecting the national, regional, state or local engineering or construction industries or the wholesale or retail markets for commodities, materials or supplies (including equipment supplies, steel, concrete, asphalt, natural gas, electricity, fuel, coal, water or coal transportation) or the hedging markets therefor, including any change in commodity prices; (k) any hurricane, tornado, tsunami, flood, earthquake or other natural disaster or weather-related event, circumstance or development; or (l) any Effect (regardless of the applicability of any other subpart hereof) arising out of, in response to, or resulting from any pandemic (including COVID-19), epidemic or other disease outbreak or any domestic protests, including any changes in habits of people or markets, or any Law or any directive, pronouncement or guideline issued by a Governmental Authority or industry group, including providing for business closures, “sheltering-in-place,” curfews or other restrictions that relate to, or arise out of any of the foregoing; provided, however, that any Effect set forth in clauses (a), (b), (c), (d), (g), (h), (i), (j) and (l) above may be taken into account in determining whether a Material Adverse Effect has occurred solely to the extent such Effect has or would reasonably be expected to have a materially disproportionate adverse effect on the Company and the Company Subsidiaries, taken as a whole, as compared to other entities (if any) engaged in the natural gas distribution business and related businesses in the same state or states in which such Effect has taken place (in which case, only the incremental disproportionate impact may be taken into account in determining whether there has been, or would be, a Material Adverse Effect, to

the extent such change is not otherwise excluded from being taken into account by clauses (a) through (l) of this definition).

“Material Company Contract” has the meaning given such term in Section 3.14(a).

“Maximum Amount” has the meaning given such term in Section 6.07(b).

“Mitigation Procedures” has the meaning given such term in Section 6.04(d)(ii).

“Monthly Reports” has the meaning given such term in Section 5.04(b).

“MPUC” means the Maine Public Utilities Commission.

“MTPSC” means the Montana Public Service Commission.

“Multiemployer Plan” has the meaning given such term in Section 3.09(d).

“NCUC” means the North Carolina Utilities Commission.

“Net Closing Indebtedness” means (x) the Closing Indebtedness *minus* (y) the Cash Amount (it being understood that Net Closing Indebtedness may be either a positive or negative number).

“Net Working Capital” means (x) the Current Assets, *minus* (y) the Current Liabilities (it being understood that Net Working Capital may be either a positive or negative number).

“Non-Party Affiliate” has the meaning given such term in Section 9.16.

“Note Purchase Agreements” means (i) that certain Note Purchase Agreement, dated as of October 19, 2016, by and among Hearthstone Utilities, Inc. and Teachers Insurance and Annuity Association of America, as amended by the First Amendment to Purchase Agreement, dated as of January 29, 2019, by and among Hearthstone Utilities, Inc., the guarantors party thereto, and Teachers Insurance and Annuity Association of America, and as may be further amended, restated, supplemented or otherwise modified from time to time and (ii) that certain Note Purchase Agreement, dated as of December 27, 2019, by and between Hearthstone Utilities, Inc. and Teachers Insurance and Annuity Association of America, as may be amended, restated, supplemented or otherwise modified from time to time.

“Obligations” means duties, liabilities and obligations, whether vested, absolute or contingent, direct or indirect, known or unknown, asserted or unasserted, accrued or unaccrued, and whether contractual, statutory or otherwise.

“Order” means any order, injunction, judgment, decree, ruling, writ, assessment, settlement, stipulation or award.

“Ordinary Course of Business” shall mean in the ordinary course of business consistent with past practice of the relevant Person(s). For the avoidance of doubt, any commercially reasonable actions taken (or not taken) arising out of, as a result of, or in response to any

pandemic (including COVID-19), epidemic or disease outbreak or the related Laws issued in connection therewith shall be deemed to be in the Ordinary Course of Business.

“Organizational Documents” means any corporate, partnership or limited liability organizational documents, including certificates or articles of incorporation, bylaws, certificates of formation, operating agreements (including limited liability company agreement and agreements of limited partnership), certificates of limited partnership, partnership agreements, and certificates of existence, as applicable.

“Outside Date” has the meaning given such term in Section 8.01(b).

“Party” means each of Seller and Purchaser and their permitted assigns who become party to this Agreement in accordance with its terms, and **“Parties”** shall mean Seller and Purchaser and their permitted assigns who become party to this Agreement in accordance with its terms, collectively.

“Permit” means a franchise, license, permit, certification, authorization, variance, exemption, order, registration, clearance, approval or similar consents granted, issued or required by a Governmental Authority.

“Permitted Liens” means any: (i) Liens for Taxes not yet due and payable or being contested in good faith through appropriate proceedings for which adequate reserves have been established in accordance with GAAP; (ii) Liens securing the Indebtedness of the type set forth in clause (a) of the definition of “Indebtedness”; (iii) Liens imposed by Law, such as carriers’, warehousemen’s, mechanics’, materialmen’s and other similar Liens arising in the Ordinary Course of Business for amounts not yet past due or being contested in good faith through appropriate proceedings for which adequate reserves have been established in accordance with GAAP; (iv) purchase money Liens incurred in the Ordinary Course of Business for amounts not yet past due; (v) deposits and pledges of cash securing (a) obligations incurred in respect of workers’ compensation, unemployment insurance or other forms of governmental insurance or benefits, (b) the performance of bids, tenders, leases, contracts and statutory obligations, or (c) obligations on surety bonds made or otherwise arising in the Ordinary Course of Business; (vi) exceptions, restrictions, easements, charges, rights of way and nonmonetary encumbrances that are set forth in or otherwise applicable to any Permits that do not and are not reasonably likely to, individually or in the aggregate, materially interfere with the business of the Company or any Company Subsidiary; (vii) zoning, conservation restrictions and other land use regulations adopted by any Governmental Authority that do not and are not reasonably likely to, individually or in the aggregate, materially interfere with the business of the Company or any Company Subsidiary; and (viii) non-monetary Liens and other minor irregularities in title that, in the aggregate, do not and are not reasonably likely to, individually or in the aggregate, impair, in any material respect, the use, value or, where applicable, occupancy of any asset or property (or interest therein) as it is presently used by the Company or any Company Subsidiary.

“Person” means any individual, partnership, limited liability company, corporation, joint stock company, trust, estate, joint venture, association or unincorporated organization, or any other form of business or professional entity.

“Pre-Closing Tax Period” means any taxable period (or portion thereof) ending on or before the Closing Date.

“Present Fair Salable Value” has the meaning given such term in Section 4.09.

“Proceedings” has the meaning given such term in Section 5.03.

“PUCO” means the Ohio Public Utilities Commission.

“PUHCA 2005” has the meaning given such term in Section 3.19(a).

“Purchase Price” has the meaning given such term in Section 2.02.

“Purchaser” has the meaning given such term in the preamble to this Agreement.

“Purchaser Amount” has the meaning given such term in Section 2.04(e)(ii).

“Purchaser Disclosure Letter” has the meaning given such term in Article IV.

“Purchaser Guarantee” has the meaning given such term in Section 4.08.

“Purchaser Material Adverse Effect” means any Effect that has or would reasonably be expected to have a material adverse effect on the ability of Purchaser to consummate, or that would reasonably be expected to prevent or materially impede, interfere with or delay Purchaser’s consummation of, the transactions contemplated by this Agreement.

“Purchaser Related Party” has the meaning given such term in Section 8.02(d).

“Purchaser Required Consents” has the meaning given such term in Section 4.03(a)(ii).

“Purchaser Termination Fee” means \$ [REDACTED]

“Real Property” has the meaning given such term in Section 3.15.

“Real Property Agreements” has the meaning given such term in Section 3.15.

“Reimbursable Transaction Expenses” means any reasonable and documented costs or expenses incurred by the Company Group or any of their Affiliates prior to the Closing that are required to be reimbursed by Purchaser pursuant to Section 5.04, Section 6.07(b), or Section 6.09.

“Release” means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the indoor or outdoor environment (including ambient air, surface water, groundwater, land surface, subsurface and sediments).

“Representatives” means, with respect to any Person, such Person’s Affiliates and its and their respective officers, directors, principals, equityholders, partners, managers, members, attorneys, accountants, insurance underwriters, agents, employees, consultants, financial advisors

or other authorized representatives; provided, that with respect to Purchaser, “Representatives” shall also include Purchaser’s financing sources.

“**Required Consents**” has the meaning given such term in Section 4.03(a)(ii).

“**Required Statutory Approvals**” has the meaning given such term in Section 4.03(b)(ii).

“**Restructuring**” has the meaning given such term in the Recitals.

“**R&W Insurance Policy**” has the meaning given such term in Section 5.09.

“**Sanctions**” has the meaning given such term in Section 3.22(c).

“**Seller**” has the meaning given such term in the preamble to this Agreement.

“**Seller Disclosure Letter**” has the meaning given such term in Article III.

“**Seller Related Party**” means any of Seller’s former, current and future Affiliates, and each of its and their respective former, current and future direct or indirect directors, officers, principals, general or limited partners, employees, stockholders, other equity holders, members, managers, agents, successors, assignees, Affiliates, controlling Persons or representatives.

“**Seller Required Consents**” has the meaning given such term in Section 3.05(a)(ii).

“**Seller Required Statutory Approvals**” has the meaning given such term in Section 3.05(b)(ii).

“**Solvent**” has the meaning given such term in Section 4.09.

“**Specified Affiliates**” means Global Energy & Power Infrastructure Fund II, L.P. and its controlled Affiliates; provided, that no portfolio company of Global Energy & Power Infrastructure Fund II, L.P. will be considered a Specified Affiliate unless Seller or another Specified Affiliate has directed, requested or encouraged such portfolio company to take any of the actions that the Specified Affiliates are prohibited from taking hereunder.

“**Sponsor**” has the meaning given such term in Section 4.07.

“**State Utilities Commissions**” means the MPUC, the MTPSC, the NCUC, the PUCO and the Indiana Utility Regulatory Commission.

“**ST&B**” means Simpson Thacher & Bartlett LLP.

“**Straddle Period**” means any taxable period beginning on or before the Closing Date and ending after the Closing Date.

“**Subsidiaries**” means, with respect to any Person, any other Person of which at least a majority of (x) the economic interests in or (y) the securities or ownership interests, having by

their terms ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions, is directly or indirectly owned by such Person.

“Sufficient Financing Amount” has the meaning given such term in Section 4.07.

“Target CapEx Amount” means an amount equal to (a) the aggregate sum of the monthly amounts set forth on Exhibit B attached hereto for the period commencing on January 1, 2021 and ending with (and including) the month in which the Closing occurs (prorated for the number of days elapsed in such final month through (but excluding) the Closing Date) *minus* (b) an amount equal to the (x) the amount of capital expenditures actually incurred by the Company Group during fiscal year 2020, as reflected in the audited consolidated financial statements of Hearthstone Utilities, Inc. as of and for the year ended December 31, 2020 *minus* (y) [REDACTED]

“Target Net Working Capital” means \$ [REDACTED]

“Taxes” means any federal, state, provincial, local or foreign taxes including any income, stamp, gross receipts, ad valorem, value added, excise, real or personal property, sales, use, franchise, license, payroll, withholding, estimated, employment, production, occupation, transfer and capital gains taxes or other like assessments, taxes, customs or duties of any kind whatsoever imposed by any Governmental Authority under any applicable Law, together with any interest, penalties or additions with respect thereto.

“Tax Returns” means any return, declaration, report, claim for refund or information return or statement or other document relating to Taxes filed or required to be filed with any taxing authority, including any schedule or attachment thereto and extension request with respect thereto, and including any amendment thereof.

“Transaction Bonus” shall have the respective meaning given such term in each of the Transaction Bonus Agreements.

“Transaction Bonus Agreements” means (i) the GEP Bison Holdings Inc. Transaction Bonus Agreement, dated as of March 1, 2020, between the Company and Kevin Degenstein, as may be amended, modified or supplemented from time to time, and (ii) the GEP Bison Holdings Inc. Transaction Bonus Agreement, dated as of March 1, 2020, between the Company and Luvian Partners, Inc., as may be amended, modified or supplemented from time to time.

“Transaction Expenses” means all fees and expenses (other than Reimbursable Transaction Expenses) payable by the Company or any Company Subsidiary to any Person for services performed prior to the Closing and incurred in connection with the negotiation, execution and delivery of this Agreement or the Escrow Agreement and the consummation of the transactions contemplated hereby or thereby, to the extent not paid by the Company or Seller prior to or substantially concurrently with the Closing. For the avoidance of doubt, Transaction Expenses (i) shall include all compensation payments that come due solely (not including any express requirements contained in the Contracts providing for such compensation payments to execute any documents in order to receive any such payment, e.g., a requirement to execute a release of claims (except that any such compensation payments shall not be considered Transaction Expenses to the extent not paid as a result of the failure of any such documents

being executed) as a result of the consummation of the transactions contemplated by this Agreement, including the Transaction Bonuses, and, in each case, the employer portion of any payroll Taxes attributable thereto and (ii) shall not include any fees or expenses incurred by Purchaser and/or any of its Affiliates or representatives or lenders, regardless of whether such fees or expenses may be paid by any member of the Company Group.

“Transfer Taxes” means all sales, use, transfer, stamp, recording, ad valorem, documentary, registration, value added, conveyance and similar Taxes and fees incurred by or on behalf of a Party as a result of the sale of the Transferred Interests by Seller to Purchaser contemplated by this Agreement, as imposed by applicable Law.

“Transferred Interests” has the meaning given such term in the Recitals.

“Transferred Interests Assignment Agreement” has the meaning given such term in Section 2.03(a)(i).

“UIA” has the meaning given such term in Section 3.09(i).

“US Seller” means GEP Bison Holdings US II LP, a Delaware limited partnership, which is wholly owned (directly and indirectly) by Seller and which will be classified as a partnership for U.S. federal income tax purposes as of the date hereof, as a result of an election pursuant to Treasury Regulations Section 301.7701-3.

“Waived 280G Payments” has the meaning given such term in Section 6.10(b).

“WARN Act” means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign Laws related to plant closings, relocations, mass layoffs and employment losses.

“Willful Breach” means a material breach, or failure to perform, any of the covenants or other agreements contained in this Agreement, that is a consequence of an act or failure to act by the breaching or non-performing Party with actual knowledge, or knowledge that a Person acting reasonably under the circumstances should have, that such Party’s act or failure to act would, or would reasonably be expected to, result in or constitute a breach of or failure of performance under this Agreement.

“Withholding Holdback” has the meaning given such term in Section 6.04(d)(iii).

“Working Capital Adjustment” means (x) the Net Working Capital *minus* (y) the Target Net Working Capital (it being understood that Working Capital Adjustment may be either a positive or negative number).

1.02 **Construction.** This Agreement shall be read, interpreted and construed as the mutual form of the Parties. The Parties acknowledge that this Agreement is the product of negotiation between sophisticated parties, each of whom was represented by counsel. Accordingly, in the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden

of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision hereof.

ARTICLE II SALE AND PURCHASE

2.01 Sale, Transfer, Purchase and Acceptance of the Transferred Interests.

Subject to the terms and conditions of this Agreement, at the Closing, Seller shall sell, convey, assign, transfer and deliver to Purchaser and Purchaser shall purchase, acquire and accept from Seller, the Transferred Interests in exchange for the Purchase Price.

2.02 Purchase Price. The consideration to be paid by Purchaser for the Transferred Interests shall be (a) the Base Purchase Price, *plus* (b) the Working Capital Adjustment (which may be a positive or a negative number), *minus* (c) Net Closing Indebtedness (which may be a positive or a negative number) *plus* (d) the CapEx Adjustment (which may be a positive or a negative number), (the “**Purchase Price**”), subject to adjustment following the Closing as set forth in Section 2.04. Not less than 12 Business Days prior to the Closing, Seller shall deliver or cause to be delivered to Purchaser a statement containing Seller’s good faith calculation of the Purchase Price, using its good faith estimates of the Working Capital Adjustment, the Net Closing Indebtedness and the CapEx Adjustment together with reasonable supporting detail and documentation, in each case as of the Calculation Time (the “**Estimated Purchase Price**”).

2.03 Closing. The closing of the transactions contemplated by this Agreement (the “**Closing**”) shall take place remotely via the exchange of electronic documents, at 9:00 am New York time, on the 12th Business Day after the day on which all of the conditions set forth in Article VII have been satisfied or waived in accordance with this Agreement (other than those conditions that by their nature can only be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing). The date on which the Closing occurs is hereinafter referred to as the “**Closing Date**.” At the Closing:

(a) Seller shall deliver or cause to be delivered:

(i) to Purchaser, an assignment of the Transferred Interests in substantially the form of Exhibit A hereto (the “**Transferred Interests Assignment Agreement**”), duly executed by Seller;

(ii) to Purchaser, written resolutions providing for the termination of the Company Stock Option Plan and evidence regarding the termination of any awards granted thereunder, which, with respect to the existing option awards to Kevin Degenstein and Luvian Partners, Inc., shall be satisfied by providing Purchaser the Transaction Bonus Agreements so long as such Transaction Bonus Agreements are still in effect at the Closing;

(iii) to the other parties thereto, the Escrow Agreement duly executed by Seller;

(iv) to Purchaser, the officer’s certificate referred to in Section 7.03(b);
and

(v) to Purchaser, a customary, duly-executed letter of resignation from each member of the board of directors (or its equivalent) and each officer of the Company and each Company Subsidiary, in each case that is an employee of or a consultant to Seller or any of its Affiliates (excluding the Company Group), pursuant to which such Person shall resign from all positions held by such Person with the Company and each Company Subsidiary.

(b) Purchaser shall deliver or cause to be delivered:

(i) to Seller, the Transferred Interests Assignment Agreement, duly executed by Purchaser;

(ii) to Seller, by wire transfer or delivery of immediately available funds to one or more accounts previously designated by Seller, an amount equal to (x) the Estimated Purchase Price, *minus* (y) the Escrow Amount;

(iii) the Escrow Amount, to the Escrow Agent, by wire transfer or delivery of immediately available funds for deposit with the Escrow Agent in an account established under the Escrow Agreement (the “**Escrow Account**”);

(iv) to the Person entitled thereto, such Person’s portion of the Transaction Expenses (as identified, with payment information and amount, by Seller to Purchaser in writing no less than 12 Business Days prior to the Closing Date); provided, that a portion of Transaction Expenses with respect to compensation payments that become due solely as a result of the consummation of the transactions contemplated by this Agreement shall be paid to an account or accounts of the Company or any Company Subsidiary (as identified, with payment information and amount, by Seller to Purchaser in writing no less than 12 Business Days prior to the Closing Date) for the payment to the recipients of such Transaction Expenses;

(v) to the other parties thereto, the Escrow Agreement duly executed by Purchaser; and

(vi) to Seller, the officer’s certificate referred to in Section 7.02(b).

2.04 **Purchase Price Adjustment.**

(a) As promptly as practicable after the Closing, but in no event more than 45 calendar days after the Closing Date, Purchaser shall in good faith prepare and deliver to Seller a statement (the “**Closing Date Statement**”) indicating Purchaser’s calculation of the Working Capital Adjustment, Net Closing Indebtedness and the CapEx Adjustment and the components thereof and the resulting calculation of the Purchase Price, as of the Calculation Time, together with reasonable supporting detail. Seller shall make its and its Affiliates’ respective officers and employees, and use commercially reasonable efforts to make Seller’s other Representatives, in each case who were involved in and knowledgeable about the information used in and/or the preparation of the Estimated Purchase Price, reasonably available to Purchaser and its Representatives in connection with Purchaser’s preparation of the Closing Date Statement to the extent requested by Purchaser.

(b) Until such time as the Final Closing Date Statement shall become final in accordance with clause (c) below, Purchaser and the Company shall permit Seller and its Representatives reasonable access with reasonable prior notice, during normal business hours, to the Books and Records and personnel of the Company and the Company Subsidiaries to aid in its review of the Closing Date Statement. Seller shall have the right to review the work papers of Purchaser and the Company underlying or utilized in preparing the Closing Date Statement and the calculation of Purchase Price, Working Capital Adjustment, Net Closing Indebtedness and CapEx Adjustment set forth therein to the extent reasonably necessary to verify the accuracy of the Closing Date Statement and the calculation of the Purchase Price, the Working Capital Adjustment, Net Closing Indebtedness and the CapEx Adjustment in conformity with this Agreement.

(c) Within 30 calendar days after its receipt of the Closing Date Statement, Seller shall either inform Purchaser in writing that the Closing Date Statement is acceptable or object thereto in writing, setting forth in reasonable detail a description of each of its objections. If Seller so objects and Purchaser and Seller do not resolve such objections on a mutually agreeable basis within 30 calendar days after Purchaser's receipt of Seller's objections, the remaining disputed items shall be submitted to Ernst & Young or, if Ernst & Young is not available for such engagement or at the time of such proposed engagement is no longer independent, such other nationally recognized independent certified public accounting firm reasonably agreed to by Purchaser and Seller (Ernst & Young or such other accounting firm agreed to by Purchaser or Seller or appointed as contemplated by the succeeding sentence, the "**Accounting Firm**"). If Purchaser and Seller cannot agree on an accounting firm within 10 calendar days of determining that an Accounting Firm other than Ernst & Young must be appointed as contemplated by the preceding sentence, then Purchaser and/or Seller may submit a request to the American Arbitration Association requesting appointment of a nationally recognized independent certified public accounting firm to serve as Accounting Firm. Purchaser and Seller shall direct the Accounting Firm to resolve such disputed items within 30 calendar days of submission of the disputed items. Upon the agreement of Purchaser and Seller, the decision of the Accounting Firm, or if Seller fails to deliver an objection to Purchaser within the first 30-day period referred to above, then the Closing Date Statement, as so adjusted (the "**Final Closing Date Statement**"), shall be final, conclusive and binding against the parties hereto. As set forth in the Final Closing Date Statement, the calculation of the Working Capital Adjustment ("**Final Working Capital Adjustment**"), Net Closing Indebtedness ("**Final Net Closing Indebtedness**") and the CapEx Adjustment ("**Final CapEx Adjustment**") and resulting Final Purchase Price shall be final for all purposes hereunder.

(d) In resolving any disputed item, the Accounting Firm (i) shall be bound by the provisions of this Section 2.04, (ii) may not assign a value to any item greater than the greatest value claimed for such item or less than the smallest value for such item claimed by either Seller or Purchaser (except to the extent that the resolution of a disputed items results in a corresponding change to any other item), (iii) shall limit its decision to such items as are in dispute and (iv) shall make its determination based solely on presentations by Seller and Purchaser which are in accordance with the guidelines and procedures set forth in this Agreement (i.e., not on the basis of independent review). Each Party shall reasonably cooperate with the Accounting Firm in order for it to render its determination, and neither Party shall engage in any *ex parte* communications with the Accounting Firm. The fees, costs and expenses

of the Accounting Firm shall be allocated by the Accounting Firm between Seller, on the one hand, and Purchaser, on the other hand, in the same proportion that the aggregate amount of the disputed items so submitted to the Accounting Firm are unsuccessfully disputed by each such party (as finally determined by the Accounting Firm) bears to the total amount of such disputed items so disputed.

(e) Within five Business Days following the determination of the Final Purchase Price, Final Working Capital Adjustment, Final Net Closing Indebtedness and Final CapEx Adjustment in accordance with this Section 2.04:

(i) in the event that the Final Purchase Price exceeds the Estimated Purchase Price, (A) Purchaser shall deliver, or cause to be delivered, to Seller, by wire transfer of immediately available funds, payment in an amount equal to (x) the Final Purchase Price, *minus* (y) the Estimated Purchase Price and (B) Purchaser and Seller shall take all actions reasonably necessary under the Escrow Agreement to cause the Escrow Agent to release to Seller all amounts then contained in the Escrow Account; and

(ii) in the event that the Estimated Purchase Price exceeds the Final Purchase Price (such excess, the “**Purchaser Amount**”), then Purchaser and Seller shall take all actions reasonably necessary under the Escrow Agreement to cause the Escrow Agent to (x) release to Purchaser from the Escrow Account an amount equal to (a) the Estimated Purchase Price, *minus* (b) the Final Purchase Price (or, if less, the amounts then contained in the Escrow Account), and (y) release to Seller from the Escrow Account all amounts remaining in such account, if any, after giving effect to the release to Purchaser pursuant to the foregoing clause (x). If the amounts then contained in the Escrow Account are insufficient to pay the Purchaser Amount in full, Seller shall deliver, or cause to be delivered, to Purchaser, by wire transfer of immediately available funds, payment in an amount equal (1) the Purchaser Amount *minus* (2) such amounts in the Escrow Account released to Purchaser.

2.05 **Withholding**. Purchaser shall be entitled to deduct and withhold from any payments made pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of any such payment under any applicable Tax Law, provided that Purchaser shall not be permitted to deduct and withhold from any payments under Section 1445 of the Code, except to the extent provided in Section 6.04(d) or as otherwise required by a change in Tax Law. To the extent that any amounts are so deducted or withheld, and timely paid to the proper taxing authority pursuant to any applicable Tax Law, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made. Notwithstanding the foregoing, before making any deduction or withholding required by a change in Tax Law, Purchaser shall give Seller reasonable advance notice of any anticipated deduction or withholding (together with the legal basis therefor), provide Seller with sufficient opportunity to provide any forms or other documentation or take such other steps in order to avoid such deduction or withholding, and reasonably cooperate with Seller in good faith to attempt to reduce any amounts that would otherwise be deducted and withheld.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the disclosure letter delivered by Seller to Purchaser concurrently with the execution and delivery by Seller of this Agreement (the “**Seller Disclosure Letter**”) and subject to Section 9.12, Seller represents and warrants to Purchaser as of the date of this Agreement and as of the Closing as follows:

3.01 **Organization, Standing and Power.** Each of Seller, the Company and the Company’s Subsidiaries (collectively, the “**Company Subsidiaries**”) is duly organized, validly existing and in active status or good standing, as applicable, under the laws of the jurisdiction in which it is organized (in the case of active status or good standing, to the extent such jurisdiction recognizes such concept), except, in the case of the Company Subsidiaries, where the failure to be in good standing has not had or would not reasonably be expected to have, individually or in the aggregate, a material adverse impact on the Company and the Company Subsidiaries, taken as a whole. Seller has all requisite limited partnership power and authority to own the Transferred Interests and to execute and deliver this Agreement and the Escrow Agreement and to perform its obligations hereunder and thereunder. Each of the Company and the Company Subsidiaries has all requisite entity power and authority to enable it to own, operate, lease or otherwise hold its properties and assets and to conduct its businesses as presently conducted, except where the failure to have such power or authority has not had or would not reasonably be expected to have, individually or in the aggregate, a material adverse impact on the Company and the Company Subsidiaries, taken as a whole. Each of the Company and the Company Subsidiaries is duly qualified or licensed to do business in each jurisdiction where the nature of its business or the ownership, operation or leasing of its properties make such qualification necessary, except in any such jurisdiction where the failure to be so qualified or licensed has not had or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

3.02 **Company Subsidiaries.**

(a) All the outstanding shares of capital stock or voting securities of, or other Equity Securities in, each Company Subsidiary have been validly issued and are fully paid and nonassessable and are owned by the Company, by another Company Subsidiary or by the Company and another Company Subsidiary, free and clear of (i) all Liens and (ii) any other restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock, voting securities or other equity interests), except, in the case of the foregoing clauses (i) and (ii), as imposed by this Agreement, the Organizational Documents of the Company Subsidiaries or applicable securities Laws. Section 3.02 of the Seller Disclosure Letter sets forth a true and complete list of the Company Subsidiaries as of the date of this Agreement.

(b) Seller has made available to Purchaser true and complete copies of the certificate of incorporation of the Company in effect as of the date of this Agreement, including any amendments thereto, the bylaws of the Company in effect as of the date of this Agreement, including any amendments thereto, and the Organizational Documents of each Company Subsidiary in effect as of the date of this Agreement, including any amendments thereto. Neither

the Company nor any Company Subsidiary is in violation or breach of its Organizational Documents.

(c) Neither the Company nor any Company Subsidiary owns any shares of capital stock or voting securities of, or other Equity Securities in, any Person other than the Company Subsidiaries.

(d) The Company and the Company Subsidiaries have no material Obligations or revenues arising from the Company Group's ownership of Equity Securities in Kykuit Resources, LLC.

3.03 **Capital Structure.**

(a) The authorized capital stock of the Company consists of 160,000 shares of Company Common Stock. As of date of this Agreement, (i) 137,808 shares of Company Common Stock were issued and outstanding and (ii) options to acquire 10,718 shares of Company Common Stock under the Company Stock Option Plan were issued and outstanding. As of the Closing, all options to acquire Company Common Stock under the Company Stock Option Plan will have been terminated with no continuing Obligations of the Company in respect thereof. The Transferred Interests will represent 100% of the issued and outstanding shares of the Company Common Stock.

(b) All outstanding shares of Company Common Stock are duly authorized, validly issued, fully paid and nonassessable, were issued in compliance with applicable Law and are not subject to, or issued in violation of, any preemptive right or Contract. Seller has good and valid title to and full power and authority to sell, convey, transfer, and assign legal and beneficial ownership of, all of the Transferred Interests, free and clear of all Liens (other than under applicable securities Laws or the Company Organizational Documents). Except as set forth in Section 3.03(a), or pursuant to the terms of this Agreement, there are not issued, reserved for issuance or outstanding, and there are not any outstanding obligations of the Company or any Company Subsidiary to issue, deliver, grant or sell, or cause to be issued, delivered, granted or sold, (i) any capital stock of the Company or any Company Subsidiary or any securities of the Company or any Company Subsidiary convertible into or exchangeable or exercisable for shares of capital stock or voting securities of, or other equity interests in, the Company or any Company Subsidiary, (ii) any equity-based awards, contingent value rights, "phantom" stock warrants, calls, options or similar securities or rights that are derivative of, or provide economic benefits based, directly or indirectly, on the value or price of, any capital stock of, or other securities or ownership interests in, the Company, or other rights to acquire from the Company or any Company Subsidiary, or any other obligation or Contract of the Company or any Company Subsidiary to issue, deliver or sell, or cause to be issued, delivered or sold, any capital stock or voting securities of, or other equity interests in, the Company or any Company Subsidiary or (iii) any other rights, arrangements or Contracts to receive cash in respect of the value of capital stock of the Company or any Company Subsidiary (the securities described in foregoing clauses (i), (ii) and (iii), collectively, "**Equity Securities**"). Except pursuant to the Company Stock Option Plan, there are not any: (i) outstanding obligations of the Company or any Company Subsidiary to repurchase, redeem or otherwise acquire any Equity Securities; (ii) voting trusts, proxies or similar arrangements or understandings to which the Company or any Company Subsidiary is a

party or by which the Company or any Company Subsidiary is bound with respect to the voting of any shares of capital stock of, or other equity or voting interest in, the Company or any Company Subsidiary; or (iii) obligations or binding commitments of any character restricting the transfer of any shares of capital stock of, or other equity or voting interest in, the Company or any Company Subsidiary to which the Company or any Company Subsidiary is a party or by which it is bound. There is no outstanding Indebtedness of the Company or any Company Subsidiary having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which shareholders of the Company or Company Subsidiary may vote. All options to acquire Company Common Stock were granted in accordance with the terms of the Company Stock Option Plan and in material compliance with the requirements of all applicable Laws. All options to acquire Company Common Stock were granted with an exercise price which was not less than the fair market value of the Company Common Stock on the date of grant.

(c) Neither the Company nor or any Company Subsidiary is a party to any Contract relating to the voting of, requiring registration of, or granting any preemptive rights, anti-dilutive rights or rights of first refusal or other similar rights with respect to any Equity Securities.

3.04 **Authority; Execution and Delivery; Enforceability.** The execution, delivery and performance by Seller of this Agreement and by Seller of the Escrow Agreement, and the consummation by Seller of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action on the part of Seller. This Agreement has been duly executed and delivered by Seller, and the Escrow Agreement will at the Closing be duly executed and delivered by Seller, and, assuming the due authorization, execution and delivery of the other parties hereto and thereto, this Agreement constitutes the valid and legally binding obligation of Seller, and when executed and delivered, the Escrow Agreement will constitute the valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Laws affecting the enforcement of creditors' rights generally or by general equitable principles (the "**Bankruptcy and Equity Exceptions**").

3.05 **No Conflicts; Consents.**

(a) The execution and delivery by Seller of this Agreement and the Escrow Agreement does not, and the performance by Seller of its covenants and agreements hereunder and thereunder and the consummation of the transactions contemplated hereunder and thereunder (including the Restructuring) will not, (i) conflict with, or result in any violation or breach of any provision of the Organizational Documents of Seller, the Company or any Company Subsidiary, (ii) subject to obtaining the Consents set forth in Section 3.05(a)(ii) of the Seller Disclosure Letter (the "**Seller Required Consents**"), conflict with, result in any violation of, breach or default (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any material obligation, or result in the creation of any Liens on the properties, assets or rights of the Company or any Company Subsidiary, or give rise to the loss of a material benefit, or require Seller or the Company or any Company Subsidiary to obtain any consent, approval of, make any filing with or give any notice to any Person, in each case, under any Contract to which the Company or any Company Subsidiary is a party or by which

any of its properties or assets is bound or any Permit applicable to the business of the Company and the Company Subsidiaries or (iii) subject to obtaining the Consents referred to in Section 3.05(b) and making the Filings referred to in Section 3.05(b), conflict with, or result in any violation or breach of any provision of, any Law applicable to the Company or any Company Subsidiary or their respective properties or assets, except for, in the case of the foregoing clauses (ii) and (iii), any matter that (x) has not had or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (y) would not prevent or materially impede, interfere with or delay the consummation of the transactions contemplated by this Agreement or the Escrow Agreement.

(b) No consent, approval, authorization, waiver or Permit (“**Consent**”) of or from, or registration, declaration, notice or filing (“**Filing**”) made to or with, any Governmental Authority is required to be obtained or made by Seller, the Company, or any Company Subsidiary in connection with Seller’s execution and delivery of this Agreement or the Escrow Agreement or its performance of its covenants and agreements hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby (including the Restructuring), except for the following:

(i) compliance with, Filings under and the expiration of any applicable waiting period under the HSR Act;

(ii) (1) any required Filings with, and any required Consents of, each of the MPUC, the MTPSC, the NCUC and the PUCO and (2) and the other Filings and Consents set forth in Section 3.05(b)(ii) of the Seller Disclosure Letter (the Consents and Filings set forth in Section 3.05(b)(i) and this Section 3.05(b)(ii), collectively, the “**Seller Required Statutory Approvals**”); provided, however, any Consents required in connection with the Restructuring shall be deemed Seller Required Statutory Approvals only if the IRS Certificate is not issued by the IRS to Seller;

(iii) the Seller Required Consents; and

(iv) such other Filings or Consents the failure of which to make or obtain (1) would not have or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (2) would not prevent or materially impede, interfere with or delay the consummation of the transactions contemplated by this Agreement or the Escrow Agreement.

3.06 **Financial Statements; Undisclosed Liabilities.**

(a) Set forth in Section 3.06 of the Seller Disclosure Letter are true, correct and complete copies of (i) the audited consolidated financial statements of Hearthstone Utilities, Inc. (including the consolidated balance sheet, the consolidated statements of income, the consolidated statements of changes in stockholder equity and the consolidated statements of cash flows of the Company) as of and for the years ended December 31, 2019, December 31, 2018 and December 31, 2017 and (ii) the unaudited consolidated financial statements of Hearthstone Utilities, Inc. (including the consolidated balance sheet, the consolidated statements of income, the consolidated statements of changes in stockholder equity and the consolidated statements of

cash flows of the Company) as of and for the nine-month period ended September 30, 2020, in each case, prepared from the Books and Records of Hearthstone Utilities, Inc. in accordance with GAAP, consistently applied without modification as of the dates and for the periods presented (except as may be stated therein or in the notes thereto and, with respect to the unaudited financial statements, subject to normal and recurring audit and year-end adjustments that are expected to be immaterial and the absence of footnotes) (collectively, the “**Financial Statements**”). The Financial Statements present fairly in all material respects the financial condition and results of operations of Hearthstone Utilities, Inc. and its consolidated Subsidiaries in accordance with GAAP, consistently applied without modification as of the dates and for the periods presented, except as may be stated therein or in the notes thereto and, with respect to the unaudited financial statements, subject to normal and recurring audit and year-end adjustments that are expected to be immaterial and the absence of footnotes. The Books and Records of the Company Group have been kept and maintained in all material respects in accordance with applicable Laws.

(b) The Company has been incorporated solely for the purpose of owning the capital stock of Hearthstone Utilities, Inc. and taking action incident to the ownership of the capital stock of Hearthstone Utilities, Inc. The Company has not, since the date of its formation, carried on any business or conducted any operations, except as arising from the ownership of the capital stock of Hearthstone Utilities, Inc. and matters ancillary thereto.

(c) Except as set forth in the Financial Statements (including the related notes and schedules), none of the Company or any of the Company Subsidiaries has any Obligations required by GAAP to be set forth on a balance sheet or the notes thereto, except for Obligations (i) incurred since January 1, 2020 in the Ordinary Course of Business, (ii) permitted to be incurred in connection with the transactions contemplated by this Agreement, and (iii) which would not reasonably be expected to have, individually or in the aggregate, a material adverse impact on the Company and the Company Subsidiaries, taken as a whole.

3.07 **Absence of Certain Changes or Events.** Except as set forth on Section 3.07 of the Seller Disclosure Letter: (a) since January 1, 2020, each of the Company and the Company Subsidiaries has conducted its respective business in all material respects in the Ordinary Course of Business; and (b) since January 1, 2020, there has not occurred any action that, if taken after the date of this Agreement, would be prohibited by Section 5.02 if taken without the prior written consent of Purchaser. Since January 1, 2020, there has not occurred any fact, circumstance, effect, change, event or development that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

3.08 **Taxes.**

(a) Except as has not had or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(i) Each of the Company and each Company Subsidiary has (1) timely and properly filed, taking into account any valid extensions, all Tax Returns required to have been filed by it and all such Tax Returns are accurate and complete and (2) timely paid all Taxes due and payable by it, whether or not shown as due on any such Tax

Returns or, where payment is not yet due, has made adequate provisions for such Taxes in the Financial Statements in accordance with GAAP;

(ii) There are no Liens with respect to Taxes upon any of the assets or properties of either the Company or any Company Subsidiary, other than with respect to Taxes not yet due and payable;

(iii) The Company and each Company Subsidiary has timely and properly withheld and paid all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any current or former service provider, equity interest holder, or other third party;

(iv) No deficiency or proposed adjustment which has not been paid or resolved for any amount of Tax has been asserted or assessed in writing by any taxing authority against the Company or any Company Subsidiary. None of Seller (or any of its Affiliates), the Company or any Company Subsidiary has (1) received written notice of any audit, examination, investigation or other proceeding from any taxing authority for any amount of unpaid Taxes asserted against the Company or any Company Subsidiary, which have not been fully paid or settled, or (2) with respect to the Company or any Company Subsidiary, granted any waiver of any statute of limitations with respect to, or any extension of a period for the assessment or collection of, any Tax, which extension is still in effect;

(v) The Company and each Company Subsidiary has timely and properly collected all sales, use, value-added, and similar Taxes, and has timely and properly remitted such amounts to the appropriate taxing authority, or has been furnished properly completed exemption certificates and has maintained all such records and supporting documents in the manner required by all applicable sales and use Tax statutes and regulations;

(vi) Neither the Company nor any Company Subsidiary (1) is or, in the past three years, has been a member of an affiliated group (other than a group the common parent of which is the Company or a Company Subsidiary) filing a consolidated federal income Tax Return or (2) has any Obligations for Taxes of any Person (except for the Company or any Company Subsidiary) arising from the application of Treasury Regulation Section 1.1502-6 or any analogous provision of state, local or foreign Law, or as a transferee or successor, by contract or otherwise;

(vii) Neither the Company nor any Company Subsidiary is a party to or is otherwise bound by any Tax sharing, allocation or indemnification agreement or arrangement, except for such an agreement or arrangement (1) exclusively between or among the Company and Company Subsidiaries or (2) with customers, vendors, lessors or other third parties entered into in the Ordinary Course of Business and not primarily related to Taxes;

(viii) Within the past three years, neither the Company nor any Company Subsidiary has been a “distributing corporation” or a “controlled corporation” in a distribution intended to qualify for tax-free treatment under Section 355 of the Code;

(ix) Within the past three years, no written Claim has been made by an authority in a jurisdiction where neither the Company nor any Company Subsidiary does not file Tax Returns that the Company or any Company Subsidiary may be subject to taxation by that jurisdiction;

(x) Neither the Company nor any Company Subsidiary will be required to include any item of income in, or exclude any deduction from, taxable income for any taxable period (or portion thereof) beginning after the Closing Date as a result of any: (i) change in method of accounting for a taxable period ending on or prior to the Closing Date; (ii) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Tax Law) executed on or prior to the Closing Date; (iii) installment sale or open transaction disposition made on or prior to the Closing Date; or (iv) deferred revenue or prepaid or deposit amount received on or prior to the Closing Date;

(xi) Neither the Company nor any Company Subsidiary has requested or received a Tax ruling from any taxing authority or entered into any binding agreement relating to Taxes with any taxing authority; and

(xii) Neither the Company nor any Company Subsidiary (x) has engaged in any “reportable transaction” (other than a “loss transaction”) as defined in Treasury Regulation Section 1.6011-4(b) or (y) has applied for or received a loan under the Paycheck Protection Program established as part of the CARES Act.

3.09 **Employee Benefits.**

(a) Section 3.09(a) of the Seller Disclosure Letter sets forth a complete and accurate list as of the date of this Agreement of each material Company Benefit Plan. Any non-material Company Benefit Plans which are not listed on Section 3.09(a) of the Seller Disclosure Letter could not, when aggregated together with all other non-material Company Benefit Plans which are not listed, be considered material.

(b) With respect to each material Company Benefit Plan, Seller has made available to Purchaser, to the extent applicable, complete and accurate copies, as of the date of this Agreement, of (i) the plan document (or, if such arrangement is not in writing, a written description of the material terms thereof), including any amendment thereto, any summary plan description thereof and any summary of material modifications thereto, (ii) each trust, insurance, custodial, annuity or other funding Contract or instrument related thereto, (iii) the most recent audited financial statements and actuarial or other valuation reports prepared with respect thereto, (iv) the most recent annual reports on Form 5500 required to be filed with the Internal Revenue Service (the “**IRS**”) with respect thereto and (v) the most recently received IRS determination letter or, with respect to any Company Benefit Plan that is a master/prototype or volume submitter plan, the most recently received IRS advisory, opinion, or notification letter.

No Company Benefit Plan is maintained outside the jurisdiction of the United States, or covers any Company Personnel residing or working outside of the United States.

(c) Each Company Benefit Plan has been established and administered in accordance with its terms and the requirements of all applicable Laws, including ERISA and the Code, except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (i) there are no Claims (other than routine Claims for benefits) pending or, to the Knowledge of Seller, threatened in writing, with respect to any Company Benefit Plan or any related trust or other funding medium thereunder and (ii) no Claim by the Department of Labor, the IRS or other Governmental Authority is pending, in progress or, to the Knowledge of Seller, threatened in writing.

(d) Neither the Company nor any Company Subsidiary maintains, contributes to, is required to contribute to, or otherwise has any Obligations with respect to (i) a multiemployer plan within the meaning of Section 3(37) or 4001(a)(3) of ERISA (“**Multiemployer Plan**”) or (ii) a plan that is subject to Title IV of ERISA or Section 412 of the Code. No event has occurred and, to the knowledge of Seller, no condition exists that would subject the Company or any Company Subsidiary, by reason of their affiliation with any Company Commonly Controlled Entity, to any material tax, fine, lien, penalty or other liability imposed by ERISA or the Code.

(e) Each Company Benefit Plan that is intended to be qualified under Section 401(a) or Section 501(c)(9) of the Code, as applicable, has received a favorable determination letter or opinion or notification to that effect from the IRS.

(f) Except as set forth in Section 3.09(f) of the Seller Disclosure Letter, neither the Company nor any Company Subsidiary has any Obligations for providing health, medical or other welfare benefits after retirement or other termination of employment, except for coverage or benefits required to be provided under Section 4980(B)(f) of the Code or other applicable Law.

(g) Except as expressly provided in Section 6.01 or as set forth in Section 3.09(g) of the Seller Disclosure Letter, neither the execution and delivery of this Agreement or the Escrow Agreement, the performance by any party of its covenants and agreements hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby (alone or in conjunction with any other event) would reasonably be expected to (i) accelerate the time of any payment or trigger any funding of any compensation or benefit due to any Company Personnel, or trigger any other obligation under any Company Benefit Plan or (ii) increase the benefits or amount payable under any Company Benefit Plan.

(h) Except as set forth in Section 3.09(h) of the Seller Disclosure Letter, neither the execution and delivery of this Agreement or the Escrow Agreement, the performance by any party of its covenants and agreements hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby (alone or in conjunction with any other event) would reasonably be expected to result in any payment or benefit that could not be deductible under Section 280G of the Code.

(i) Seller is not (x) an employee benefit plan within the meaning of Section 3(3) of ERISA, (y) deemed to constitute “plan assets” within the meaning of Section 3(42) of ERISA and the regulations thereunder, or (z) a “governmental plan” or “church plan” within the meaning of ERISA. Seller does not have the authority to appoint or terminate Ullico Investment Advisors, Inc. (“**UIA**”) as investment manager of the assets invested by any Constituent Plan in the Purchaser, or to negotiate the terms of any management agreement with UIA on behalf of such Constituent Plan with respect to such assets.

(j) Each Company Benefit Plan that is a “nonqualified deferred compensation plan” complies in all material respects with, and has been operated, in all material respects, in compliance with, the requirements of Section 409A of the Code and the Treasury Regulations promulgated thereunder. No Company Benefit Plan provides any person with a “gross up” or similar payment in respect of any Taxes or related interests or penalties that may become payable under Section 409A or 4999 of the Code.

3.10 Labor and Employment Matters. Except as set forth in Section 3.10 of the Seller Disclosure Letter, neither the Company nor any Company Subsidiary is party to any collective bargaining agreement or similar labor union Contract with respect to any of their respective employees (the Contracts set forth in Section 3.10 of the Seller Disclosure Letter, the “**Company Union Contracts**”). To the Knowledge of Seller, (a) there are no labor-related strikes, walkouts or lockouts pending or threatened with respect to any employee of the Company or any Company Subsidiary, and (b) there is no pending union organizing campaign and no labor union has made a pending demand for recognition or certification with respect to any employee of the Company or any Company Subsidiary. The Company is in material compliance with all Laws relating to the employment of labor, including all such Laws relating to wages, hours, discrimination, immigration, the WARN Act and any similar state or local “mass layoff” or “plant closing” Law. Except for matters that would not have and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, all individuals who perform services on behalf of the Company or any Company Subsidiary are properly classified as Company Employees, independent contractors or otherwise.

3.11 Litigation. Except as set forth in Section 3.11 of the Seller Disclosure Letter, there is no Claim before any Governmental Authority pending or, to the Knowledge of Seller, threatened against the Company or any Company Subsidiary or any of their respective properties, rights or assets, or any of their respective directors, officers, or employees in their capacity as such, or, to the Knowledge of Seller, any other Person to whom the Company or any of the Company Subsidiaries may be liable by way of indemnity or guarantee or similar arrangement that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Except as set forth in Section 3.11 of the Seller Disclosure Letter, there is no Order outstanding against or, to the Knowledge of Seller, investigation by any Governmental Authority of the Company or any Company Subsidiary or any of their respective properties or assets that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Section 3.11 of the Seller Disclosure Letter sets forth a true and complete list as of the date of this Agreement of each known Claim involving an amount in excess of (or reasonably anticipated to be in excess of) \$100,000. There are no material Claims pending, or to the Knowledge of Seller, threatened by the Company or any Company Subsidiary against any third party.

3.12 **Compliance with Applicable Laws; Permits and Assets.**

(a) Except for matters that have not had or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Company and the Company Subsidiaries are, and at all times since January 1, 2018 have been, in compliance with all applicable Laws, and none of Seller (or any of its Affiliates), the Company or any Company Subsidiary has received written or, to the Knowledge of Seller, oral notice of any violation of Law with respect to the Company, the Company Subsidiaries or their respective assets or business and, in each case, no Claim is pending, or to the Knowledge of Seller, threatened with respect to any such matters.

(b) The Company and the Company Subsidiaries hold all material Permits necessary in order to validly and lawfully own, lease, maintain, operate and conduct the business and operations of the Company and the Company Subsidiaries as currently conducted in substantially the same manner as that the Company and the Company Subsidiaries have been operating their respective businesses prior to the date hereof. Except for matters that have not had or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, all such Permits are in full force and effect, and there exists no violation or default thereunder or breach thereof, and none of the Company or any Company Subsidiary has notice or actual knowledge that such Permits will not be renewed in the Ordinary Course of Business after the Closing Date. No Governmental Authority has given written or, to the Knowledge of Seller, oral notice to the Company or any Company Subsidiary that it has taken or intends to take any action to terminate, suspend, cancel or reform any such Permit. Each such material Permit has been previously furnished to the Purchaser (including all amendments, waivers and modifications thereto).

(c) Except for matters that have not had or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (i) each of the Company and the Company Subsidiaries is, and since January 1, 2018 has been, in compliance with (x) all applicable material data protection, privacy and other applicable Laws governing the collection or use (including the storage, display, transfer and other disposition) of any personal information and (y) any material privacy policies or related policies, programs or other written or, to the Knowledge of Seller, oral notices that concern the Company's or any Company Subsidiaries' collection or use of any personal information of any Person; (ii) since January 1, 2018, there have not been any incidents of material data security breaches, or any written or, to the Knowledge of Seller, oral complaints or notices to, or any audits, proceedings or investigations conducted or claims asserted in writing or, to the Knowledge of Seller, orally by any other Person (including any Governmental Authority) regarding the unauthorized or illegal collection or use (including the storage, display, transfer and other disposition) of personal information of any Person by the Company or any Company Subsidiaries or any violation of applicable Law, and no such claim is pending or, to the Knowledge of Seller, threatened and (iii) the Company Group maintains privacy policies designed to comply with applicable data privacy, data protection and data security Laws.

3.13 **Environmental Matters.**

(a) Except for matters that would not have and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(i) the Company and the Company Subsidiaries are in compliance with all, and within the applicable statute of limitations have not violated any, Environmental Laws, and, except for matters that have been fully and finally resolved, none of Seller (or any of its Affiliates), the Company or any Company Subsidiary has received any written or, to the Knowledge of Seller, oral communication from a Governmental Authority or other Person that alleges that the Company or any Company Subsidiary is or has been in violation of or subject to liability pursuant to any Environmental Law or any Permit issued pursuant to Environmental Law (each, an “**Environmental Permit**”);

(ii) with respect to all Environmental Permits necessary to conduct the respective operations of the Company or the Company Subsidiaries as currently conducted, (1) the Company and each of the Company Subsidiaries have obtained and are in compliance with all, and within the applicable statute of limitations have not violated any, such Environmental Permits, (2) all such Environmental Permits are valid and in good standing and (3) none of Seller (or any of its Affiliates), the Company or any Company Subsidiary has received written or, to the Knowledge of Seller, oral notice from any Governmental Authority seeking to modify, revoke or terminate, any such Environmental Permits;

(iii) there are no Environmental Claims pending or, to the Knowledge of Seller, threatened against the Company or any Company Subsidiary or that have not been fully and finally resolved within three years prior to the Closing Date;

(iv) there are and have been no actual or threatened Releases of Hazardous Materials at any property currently or, to the Knowledge of Seller, formerly owned, leased or operated by the Company or any Company Subsidiary, or at any other location (including third-party disposal sites) that would reasonably be expected to form the basis of any Environmental Claim against the Company or any Company Subsidiary, or result in liability to the Company or any Company Subsidiary under any Environmental Laws;

(v) none of the Company or any Company Subsidiaries has entered into any consent decree or other agreement with any Governmental Authority, and none of the Company or any Company Subsidiaries is subject to any Order or similar requirement, in either case relating to any Environmental Laws or to any Hazardous Materials;

(vi) none of the Company or any Company Subsidiaries is subject to any Obligations pursuant to Environmental Law with respect to any manufactured gas plants;

(vii) none of the properties currently or, to the Knowledge of Seller, formerly owned or operated by the Company or any Company Subsidiaries is listed or, to

the Knowledge of Seller, proposed for listing on the National Priorities List or on the CERCLIS or any analogous state or local list; and

(viii) none of the Company or any Company Subsidiaries has assumed or provided indemnity against any Obligations of any other Person under or relating to Environmental Laws.

3.14 **Contracts.**

(a) Except as set forth on Section 3.14(a) of the Seller Disclosure Letter, and except for this Agreement and Company Benefit Plans, as of the date of this Agreement, neither the Company nor any Company Subsidiary is a party to any Contract:

(i) relating to firm (i) pipeline transportation, including any interconnection, balancing and transportation agreements, (ii) natural gas storage service, or (iii) purchase of natural gas for consideration, in each case, in excess of \$75,000 on an annual basis or \$250,000 in the aggregate, and in each case, other than under tariffs of general applicability on stated rates;

(ii) that generates revenues to the Company or any of the Company Subsidiaries in excess of \$75,000 on an annual basis or requires payment by the Company or any of the Company Subsidiaries in excess of \$75,000 on an annual basis or \$250,000 in the aggregate;

(iii) that obligates the Company or any Company Subsidiary to make any capital commitments or capital expenditures totaling more than \$100,000 on an annual basis or \$250,000 in the aggregate;

(iv) for the purchase or sale of assets, including Equity Securities (other than natural gas or other inventory purchased by the Company or any Company Subsidiary in the Ordinary Course of Business) or a business, in each case with material obligations remaining to be performed or any material Obligations continuing after the date of this Agreement, including any “earn-out” or other contingent or fixed payment obligations in excess of \$100,000;

(v) that contains restrictions on the right of the Company, any Company Subsidiary or any of their Affiliates (including, assuming for these purposes the Closing has occurred, Purchaser or any of its Affiliates) to (A) engage in any line of business or activities competitive with any Person or in any geographical area, (B) to offer or sell any product or service to any Person or class of Persons or (C) to solicit customers or suppliers anywhere in the world;

(vi) providing for material warranty or repair obligations currently in effect in connection with assets or property having a value of at least \$50,000, including those with respect to any material equipment or components of the Company or any Company Subsidiary;

(vii) relating to third party guarantee obligations of the Company or any Company Subsidiary;

(viii) relating to a partnership, joint venture, strategic alliance or similar arrangement that is material to the Company as a whole or any Company Subsidiary;

(ix) the primary purpose of which is to provide for indemnification of any Person or the assumption of any Tax, environmental or other Obligations of any Person by the Company or any Company Subsidiary, except for any such Contract that is not material to the Company or any Company Subsidiary;

(x) (A) relating to any item of Indebtedness involving an amount greater than \$75,000 or that is otherwise material to the Company as a whole or (B) granting a Lien on the Equity Securities, assets or properties of the Company or any Company Subsidiary to secure such Indebtedness;

(xi) that is a settlement or similar Contract with any Governmental Authority, or that is a settlement or similar Contract pursuant to which the Company or any Company Subsidiary is obligated to pay consideration after the date of this Agreement in excess of \$100,000;

(xii) is a Contract that relates to material Intellectual Property of the Company or any Company Subsidiary, excluding off-the-shelf software licenses with annual fees less than \$40,000;

(xiii) any Real Property Agreement that is material to the Company as a whole or is material to any Company Subsidiary;

(xiv) that prohibits the payment of dividends or distributions in respect of the capital stock of the Company or any Company Subsidiary, prohibits the pledging of the capital stock of the Company or any Company Subsidiary or prohibits the issuance of guarantees by the Company or any Company Subsidiary; or

(xv) any Contract relating to futures, hedges or swaps that involves an amount greater than \$75,000 or is otherwise material to the Company as a whole;

(each Contract of the type described in this Section 3.14(a), whether or not set forth on Section 3.14(a) of the Seller Disclosure Letter, and any Contract of such type entered into after the date hereof and prior to the Closing, including any amendments thereto, a “**Material Company Contract**”).

(b) A true and correct copy of each Material Company Contract (including any written waivers thereto) in effect as of the date of this Agreement has been made available to Purchaser prior to the date of this Agreement. Except as has not had or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (i) each Material Company Contract is a valid, binding and legally enforceable obligation of the Company or one of the Company Subsidiaries, as the case may be, and, to the Knowledge of Seller, of the other parties thereto, subject in all respects to the Bankruptcy and Equity Exceptions, (ii) each such

Material Company Contract is in full force and effect in accordance with its terms, (iii) none of the Company or any Company Subsidiary is (with or without notice or lapse of time, or both) in violation, breach or default under any such Material Company Contract and, to the Knowledge of Seller, no other party to any such Material Company Contract is (with or without notice or lapse of time, or both) in violation, breach or default thereunder and (iv) no event or circumstance has occurred that (with or without notice or lapse of time, or both) would constitute a violation, breach or default under, or permit any termination, modification or acceleration under, such Material Company Contract by the Company or any Company Subsidiary or, to the Knowledge of Seller, any other party thereto.

(c) No party to any Material Company Contract, including the Company or any Company Subsidiary, has given written notice of its intention to terminate or make a Claim of force majeure (or its intention to do or claim any of the foregoing) of a Material Company Contract, and none of Seller, the Company, the Company Subsidiaries or any of their respective Affiliates has received any written notice of any of the foregoing from any counterparty to a Material Company Contract.

3.15 **Real Property.** Except as has not had or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (1) each of the Company and the Company Subsidiaries has either (A) good, marketable and indefeasible title, in fee or (B) good and valid leasehold, easement, license or other rights, to the land, buildings, wires, pipes, structures and other improvements thereon and fixtures thereto necessary to permit it to conduct its business as currently conducted, including all transmission lines (the “**Real Property**”), in each case, free and clear of any Liens, except for Permitted Liens; (2) the Company and the Company Subsidiaries possess all permits, deeds, leases, licenses, easements, rights or way, surface rights, operating authorities, orders, exemptions, franchises, variances, consents, approvals and such other similar agreements granting rights in real property or other similar authorizations relating to real property (collectively, “**Real Property Agreements**”) required for the present ownership and operation of all Real Property; and (3) none of Seller (or any of its Affiliate), the Company or any Company Subsidiary has received written or, to the Knowledge of Seller, oral notice of any condemnation proceeding or proposed action or agreement for taking in lieu of condemnation, nor is any such proceeding, action or agreement pending or, to the Knowledge of Seller, threatened in writing, with respect to any portion of any Real Property. Neither the Company nor any Company Subsidiary is a party to any Contract or option to purchase or sell an interest in any material real property. Seller has made available to Purchaser true and correct copies of all title insurance abstracts, policies and surveys in Seller’s or any of its Affiliate’s possession or control relating to Real Property.

3.16 **Personal Property.** The Company Group (i) owns, leases or licenses and (ii) has good and valid title to, or a valid leasehold interest in, all material equipment, inventory, Intellectual Property, real property (and interests in real property) and other assets necessary to conduct the business and operations of the Company Group in substantially the same manner as the Company Group has been operating its businesses prior to the date hereof, free and clear of all Liens, except for Permitted Liens. Except as has not had or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the machinery and equipment of the Company and the Company Subsidiaries are in normal operating condition and are in a reasonable state of maintenance and repair in accordance with normal industry practice

and are suitable in all material respects for the purposes for which they are now being used in the conduct of the business of the Company and the Company Subsidiaries.

3.17 **Intellectual Property.** Section 3.17 of the Seller Disclosure Letter sets forth a true and complete list as of the date of this Agreement of (i) all worldwide patent, trademark and copyright registrations and applications thereof, (ii) domain names owned by the Company Group and (iii) licenses to use Intellectual Property of any other Person that is used by the Company Group (but excluding licenses of commercially available or off-the-shelf software or similar systems), in each case, that are material to the Company Group as a whole or any Company Subsidiary. Except as has not had or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) the Company Group owns or has the right to use all Intellectual Property used in its businesses as presently conducted, and the conduct of such businesses does not infringe or violate the rights of others, (b) to the Knowledge of Seller, no Person is infringing, misappropriating or violating any Intellectual Property owned by the Company Group and (c) no member of the Company Group is infringing, misappropriating or violating any Intellectual Property owned by any other Person and, to the Knowledge of Seller, there has been no Claim made by a third party with respect to any of the foregoing. The Company Group has in place commercially reasonable measures, and has taken commercially reasonable actions, to protect its material Intellectual Property, confidential information and the integrity, continuous operation and security of its material Intellectual Property and information technology equipment and assets owned by the Company Group and used in its business (and the data therein).

3.18 **Insurance.**

(a) Except as would not have and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (i) the Company and the Company Subsidiaries maintain insurance coverage with financially responsible insurance companies against such risks and in such amounts as are (A) sufficient for compliance with applicable Laws and Material Company Contracts and (B) customary in the industries in which the Company and the Company Subsidiaries operate, including fire and casualty, general liability, director and officer, business interruption, product liability, and sprinkler and water damage insurance policies (“**Insurance Policies**”) and (ii) such Insurance Policies are valid, binding and in full force and effect and all premiums due with respect to all Insurance Policies have been paid. The Company and the Company Subsidiaries have not reached or exceeded their policy limits for any insurance policies in effect at any time during the past three years. Except as set forth in Section 3.18(a) of the Seller Disclosure Letter, no insurance provider has issued any reservation right letters for any Claims pending or, to the Knowledge of Seller, threatened.

(b) Excluding insurance policies that have expired and been replaced on substantially similar terms in the Ordinary Course of Business, no excess liability or protection and indemnity insurance policy has been cancelled by the insurer, and no threat in writing has been made to cancel (excluding cancellation upon expiration or failure to renew) any such insurance policy of the Company or any Company Subsidiary. Except as set forth in Section 3.18(b) of the Seller Disclosure Letter and except for such matters that, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect, no event has occurred, including the failure by the Company or any Company Subsidiary

to give any notice or information or by giving any inaccurate or erroneous notice or information, that limits or impairs the rights of the Company or any Company Subsidiary under any such excess liability or protection and indemnity insurance policies in effect on the date of this Agreement.

(c) Since January 1, 2020, all applicable insurance carriers under the Insurance Policies have been notified of all potential material claims and no insurer has refused, denied or disputed coverage with respect to any material claim by the Company or any Company Subsidiary. There are no material unpaid claims under any of the Insurance Policies.

3.19 **Regulatory Status.**

(a) The Company is not subject to or is otherwise exempt from regulation with respect to Federal Energy Regulatory Commission (“**FERC**”) regarding access to books and records under the Public Utility Holding Company Act of 2005 (“**PUHCA 2005**”). Except as set forth in Section 3.19(a)(i) of the Seller Disclosure Letter, none of the Company or the Company Subsidiaries is regulated as a “public utility” under the Federal Power Act or as a “natural gas company” under the Natural Gas Act, and the assets of the Company and the Company Subsidiaries are not regulated by the FERC as an interstate pipeline and are not subject to any FERC abandonment approval prior to disposition. Except for the Company Subsidiaries set forth in Section 3.19(a)(ii) of the Seller Disclosure Letter, none of the Company Subsidiaries are regulated as a public utility, public service company or gas utility (or similar designation) or under applicable Law of any state or foreign nation.

(b) All filings (except for immaterial filings) required to be made by the Company or any Company Subsidiary since January 1, 2018, with any of the State Utilities Commissions or FERC, as the case may be, have been made, including all forms, statements, reports, agreements and all documents, exhibits, amendments and supplements appertaining thereto, including all rates, tariffs and related material documents, and all such filings complied, as of their respective dates, with all applicable requirements of applicable Laws and the rules and regulations promulgated thereunder in all material respects.

(c) Except as set forth in Section 3.19(c) of the Seller Disclosure Letter, neither the Company nor any of the Company Subsidiaries, to the extent its rates or services are regulated by a Governmental Authority, (i) as of the date hereof, has filed a currently pending rate case not subject to a final Order before a Governmental Authority with respect to rates charged by the Company or any of the Company Subsidiaries or (ii) has rates in any amounts that have been or are being collected subject to refund, pending final resolution of any rate proceeding pending before a Governmental Authority or on appeal to a court (other than rates based on estimated costs and/or revenues that are subject to adjustment once the actual costs and/or revenues become known).

3.20 **Affiliate Transactions.** Except as set forth in Section 3.20 of the Seller Disclosure Letter, since January 1, 2018, there have been no and are not now any transactions, or series of related transactions, agreements, Contracts, obligations or understandings, nor are there any currently proposed transactions, or series of related transactions, Contracts, obligations or understandings, (i) between Seller, the Company or any Company Subsidiary, on the one hand,

and any officer or director of the Company or any Company Subsidiary, on the other hand, (ii) between Seller, the Company or any Company Subsidiary, on the one hand, and any record or beneficial owner of 5% or more of the voting securities of the Company or any Company Subsidiary, on the other hand, (iii) between Seller (or any of its Affiliates), the Company or any Company Subsidiary, on the one hand, and the Company, any Company Subsidiary or any controlled Affiliate of the Company or any Company Subsidiary, on the other hand, (iv) between Seller, the Company or any Company Subsidiary, on the one hand, and any Key Employee or any of such Key Employee's Affiliates, on the other hand, and (v) between the Company or any Company Subsidiary, on the one hand, and Luvian Partners, Inc. or any of its Affiliates or employees, on the other hand.

3.21 **Brokers' Fees and Expenses.** Except for Credit Suisse Securities (USA) LLC (the fees and expenses of which will be borne by Seller or its Affiliates (excluding the Company Group)), no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller, the Company or any Company Subsidiary.

3.22 **OFAC Compliance; Anti-Corruption; Sanctions; Anti-Money Laundering.**

(a) None of Seller, the Company or any Company Subsidiary or any of their respective directors, or officers or, to the Knowledge of Seller, any of their respective employees, agents or representatives has taken, in connection with this Agreement, any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any Person to improperly influence official action by that Person for the benefit of the Company or any Company Subsidiary, or to otherwise secure an improper business advantage for the Company or any Company Subsidiary, in each case that would constitute a violation of applicable anti-corruption or anti-money laundering Laws. The businesses of Seller, the Company and each Company Subsidiary and, to the Knowledge of Seller, their respective officers, directors, employees, and agents are and have been conducted in compliance with applicable anti-corruption and anti-money laundering Laws in all material respects, and the Company Group has instituted and maintain policies and procedures designed to promote and achieve compliance with such Laws. No Claim involving Seller, the Company, each Company Subsidiary or, to the Knowledge of Seller, their respective Representatives with respect to any anti-corruption Laws or anti-money laundering Laws is pending or, to the Knowledge of Seller, threatened in writing.

(b) The operations of the Company and the Company Subsidiaries are and have been conducted in material compliance with all applicable Laws concerning or relating to Sanctions; and no Claim involving Seller, the Company, each Company Subsidiary or, to the Knowledge of Seller, their respective Representatives with respect to any such Laws is pending or, to the Knowledge of Seller, threatened in writing.

(c) Neither Seller nor any of its Specified Affiliates is a Person that is, or is owned 50% or greater or controlled by, a Person that is: (i) the subject of any economic or financial sanctions administered by the U.S. Department of State or the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**Sanctions**"); or (ii) located, organized or

resident in a country or territory that is the subject of comprehensive Sanctions (at the time of this Agreement, the Crimea region of the Ukraine, Cuba, Iran, North Korea and Syria).

3.23 **Bank Accounts; Directors and Officers.** Prior to the date hereof, Seller has furnished to Purchaser a correct and complete list of the names and locations of all banks, trust companies and other financial institutions at which the Company and the Company Subsidiaries maintain accounts of any nature or safe deposit boxes, in each case as of the date hereof. No personnel of Seller that is not an employee of any member of the Company Group or of Luvian Partners, Inc. are authorized signatories with respect to any of the accounts or safe deposit boxes referenced in clause (a) above. Section 3.23 of the Seller Disclosure Letter sets forth a correct and complete list of the directors (or other managing Persons) and officers of the Company and the Company Subsidiaries, in each case as of the date hereof. No Person holds a power of attorney to act on behalf of the Company or any of the Company Subsidiaries.

3.24 **No Additional Representations.** Except for the representations and warranties expressly set forth in Article IV (as modified by the Purchaser Disclosure Letter), Seller specifically acknowledges and agrees that neither Purchaser nor any of its Affiliates, Representatives or shareholders or any other Person makes, or has made, any other express or implied representation or warranty whatsoever (whether at law (including at common law or by statute) or in equity).

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PURCHASER

Subject to Section 9.12, except as set forth in the disclosure letter delivered by Purchaser to Seller concurrently with the execution and delivery by Purchaser of this Agreement (the “**Purchaser Disclosure Letter**”), Purchaser represents and warrants to Seller as of the date of this Agreement and as of the Closing as follows:

4.01 **Organization, Standing and Power.** Purchaser is duly organized, validly existing and in active status or good standing, as applicable, under the laws of the jurisdiction in which it is organized (in the case of active status or good standing, to the extent such jurisdiction recognizes such concept). Purchaser has all requisite limited partnership power and authority to own the Transferred Interests and to execute and deliver this Agreement and the Escrow Agreement and to perform its obligations hereunder and thereunder. Purchaser has all requisite entity power and authority to own, operate, lease or otherwise hold its properties and assets and to conduct its businesses as presently conducted, except where the failure to have such power or authority has not had or would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect. Purchaser is duly qualified or licensed to do business in each jurisdiction where the nature of its business or the ownership, operation or leasing of its properties make such qualification necessary, except in any such jurisdiction where the failure to be so qualified or licensed has not had or would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

4.02 **Authority; Execution and Delivery; Enforceability.** The execution, delivery and performance by Purchaser of this Agreement and by Purchaser of the Escrow Agreement, and the consummation by Purchaser of the transactions contemplated hereby and thereby, have

been duly authorized by all necessary corporate action on the part of Purchaser. This Agreement has been duly executed and delivered by Purchaser, and the Escrow Agreement will at the Closing be duly executed and delivered by Purchaser, and, assuming the due authorization, execution and delivery of the other parties hereto and thereto, this Agreement constitutes the valid and legally binding obligation of Purchaser, and when executed and delivered, the Escrow Agreement will constitute the valid and legally binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, subject in all respects to the Bankruptcy and Equity Exceptions.

4.03 **No Conflicts; Consents.**

(a) The execution and delivery of this Agreement and the Escrow Agreement by Purchaser does not, and the performance by Purchaser of its covenants and agreements hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby will not, (i) conflict with, or result in any violation of any provision of, the Organizational Documents of Purchaser, (ii) subject to obtaining the Consents set forth in Section 4.03(a)(ii) of the Purchaser Disclosure Letter (the “**Purchaser Required Consents**” and, together with the Seller Required Consents, the “**Required Consents**”), conflict with, result in any violation of, breach or default (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any material obligation, or result in the creation of any Liens on the properties, assets or rights of Purchaser, or give rise to the loss of a material benefit, or require Purchaser to obtain consent, approval of, make any filing with or any notice to any Person, in each case, under any Contract to which Purchaser is a party or by which any of its properties or assets is bound or any Permit applicable to the business of Purchaser and its Affiliates or (iii) subject to obtaining the Consents referred to in Section 4.03(b) and making the Filings referred to in Section 4.03(b), conflict with, or result in any violation or breach of any provision of, any Law applicable to Purchaser or its properties or assets, except for, in the case of the foregoing clauses (ii) and (iii), any matter that has not had or would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

(b) No Consent of or from, or Filing made to or with, any Governmental Authority, is required to be obtained or made by Purchaser or any Affiliate of Purchaser in connection with Purchaser’s execution and delivery of this Agreement or the Escrow Agreement or its performance of its covenants and agreements hereunder or thereunder, or the consummation of the transactions contemplated hereby or thereby, except for the following:

(i) compliance with, Filings under and the expiration of any applicable waiting period under the HSR Act;

(ii) (1) any required Filings with, and any required Consent of, each of the MPUC, the MTPSC, the NCUC and the PUCO and (2) the other Filings and Consents set forth in Section 4.03(b)(ii) of the Purchaser Disclosure Letter (the Consents and Filings set forth in Section 4.03(b)(i) and this Section 4.03(b)(ii), together with the Seller Required Statutory Approvals, the “**Required Statutory Approvals**”);

(iii) the Purchaser Required Consents; and

(iv) such other Filings or Consents the failure of which to make or obtain would not have or would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

4.04 **Litigation.** As of the date of this Agreement, there is no Claim before any Governmental Authority pending or, to the Knowledge of Purchaser, threatened against Purchaser or any of its properties, rights or assets, or any of its directors, officers, or employees in their capacity as such, or, to the Knowledge of the Purchaser, any other Person to whom the Purchaser may be liable by way of indemnity or guarantee or similar arrangement that has had or would reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect. As of the date of this Agreement, there is no Order outstanding against or, to the Knowledge of Purchaser, investigation by any Governmental Authority of Purchaser or its properties or assets that has had or would reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

4.05 **Compliance with Applicable Laws.** Except as has not had or would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect, Purchaser is in compliance with all applicable Laws and material Permits applicable to the business and operations of Purchaser.

4.06 **Purchaser Benefit Plans.** Subject to the accuracy of Seller's representation in Section 3.09(i), the execution, delivery and performance by Purchaser of this Agreement, and the consummation by Purchaser of the transactions contemplated hereby will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

4.07 **Financing.** Purchaser has furnished Seller with a true, complete and correct copy of the executed and binding equity commitment letter, dated as of the date hereof, among Purchaser and Ullico Infrastructure Master Fund, L.P. ("**Sponsor**") (including all exhibits, schedules and annexes thereto, the "**Equity Commitment Letter**"), pursuant to which Sponsor has committed, subject to the terms and conditions set forth therein, to invest in Purchaser the cash amount set forth therein (the "**Equity Financing**"). The amount of the Equity Financing is and will be sufficient, without recourse to any other source of funds, to (a) pay the Estimated Purchase Price and any adjustment pursuant to Section 2.04, (b) pay any and all fees and expenses required to be paid by Purchaser and its Affiliates in connection with the transactions contemplated by this Agreement and the Escrow Agreement and (c) consummate the transactions contemplated by this Agreement and perform Purchaser's obligations hereunder (the "**Sufficient Financing Amount**"). Seller is an express third party beneficiary of the Equity Commitment Letter, including for purpose of causing the Equity Financing to be funded in accordance therewith. The Equity Commitment Letter has not been amended or modified prior to the date hereof, no such amendment or modification is contemplated, and the commitments contained in the Equity Commitment Letter have not been withdrawn, modified, amended, terminated or rescinded in any respect and no such withdrawal, modification, amendment or rescission is contemplated. There are no side letters or other agreements, Contracts or arrangements related to the funding or investing, as applicable, of the full amount of the Equity Financing other than as expressly set forth in the Equity Commitment Letter delivered to Seller prior to the date hereof, and there are no conditions precedent or other contingencies related to the funding (or reduction) of the full amount of the Equity Financing other than as expressly set forth in the Equity

Commitment Letter and delivered to Seller prior to the date hereof. As of the date hereof, the Equity Commitment Letter is in full force and effect. The Equity Commitment Letter (a) constitutes a legal, valid and binding obligation of Purchaser and Sponsor and (b) is enforceable in accordance with its terms against Purchaser and Sponsor except as enforcement may be limited by the Bankruptcy and Equity Exceptions. No event has occurred which, with or without notice, lapse of time or both would or would reasonably be expected to constitute a default or breach on the part of Purchaser or Sponsor, under the Equity Commitment Letter. No commitment or other fees and expenses are required to be paid under the Equity Commitment Letter. There is no fact or occurrence existing that would make any of the statements (including assumptions) set forth in the Equity Commitment Letter inaccurate in any material respect, and no event has occurred which, with or without notice, lapse of time or both, would or would reasonably be expected to constitute a default or breach on the part of Purchaser or Sponsor under the Equity Commitment Letter. Purchaser has no reason to believe that any of the conditions to the funding of the Equity Financing contemplated by the Equity Commitment Letter will not be satisfied on a timely basis or that the Equity Financing will not be made available to Purchaser on or prior to the Closing Date. In no event shall the receipt or availability of the Equity Financing or any other funds or financing by Purchaser or any Affiliate or any other transactions be a condition to any of Purchaser's obligations hereunder.

4.08 **Guarantee.** Concurrently with the execution of this Agreement, Purchaser has delivered to Seller a duly executed guarantee (the "**Purchaser Guarantee**") pursuant to which Sponsor has guaranteed the obligation of the Purchaser to pay the Purchaser Termination Fee and related costs and expenses of recovery payable under Section 8.02(c), in each case subject to the terms, conditions and limitations set forth therein. The Purchaser Guarantee has not been amended, restated or otherwise modified or waived prior to the date hereof. The Purchaser Guarantee is in full force and effect. The Purchaser Guarantee constitutes the legal, valid and binding obligation of Sponsor, except as such enforcement may be limited by the Bankruptcy and Equity Exceptions. As of the date hereof, the Sponsor has not committed any breach of any of its covenants or other obligations set forth in the Purchaser Guarantee, nor is Sponsor in default under the Purchaser Guarantee. No event has occurred or circumstance exists that, with or without notice, lapse of time or both, would reasonably be expected to constitute a default or result in a breach or default on the part of Sponsor under any term or condition of the applicable Purchaser Guarantee. As of the date hereof, Purchaser (a) knows of no fact, occurrence, circumstance or condition that would reasonably be expected to cause the Purchaser Guarantee to terminate or be withdrawn, modified, repudiated or rescinded or to be or become ineffective and (b) knows of no potential impediment to the funding of any of the payment obligations of the Sponsor under the Purchaser Guarantee.

4.09 **Solvency.** Assuming the satisfaction of the conditions set forth in Section 7.01 and Section 7.03, immediately after giving effect to the transactions contemplated by this Agreement, the Company and each of the Company Subsidiaries will be Solvent. No transfer of property is being made and no obligation is being incurred by or at the direction of Purchaser in connection with the transactions contemplated by this Agreement with the intent to hinder, delay or defraud any present or future creditors of the Company or the Company Subsidiaries. For purposes of this Agreement, "**Solvent**" when used with respect to the Company, means that, as of any date of determination from and after the Closing Date, (i) the Present Fair Salable Value of its assets will, as of such date, exceed all of its liabilities, contingent or otherwise, as of such

date, (ii) the Company will not have, or have access to, as of such date, an unreasonably small amount of capital for the business in which it is engaged or will be engaged and (iii) the Company will be able to pay its debts as they become absolute and mature, in the ordinary course of business, taking into account the timing of and amounts of cash to be received by it and the timing of and amounts of cash to be payable on or in respect of its indebtedness, in each case after giving effect to the transactions contemplated by this Agreement. For purposes of the definition of “Solvent” (A) “debt” means liability on a “claim”; and (B) “claim” means (x) any right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured or (y) the right to an equitable remedy for a breach in performance if such breach gives rise to a right to payment, whether or not such equitable remedy is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. “**Present Fair Salable Value**” means the amount that may be realized if the aggregate assets of the Company (including goodwill) are sold as an entirety with reasonable promptness in an arm’s-length transaction under present conditions for the sale of comparable business enterprises.

4.10 **Brokers’ Fees and Expenses.** Other than RBC Capital Markets (the fees and expenses of which will be borne by Purchaser or its Affiliates), no broker, investment banker, financial advisor or other Person is entitled to any broker’s, finder’s, financial advisor’s or other similar fee or commission in connection with the transactions contemplated under this Agreement based upon arrangements made by Purchaser or any of its Affiliates.

4.11 **Purchase for Investment.** Purchaser is acquiring the Transferred Interests for investment and not with a view toward, or for offer or sale in connection with, any resale or public distribution thereof in violation of the U.S. Securities Act of 1933, as amended, or any state or non-U.S. Law of similar effect. Purchaser acknowledges that the Transferred Interests will not be registered under the U.S. Securities Act of 1933, as amended, or any state or non-U.S. Law of similar effect.

4.12 **Regulatory Status.** Purchaser is not subject to or is otherwise exempt from regulation with respect to FERC regarding access to books and records under PUHCA 2005.

ARTICLE V PRE-CLOSING COVENANTS

5.01 Further Actions; Regulatory Approvals; Required Actions.

(a) Subject to the terms and conditions of this Agreement, during the Interim Period, each of the Parties shall use reasonable best efforts to take, or cause to be taken, all actions, and do, or cause to be done, and assist and cooperate with the other Parties in doing, all things necessary to cause the conditions to the Closing set forth in Article VII to be satisfied as promptly as reasonably practicable or to effect the Closing as promptly as reasonably practicable, including (i) making all necessary Filings with Governmental Authorities or third parties, (ii) obtaining the Required Consents and all other third-party Consents that are necessary, proper or advisable to consummate the transactions contemplated hereunder, (iii) obtaining the Required Statutory Approvals and all other Consents of any Governmental Authority that are necessary,

proper or advisable to consummate the transactions contemplated hereunder (including the Restructuring) and (iv) executing and delivering any additional instruments that are necessary, proper or advisable to consummate the transactions contemplated hereunder.

(b) In connection with and without limiting the generality of Section 5.01(a), during the Interim Period, each of Purchaser and Seller shall, as applicable:

(i) make or cause to be made, within 90 days after the date of this Agreement (or such later date as may be agreed between Seller and Purchaser), an appropriate filing of a Notification and Report Form pursuant to the HSR Act relating to the transactions contemplated hereunder;

(ii) make or cause to be made, as promptly as practicable after the date of this Agreement and in any event within 40 days after the date of this Agreement, all necessary Filings with any Governmental Authority (including the State Utilities Commissions) relating to the transactions contemplated hereunder (including the Restructuring), including any such Filings necessary to obtain any Required Statutory Approval;

(iii) furnish to the other all assistance, cooperation and information reasonably required for any such Filing and in order to achieve the effects set forth in this Section 5.01;

(iv) unless prohibited by applicable Law or by a Governmental Authority, give the other reasonable prior notice of any such Filing and, to the extent reasonably practicable and unless prohibited by applicable Law, of any material communication with any Governmental Authority relating to the transactions contemplated hereunder (including with respect to any of the actions referred to in this Section 5.01(b)) and, to the extent reasonably practicable and unless prohibited by applicable Law, permit the other to review and discuss in advance, and consider in good faith the views and reasonable comments of, and secure the participation of, the other in connection with any such Filing or communication;

(v) respond as promptly as reasonably practicable under the circumstances to any inquiries received from any Governmental Authority or any other authority enforcing applicable antitrust Laws for additional information or documentation in connection with antitrust, competition or similar matters (including any “second request” under the HSR Act) and not extend any waiting period under the HSR Act or enter into any agreement with any such Governmental Authority or other authorities not to consummate the transactions contemplated hereunder, except with the prior written consent of the other Party; and

(vi) unless prohibited by applicable Law or a Governmental Authority, to the extent reasonably practicable: (w) not participate in or attend any formal meeting with any Governmental Authority in respect of the transactions contemplated hereunder without a representative of the other Party; (x) keep the other Party apprised with respect to any meeting or substantive conversation with any Governmental Authority in respect

of the transactions contemplated hereunder; (y) cooperate in the filing of any substantive memoranda, white papers, filings, correspondence or other written communications explaining or defending this Agreement or the transactions contemplated hereunder, articulating any regulatory or competitive argument or responding to requests or objections made by any Governmental Authority; and (z) furnish the other Party with copies of all substantive correspondence, Filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives on the one hand, and any Governmental Authority or members of any Governmental Authority's staff, on the other hand, with respect to this Agreement or the transactions contemplated hereunder (provided that the Parties shall be permitted to redact any correspondence, Filing or communication to the extent such correspondence, Filing or communication contains commercially sensitive information, which information shall be provided to counsel on a confidential, counsel-to-counsel basis).

(c) During the Interim Period, Purchaser shall not, and shall cause its Affiliates not to, take any action, including acquiring any asset, property, business or Person (by way of merger, consolidation, share exchange, investment, other business combination, asset, stock or equity purchase, or otherwise), that would reasonably be expected to materially and adversely affect Purchaser's obtaining or making any Consent or Filing with any Governmental Authority contemplated by this Section 5.01 or materially delay the timely receipt thereof.

(d) In furtherance of and without limiting any of Purchaser's covenants and agreements under this Section 5.01, and subject to the limitations set forth in Section 5.10, during the Interim Period, Purchaser's reasonable best efforts with respect to any Required Statutory Approval shall include the following:

(i) promptly taking, and cause its Affiliates to take, any and all actions to resolve, avoid, or eliminate any impediments or objections that may be asserted by any Governmental Authority, with respect to the transactions contemplated by this Agreement under any Law, or to avoid or overcome the entry of any action, including any legislative, administrative or judicial action, injunction or other order, decree, decision, determination or judgment (in each case, whether temporary, preliminary or permanent), that would delay, restrain, restrict, deny, prevent, enjoin or otherwise prohibit the consummation of the transaction contemplated herein, including (x) the defense through litigation on the merits of any Claim asserted in any court, agency or other proceeding by any Person, including any Governmental Authority, seeking to delay, restrain, deny, prevent, enjoin or otherwise prohibit consummation of such transactions and (y) offering or consenting to and effecting any sale, lease, license, disposal or holding separate of, or restriction or limitation on, any assets, operations, rights, product lines, licenses, categories of assets or business or other interests therein, of Purchaser and its Affiliates, and entering into customary agreements with, and submitting to orders of, the relevant Governmental Authority giving effect thereto, or any other act, omission or restriction; and

(ii) promptly taking, in the event that any permanent, preliminary or temporary injunction, decision, order, judgment, determination or decree is entered or issued, or becomes reasonably foreseeable to be entered or issued, in any proceeding or

inquiry of any kind that would make consummation of the transactions contemplated herein in accordance with the terms hereof unlawful or that would delay, restrain, deny, prevent, enjoin or otherwise prohibit consummation of the transactions contemplated herein, any and all steps (including the appeal thereof, the posting of a bond or the taking of the steps contemplated by Section 5.01(d)(i) above) necessary to resist, vacate, modify, reverse, suspend, prevent, eliminate or remove such actual, anticipated or threatened injunction, decision, order, judgment, determination or decree so as to permit the consummation of the transactions contemplated herein in accordance with the terms hereof as soon as reasonably possible and, in any event, prior to the Outside Date.

(e) Notwithstanding anything to the contrary in this Section 5.01 or elsewhere in this Agreement, reasonable best efforts or any other provision of this Section 5.01 shall not require Purchaser or any of its Affiliates (including the Company or any Company Subsidiary after the Closing), or permit the Company or any of the Company Subsidiaries, to take any action (including any of the actions listed in Section 5.01(d)), or agree to or accept any order, action or regulatory condition (including any Final Order) of any Governmental Authority containing terms, conditions, liabilities, obligations, commitments or sanctions, that, individually or in the aggregate, would reasonably be expected to result in a material adverse effect on the business, assets, liabilities, properties, financial condition or results of operations of Purchaser and its subsidiaries and the Company and the Company Subsidiaries, taken as a whole (a “**Burdensome Effect**”); provided that, none of the following shall constitute or be taken into account in determining whether any such terms, conditions, liabilities, obligations, commitments or sanctions would, individually or in the aggregate, have such a Burdensome Effect: (1) any Order issued by any of the State Utilities Commissions prior to the date hereof and applicable to the Company or any of the Company Subsidiaries; (2) any Proceedings, including any rate cases, involving the Company or any of the Company Subsidiaries; or (3) any other terms, conditions, liabilities, obligations, commitments or sanctions imposed by any of the State Utilities Commissions on the Company or any of the Company Subsidiaries other than in connection with obtaining a Required Statutory Approval.

(f) Purchaser shall promptly notify Seller in writing, and Seller shall promptly notify Purchaser in writing, of any notice or other communication received by it or any of its Affiliates from any Person alleging that such Person’s Consent is or may be required in connection with the transactions contemplated hereunder.

(g) Purchaser shall be responsible for and shall pay all filing fees for the Filings required pursuant to this Section 5.01. Purchaser shall not be required to pay any consideration to any third party or to offer to grant, or agree to, any financial or other material accommodation to any third party in order to obtain any Required Consent (excluding any Required Statutory Approvals). Seller shall not be required to pay any amount in connection with obtaining the Required Consents, Required Statutory Approvals or otherwise complying with this Section 5.01.

5.02 **Conduct of Business.**

(a) Except (I) for matters set forth in Section 5.02 of the Seller Disclosure Letter or expressly permitted or required by this Agreement (including the Restructuring), (II) as

required by a Governmental Authority of competent jurisdiction (including pursuant to an Order issued by any of the State Utilities Commissions) or by applicable Law, or as expressly permitted pursuant to Section 5.03 with respect to any Proceedings, or (III) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), from the date of this Agreement until the earlier of the Closing Date or termination of this Agreement pursuant to Section 8.01 (the “**Interim Period**”), Seller shall cause the Company and each Company Subsidiary to (x) conduct its business in the Ordinary Course of Business and (y) to the extent consistent with the foregoing clause (x), use commercially reasonable efforts to preserve intact, in all material respects, its business organization, assets, properties and existing relationships with customers, suppliers, employees, and Governmental Authorities. In addition, and without limiting the generality of the foregoing, except (1) as set forth in the Seller Disclosure Letter, (2) as expressly permitted or required by this Agreement (including the Restructuring), or as required by a Governmental Authority (including pursuant to an Order issued by any of the State Utilities Commissions) or by applicable Law, (3) as expressly permitted pursuant to Section 5.03 with respect to any Proceedings, or (4) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), during the Interim Period, Seller shall not (in relation to the Company Group) and shall not permit the Company or any of the Company Subsidiaries to do any of the following:

- (i) purchase, redeem or otherwise acquire any Equity Securities of any Person, or make any non-cash distributions in respect of, any of its Equity Securities, except for non-cash distributions from a Company Subsidiary to the Company or to another wholly-owned Company Subsidiary;
- (ii) amend, modify or effect any change to any of its Organizational Documents (except for immaterial or ministerial amendments);
- (iii) split, combine, consolidate, subdivide or reclassify any Equity Securities, or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for its capital stock, other equity interests or voting securities;
- (iv) take any action with respect to or adopt a plan of complete or partial liquidation or resolutions providing for or authorizing any liquidation or dissolution, merger, consolidation, restructuring, recapitalization or other reorganization;
- (v) (1) grant to any Company Personnel any increase in compensation or benefits except for increases in base salary or wages made in the Ordinary Course of Business, (2) establish, adopt, enter into, amend in any material respect or terminate any Company Benefit Plan (or any plan or agreement that would be a Company Benefit Plan if in existence on the date hereof), (3) take any action to accelerate the time of vesting, funding or payment of any compensation or benefits under any Company Benefit Plan or (4) hire any employee with aggregate annual compensation for such employee above \$200,000 or terminate the employment of any Key Employees, other than for cause, except, in the case of any such hires, in the Ordinary Course of Business in a manner that would not materially increase the cost to the Company or any Company Subsidiary, or (5) enter into, amend, terminate, or modify any collective bargaining agreement or similar labor union Contract with respect to any of their respective employees; except in

the case of the foregoing clauses (1) through (5) for actions required by the terms and conditions of this Agreement, by any such Company Benefit Plan or by any Company Union Contract, as in effect on the date hereof or by applicable Law;

(vi) make any material change in accounting methods, principles or practices, except to the extent as may have been required by a change in applicable Law or GAAP or by any Governmental Authority;

(vii) make any acquisition or disposition of, lease, sublease, license, assign or make any investment in any interest in, any asset, business or line of business (including by merger, consolidation or acquisition of stock or assets), except for: (1) any acquisition or disposition for consideration that is individually not in excess of \$100,000 and in the aggregate not in excess of \$500,000; or (2) any (x) acquisition of assets in the Ordinary Course of Business or pursuant to the capital plan set forth in Section 5.02(a)(ix) of the Seller Disclosure Letter (for the avoidance of doubt, capital expenditures for the purchase of assets shall be governed solely by Section 5.02(a)(ix)) or (y) any disposition of obsolete or worn-out equipment in the Ordinary Course of Business;

(viii) (1) incur, assume, suffer or modify any Indebtedness, (2) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other Person, (3) make any loans, advances or capital contributions to, or investments in, any other Person or (4) mortgage, pledge or otherwise encumber any assets (including Equity Securities), tangible or intangible, or create, incur, assume or suffer to exist any Lien (other than a Permitted Lien) thereupon, except for (x) guarantees by the Company of existing Indebtedness of any wholly-owned Company Subsidiary, (y) guarantees and other credit support by the Company of obligations of any Company Subsidiary in the Ordinary Course of Business and (z) borrowings under existing revolving credit facilities (or replacements thereof on comparable terms) or existing commercial paper programs in the Ordinary Course of Business;

(ix) make, or agree or commit to make, any capital expenditure, except for (1) capital expenditures in accordance with the capital plan set forth in Section 5.01(a)(ix) of the Seller Disclosure Letter, plus a 10% variance for each principal category set forth in such capital plan, and (2) with respect to any capital expenditure not addressed by the foregoing clause (1), not to exceed \$250,000 in any 12-month period;

(x) (1) enter into, modify, amend, waive extend, fail to perform the terms of or terminate any Material Company Contract, except in the Ordinary Course of Business; provided that no such exception shall apply with respect to any such Material Company Contract (other than contracts of the type described in Section 3.14(a)(i) to the extent that the costs thereof are subject to recovery in rates through a fuel cost or other recovery mechanism) that (A) has a term longer than one year and cannot be terminated by the Company or the applicable Company Subsidiary without penalty or other material and adverse effect on the Company or any Company Subsidiary upon written notice of 30 days or less; (B) provides for a binding commitment for (x) the Company or any

Company Subsidiary to make or (y) a third party to make to the Company or any Company Subsidiary, payments of more than \$100,000 in the aggregate or that has resulted in payments of more than \$100,000 in the aggregate for the prior fiscal year or (C) contains non-compete, non-solicit or no-hire provisions binding on the Company, any Company Subsidiary or any of their respective Affiliates (including Purchaser and its Affiliates following the Closing); (2) without limiting Purchaser's obligations under Section 5.01, enter into any Contract that, from and after the Closing, purports to bind Purchaser or any of its Affiliates (other than the Company and the Company Subsidiaries); (3) grant any material refunds, credits, rebates or other allowances to any end user, customer, reseller or distributor or materially accelerate, or materially alter practices and policies relating to, the rate of collection of accounts receivable or payment of accounts payable, in each case other than in the Ordinary Course of Business; (4) waive, release, grant, encumber, or transfer any right of material value; or (5) engage in any transaction or series of related transactions, arrangements, obligations, or understanding, or enter into, modify, amend, extend, fail to perform the terms of, or terminate any Contract, in either case, that would have been required to be disclosed pursuant to Section 3.20 if in effect as of the date of this Agreement.

(xi) make, revoke or change any material Tax election, change (or request any taxing authority to change) any material method of Tax accounting or Tax accounting period, settle or compromise any material Tax liability or refund, amend any material Tax Return, enter into any closing agreement or other binding written agreement with any taxing authority or any Tax sharing agreement, settle or compromise any proceeding with respect to any material Tax claim or assessment relating to the Company, surrender any material claim for a refund of Taxes, prepare any material Tax Return in a manner inconsistent with past practices with respect to the treatment of items on prior Tax Returns, or agree to an extension or waiver of the statute of limitations with respect to any assessment or determination of Taxes (other than pursuant to extensions of time to file Tax Returns obtained in the Ordinary Course of Business);

(xii) waive, release, assign, settle or compromise any Claim against or by the Company or any Company Subsidiary, except for waivers, releases, assignments, settlements or compromises that (1) with respect to the payment of monetary damages, the amount of monetary damages to be paid by the Company or the Company Subsidiaries does not exceed (A) the amount with respect thereto reflected on the most recent Financial Statements (including the notes thereto) or (B) solely with respect to Claims arising after the date of this Agreement, \$300,000, in the aggregate, in excess of the proceeds received or reasonably expected to be received from any Insurance Policies in connection with such payment, or (2) with respect to any nonmonetary terms and conditions thereof, would be immaterial to the Company as a whole or any Company Subsidiary and would not restrict the Business of the Company or any Company Subsidiary in any material way or result in criminal liability against the Company or any Company Subsidiary; provided that the foregoing exceptions shall not apply to proceedings arising out of or related to this Agreement or the Escrow Agreement or any of the transactions contemplated hereby or thereby;

(xiii) commence any Claim against any Person with an amount in controversy in excess of \$300,000 in the aggregate;

(xiv) enter into any new line of business or make a material change to any existing line of business;

(xv) fail to maintain insurance at no less than current levels or otherwise in a manner consistent with past practice; or

(xvi) enter into any Contract to do any of the foregoing.

(b) Emergencies. Notwithstanding anything to the contrary contained in this Agreement, the Company may, and may cause any Company Subsidiary to, take reasonable actions in accordance with good industry practice (and any guidelines issued by a Governmental Authority with respect to COVID-19) (i) to comply with applicable Law (including any Law, directive, pronouncement or guideline issued by a Governmental Authority or industry group providing for business closures, “sheltering-in-place” or other restrictions, actions, or protections that arise from or are in response to or otherwise resulting from any pandemic (including COVID-19), epidemic or disease outbreak or domestic protest) or (ii) with respect to any operational emergencies (including any restoration measures in response to any tornado, flood, earthquake, hurricane, tsunami or other natural disaster or weather-related event, circumstance or development and related equipment failures or outages) or an immediate and material threat to the health or safety of natural Persons; provided, however, that Seller shall provide Purchaser with (x) notice of any such action in respect of clause (ii) that would otherwise be prohibited pursuant to this Section 5.02 as soon as reasonably practicable after Seller becomes aware of such emergency, together with a reasonably detailed description of the circumstances surrounding such occurrence and (y) provide periodic updates to Purchaser with respect to actions in response to COVID-19 and related Laws and guidelines.

(c) No Control of the Company’s Business. Purchaser acknowledges and agrees that (i) nothing contained herein is intended to give Purchaser, directly or indirectly, the right to control or direct the operations of the Company or any Company Subsidiary prior to the Closing Date and (ii) prior to the Closing Date, Seller shall exercise complete control and supervision over the Company’s and the Company Subsidiaries’ respective operations.

(d) Advice of Changes. Each of Purchaser and Seller shall promptly advise the other orally and in writing of any change or event that would prevent any of the conditions precedent described in Article VII from being satisfied, except that no such notification will affect or be deemed to modify any representation or warranty in this Agreement or the conditions precedent described in Article VII.

5.03 Proceedings. During the Interim Period, the Company and the Company Subsidiaries may (a) continue to pursue the rate cases and other proceedings set forth in Section 5.03(a) of the Seller Disclosure Letter in the Ordinary Course of Business, (b) only upon the prior written consent of Purchaser (such consent not to be unreasonably withheld, delayed or conditioned), (i) withdraw from, make a material change in the requested amounts pursued under, settle or compromise the proceedings set forth in Section 5.03(b) of the Seller Disclosure

Letter and (ii) initiate new rate cases, or any other proceeding that would reasonably be expected to affect the authorized capital structure or authorized return on equity of any Company Subsidiary or materially affect the return on equity of any Company Subsidiary in an adverse manner, with Governmental Authorities, or other proceedings not in the Ordinary Course of Business, and (c) initiate any other proceeding with Governmental Authorities in the Ordinary Course of Business (the foregoing clauses (a), (b) and (c), collectively, “**Proceedings**”); provided that in any Proceeding described in the foregoing clauses (a) through (c), Seller shall cause the Company and the Company Subsidiaries to, to the extent reasonably practicable and as permitted by applicable Law, reasonably consult in advance with Purchaser and its Representatives and consider in good faith any suggestions made by or on behalf of Purchaser in connection therewith, except with respect to any Proceeding of the type disclosed in the foregoing clauses (a) and (c) that is immaterial to the Company and each Company Subsidiary. Seller shall not (in relation to the Company Group) and shall not permit the Company or any of the Company Subsidiaries to continue to pursue or otherwise initiate any Proceeding except to the extent permitted by, and subject to the terms of, this Section 5.03.

5.04 Access and Information.

(a) Subject to applicable Law and the Confidentiality Agreement, during the Interim Period, Seller shall, and shall cause each of the Company and the Company Subsidiaries to, afford to Purchaser and its Representatives reasonable access (at Purchaser’s sole cost and expense), during normal business hours and upon reasonable advance notice, to such properties, books, contracts, financials, commitments, personnel (including members of management) and records as Purchaser may reasonably request, and during such period, Seller shall cause the Company and the Company Subsidiaries to, make available promptly to Purchaser all information concerning the Company’s and any Company Subsidiary’s business, properties and personnel as Purchaser may reasonably request; provided, however, that Seller, the Company and the Company Subsidiaries may withhold from Purchaser or its Representatives any document or information that Seller, the Company or such Company Subsidiary believes is subject to the terms of a confidentiality agreement with a third party (provided that Seller shall promptly notify Purchaser in writing if any information is withheld by reason of the foregoing exception and Seller shall cause the Company or such Company Subsidiary to use its commercially reasonable efforts to obtain the required consent of such third party to disclose such document or information (provided further that, commercially reasonable efforts shall not include the making of any concession, incurring any cost or expense, paying any fee or waiving any right)) or subject to any attorney-client privilege (provided that Seller shall promptly notify Purchaser in writing if any information is withheld by reason of the foregoing exception and Seller shall cause the Company or such Company Subsidiary to use its commercially reasonable efforts to allow the disclosure of such document or information (or as much of it as possible) in a manner that does not result in a loss of attorney-client privilege (provided further that, commercially reasonable efforts shall not include the making of any concession, incurring any cost or expense, paying any fee or waiving any right)); provided, further, that Purchaser and its Representatives shall not have the right to collect any air, soil, surface water or ground water samples or perform any invasive or destructive air sampling on, under, at or from any of the properties owned, leased or operated by the Company or any Company Subsidiary, except with the advance written consent of Seller. Subject to applicable Law, Seller will provide Purchaser with copies of any reports, material notices and other material information provided to or made

available to any regulator of the Company or any Company Subsidiary or any of the lenders under the Credit Agreement or the Note Purchase Agreement by or on behalf of the Company or such Company Subsidiary and any other reports of the Company or any Company Subsidiary reasonably requested by Purchaser. Except for incidents caused by Seller's or its Affiliates' intentional misconduct or gross negligence, Purchaser shall indemnify Seller and its Affiliates and Representatives from, and hold Seller and its Affiliates and Representatives harmless against, any and all Claims, losses, liabilities, damages, judgments, inquiries, fines and reasonable fees, costs, expenses, including attorneys' fees and disbursements, and the cost of enforcing this indemnity arising out of or resulting from any access to such properties provided pursuant to this Section 5.04(a).

(b) Subject to applicable Law and the Confidentiality Agreement, during the Interim Period, Seller shall, (i) as soon as reasonably practicable following the end of each fiscal quarter, provide Purchaser with the unaudited consolidated financial statements of Hearthstone Utilities, Inc. (including the consolidated balance sheet, the consolidated statements of income, the consolidated statements of changes in stockholder equity and the consolidated statements of cash flows of the Company) as of and for such fiscal quarter, in each case, prepared from the Books and Records of Hearthstone Utilities, Inc. in accordance with GAAP, consistently applied without modification as of the dates and for the periods presented (except as may be stated therein or in the notes thereto and, with respect to the unaudited financial statements, subject to normal and recurring audit and year-end adjustments that are expected to be immaterial and the absence of footnotes) and (ii) as soon as reasonably practicable following the end of each month, provide Purchaser with (x) unaudited balance sheets and other financial statements and (y) material business or operational reports (which, for clarity, include monthly business review materials and board meeting materials of the type referenced in Section 5.04(b) of the Seller Disclosure Letter), in each case as prepared on a monthly basis in the Ordinary Course of Business for the management of the Company Group (such reports, the "**Monthly Reports**"). Following delivery of each Monthly Report, no more than once per month during the Interim Period during normal business hours and upon reasonable advance notice by Purchaser, if requested by Purchaser, Purchaser and members of management of the Company shall meet to discuss such Monthly Reports and any information related thereto as Purchaser may reasonably request. Following the delivery by Seller of the Estimated Purchase Price in accordance with Section 2.02, during normal business hours and upon reasonable advance notice by Purchaser, if requested by Purchaser, Purchaser and members of management of the Company shall meet to discuss any information concerning the Company's and any Company Subsidiary's business, operations, and financial performance as Purchaser may reasonably request.

(c) All documents and information exchanged pursuant to this Section 5.04 shall be subject to the Confidentiality Agreement, dated as of August 7, 2020, by and among Global Energy & Power Infrastructure II Advisors, L.L.C. and UIF GP, LLC (the "**Confidentiality Agreement**"). Notwithstanding anything to the contrary set forth in this Agreement or the Confidentiality Agreement, (i) each Party acknowledges and agrees that the terms and existence of this Agreement and the transactions contemplated hereby shall be considered Confidential Information of the Parties and shall not be disclosed by any Party to any third party without the prior written consent of the other Party (except in accordance with clause (ii) of this Section 5.04(c)) and (ii) any Party may disclose Confidential Information to its Representatives on a need-to-know basis (it being understood that such Party shall be responsible

for any breach of this Section 5.04(c) by such Person) or to the extent required by this Agreement (including for purposes of complying with a Party's obligations under Section 5.01) or applicable Law or Order. Upon the Closing, the Confidentiality Agreement shall terminate and, for a period of two years following the Closing Date, the confidentiality and use provisions and obligations in the Confidentiality Agreement shall be incorporated herein and apply to each Party *mutatis mutandis* with respect to the Confidential Information of the other Party.

(d) Seller shall promptly, and in no event later than 30 days following the Closing Date, deliver to Purchaser (or its designee) copies of all Books and Records of or to the extent relating to the Company Group (whether in hard copy or electronic format, and wherever located) that are in the possession or control of Seller or any of its Representatives and are not otherwise in the possession or control of the Company Group as of the Closing Date.

5.05 **Publicity.** Purchaser and Seller shall not issue any press release or make any written public statement with respect to this Agreement or the transactions contemplated by this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld), except as such Party reasonably concludes may be required by applicable Law or court process (in which case, the disclosing Party shall, to the extent permitted by applicable Law, give the other Party the opportunity to review and consult thereon). Purchaser and Seller agree that the initial press release, if any, to be issued with respect to this Agreement or the transactions contemplated hereby shall be in a form agreed to by the Parties. Nothing in this Section 5.05 shall limit the ability of any Party to make internal announcements to its respective employees that are consistent in all material respects with the prior public disclosures regarding the transactions contemplated by this Agreement.

5.06 **Escrow.** During the Interim Period, Seller and Purchaser shall cooperate in good faith and acting reasonably to prepare and negotiate the Escrow Agreement with each other and the Escrow Agent on terms and conditions mutually acceptable to Seller, Purchaser and the Escrow Agent and consistent with the terms specified in the definition of Escrow Agreement.

5.07 **Financing.**

(a) Notwithstanding anything in this Agreement to the contrary, Purchaser hereby acknowledges and agrees that obtaining any financing is not a condition to the Closing. For the avoidance of doubt, if the Equity Financing is not available, Purchaser shall continue to be obligated, subject to the fulfillment or waiver of the conditions to the obligation of Purchaser set forth in Section 7.01 and Section 7.03, to complete the transactions contemplated by this Agreement on the terms contemplated by this Agreement.

(b) Purchaser shall take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary, proper or advisable to obtain and cause to be funded the Equity Financing on the terms and conditions described in the Equity Commitment Letter upon satisfaction or waiver of the conditions to the obligation of Purchaser set forth in Section 7.01 and Section 7.03. Purchaser shall not, and shall cause its Affiliates not to, directly or indirectly, agree to or permit any amendment, supplement or other modification of, or waive any of its rights under, the Equity Commitment Letter without Seller's prior written consent (such consent not to be unreasonably withheld). Purchaser shall not, and shall cause its Affiliates not to, take or

refrain from taking, directly or indirectly, any action that could reasonably be expected to result in a default under or failure of any of the conditions contained in the Equity Commitment Letter. Purchaser shall promptly upon execution deliver to Seller a copy of any amendment, replacement, supplement, modification or waiver of the Equity Commitment Letter. Purchaser shall, and shall cause its Affiliates to, give Seller prompt written notice (i) if for any reason Purchaser believes in good faith that there is a possibility that it will not be able to obtain all or any portion of the Equity Financing on the terms, in the manner or from the sources contemplated by the Equity Commitment Letter or (ii) if for any reason Purchaser believes in good faith that there is a possibility that it will not be able to obtain the Sufficient Financing Amount under the Equity Commitment Letter at the Closing.

5.08 Company Group Indebtedness. During the Interim Period, Seller and Purchaser shall use commercially reasonable efforts to (a) obtain consents or waivers from the applicable lenders with respect to change in control provisions under the Credit Agreement and the Note Purchase Agreement so as to permit the consummation of the transactions contemplated hereby and/or (b) obtain approval from the applicable lenders to amend or modify the Note Purchase Agreement (it being understood that in either such case, and notwithstanding anything to the contrary set forth in the Confidentiality Agreement, Purchaser and its Representatives (acting on Purchaser's behalf) shall have the right to contact such lenders in connection with the pursuit of such consents, waivers or approvals; provided, that Purchaser shall provide Seller with prior written notice of any such contact and shall keep Seller reasonably apprised with respect to any meeting or conversation with any such lenders); provided that, Seller's and Purchaser's commercially reasonable efforts shall not include the making of any concession, incurring any cost or expense, paying any fee or waiving any right. Notwithstanding anything in this Agreement to the contrary, Purchaser hereby acknowledges and agrees that obtaining such consents, waivers, approvals or amendments are not conditions to the Closing. For the avoidance of doubt, if such consents, waivers, approvals or amendments are not available, Purchaser shall continue to be obligated, subject to the fulfillment or waiver of the conditions to the obligation of Purchaser set forth in Section 7.01 and Section 7.03, to complete the transactions contemplated by this Agreement on the terms contemplated by this Agreement.

5.09 R&W Insurance Policy. Prior to the Closing Date, Purchaser may, at its own expense, obtain and cause to be underwritten a buyer-side representations and warranties insurance policy providing insurance coverage for Claims, losses, liabilities, damages, judgments, inquiries, fines and reasonable fees, costs and expenses suffered or incurred by Purchaser, Purchaser's Affiliates, the Company, the Company Subsidiaries and their respective partners, managers, members, shareholders, consultants, Representatives, successors and assigns to the extent arising out of, or resulting from the inaccuracy of any representation or warranty of Seller contained in this Agreement or in any certificate delivered pursuant hereto and, if Purchaser has elected such coverage, Taxes in respect of the Company and any of the Company Subsidiaries for any Tax periods ending on or prior to the Closing Date (the "**R&W Insurance Policy**"). Purchaser acknowledges that (a) the representations and warranties of Seller contained in or made pursuant to this Agreement and the representations and warranties of Seller set forth in any certificate delivered at the Closing in connection with this Agreement shall terminate effective as of the Closing, shall not survive the Closing and (b) Purchaser's sole recourse and remedy after the Closing in respect of any inaccuracy or breach of any representation or warranty of Seller contained in this Agreement or in any certificate delivered pursuant hereto shall be to

make a claim against the R&W Insurance Policy, if obtained. Purchaser acknowledges and agrees that if it obtains the R&W Insurance Policy, it shall cause such R&W Insurance Policy to expressly provide that the insurer(s) issuing such policy shall waive or otherwise not pursue any subrogation rights against Seller and its Affiliates, except in the case of Fraud.

ARTICLE VI OTHER AGREEMENTS

6.01 Employee Benefits.

(a) During the period commencing on the Closing Date and ending on the one year anniversary of the Closing Date (the “**Continuation Period**”), Purchaser shall, or shall cause the Company and the Company Subsidiaries to, provide (x) each individual who is employed by the Company or a Company Subsidiary immediately prior to the Closing Date and who remains employed thereafter by Purchaser, the Company or any Company Subsidiary (each, a “**Company Employee**”) who is not covered by a Company Union Contract and who remains a Company Employee during such period with a base salary, wage, target bonus opportunity, and commission opportunity that is no less favorable than the base salary, wage, target bonus opportunity, and commission opportunity provided to the Company Employee immediately prior to the Closing Date and (y) each Company Employee with employee benefits (excluding, for the avoidance of doubt, any equity-based compensation, defined benefit pension plan participation, severance, or one-time retention, change in control, or other similar payments) that are no less favorable, in the aggregate, than such employee benefits that are provided to the Company Employee immediately prior to the Closing Date. During the Continuation Period, Purchaser shall, and shall cause the Company and the Company Subsidiaries to, maintain for each Company Employee a severance or termination plan, program or arrangement no less favorable than the severance or termination plan, policy or arrangement provided to such Company Employee immediately prior to the Closing Date.

(b) With respect to each Company Employee who is covered by a Company Union Contract, Purchaser shall cause the Company or applicable Company Subsidiary to continue to honor the Company Union Contracts, in each case as in effect at the Closing Date, in accordance with their terms (it being understood that this sentence shall not be construed to limit the ability of Purchaser, the Company or the Company Subsidiaries to amend or terminate any such Company Union Contract, to the extent permitted by the terms of the applicable Company Union Contract and applicable Law).

(c) On the Closing Date, Purchaser shall, or shall cause the Company or the Company Subsidiaries to, assume and honor in accordance with their terms all of the Company’s and all of the Company Subsidiaries’ employment, severance, retention, termination and change-in-control plans, policies, programs, agreements and arrangements (including any change-in-control severance agreement or other arrangement between the Company and any Company Employee) maintained by the Company or any Company Subsidiary, in each case, as in effect on the Closing Date, including with respect to any payments, benefits or rights arising as a result of the transactions contemplated by this Agreement (either alone or in combination with any other event), it being understood that this sentence shall not be construed to limit the ability of Purchaser, the Company or any Company Subsidiary to amend or terminate any such plans,

policies, programs, agreements, or arrangements, to the extent permitted by the terms of the applicable plan, policy, program, agreement or arrangement nor shall this sentence have any impact on whether any payments under such plans, policies, programs, agreements and arrangements are included in the definition of Transaction Expenses.

(d) With respect to all employee benefit plans of the Company or any Company Subsidiary, including any “employee benefit plan” (within the meaning of Section 3(3) of ERISA) (including any vacation, paid time-off and severance plans), each Company Employee’s service with the Company or any Company Subsidiary (as well as service with any predecessor employer of the Company or any such Company Subsidiary, to the extent service with the predecessor employer was recognized by the Company or such Company Subsidiary) prior to the Closing shall be treated as service with the Company or any Company Subsidiary for all purposes, including determining eligibility to participate, level of benefits, vesting and benefit accruals, except (i) to the extent that such service was not recognized under the corresponding Company Benefit Plan, (ii) for purposes of benefit accruals under any defined benefit pension plan or (iii) to the extent that such recognition would result in any duplication of coverage or benefits for the same period of service.

(e) Purchaser shall, and shall cause the Company and the Company Subsidiaries to take commercially reasonable efforts to waive, or cause to be waived, any pre-existing condition limitations, exclusions, actively at work requirements and waiting periods under any welfare benefit plan maintained by Purchaser, the Company or any Company Subsidiary in which Company Employees (and their eligible dependents) will be eligible to participate from and after the Closing Date, except to the extent that such pre-existing condition limitations, exclusions, actively-at-work requirements and waiting periods would not have been satisfied or waived under the corresponding Company Benefit Plan. Purchaser shall, or shall cause the Company and the Company Subsidiaries to take commercially reasonable efforts to recognize the dollar amount of all co-payments, deductibles and similar expenses incurred by each Company Employee (and his or her eligible dependents) during the calendar year in which the Closing Date occurs for purposes of satisfying such year’s deductible and co-payment limitations under the relevant welfare benefit plans in which they will be eligible to participate from and after the Closing Date to the extent taken into account under the corresponding Company Benefit Plan.

(f) This Section 6.01 shall survive the Closing. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 6.01 are solely for the benefit of the parties to this Agreement, and no provision of this Agreement, specifically this Section 6.01, is intended to, or shall, constitute the establishment or adoption of or an amendment to any employee benefit plan for purposes of ERISA or otherwise and no Company Personnel or any other individual associated therewith shall be regarded for any purpose as a third-party beneficiary of, or as having any third party beneficiary or other rights with respect to, this Agreement or have the right to enforce the provisions hereof including in respect of continued employment (or resumed employment). Nothing contained herein shall alter the at-will employment relationship of any Company Employee, obligate, or affect the ability of, Purchaser, the Company or any Company Subsidiary to maintain any particular compensation or benefit plan, program, policy, or arrangement or require Purchaser, the Company or any Company Subsidiary to continue any Company Benefit Plan, or prohibit the Company or any of the

Company Subsidiaries from amending or terminating any such plans in accordance with their terms or if otherwise required pursuant to applicable Law.

6.02 **Release**. Effective as of the Closing, except in the case of Fraud and subject to the immediately following sentence, (a) Seller hereby, on its own behalf and on behalf of its Affiliates, unconditionally and irrevocably releases and waives any claims that Seller or any of its Affiliates has or may have against the Company or any Company Subsidiary to the extent relating to actions, omissions, facts or circumstances occurring or existing at or prior to the Closing and (b) Purchaser hereby, on its own behalf and on behalf of its Affiliates (including the Company Group), unconditionally and irrevocably releases and waives any claims that the Company or its Affiliates have or may have against Seller or any Seller Related Parties, arising out of, resulting from or relating to actions, omissions, facts or circumstances occurring, arising or existing at or prior to the Closing, solely in relation to the Company Group. Nothing contained in this Section 6.02 is intended to, nor does it, (i) extend to any claims in respect of this Agreement or the Escrow Agreement or any of the provisions set forth herein or therein, or (ii) affect any right to indemnification, exculpation or advancement of expenses to which Seller or any Seller Related Party may be entitled as a result of such Person's interest in or service as a manager, director, officer, employee, advisor, consultant or other representative of the Company Group, including the rights set forth in Section 6.07.

6.03 **"AS IS, WHERE IS"**. PURCHASER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE III (AS MODIFIED BY THE SELLER DISCLOSURE LETTER) AND/OR ANY CERTIFICATE DELIVERED PURSUANT TO THIS AGREEMENT, NEITHER SELLER, A SELLER RELATED PARTY NOR ANY OTHER PERSON MAKE, OR HAVE MADE, ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO THE COMPANY GROUP, THE BUSINESS OF THE COMPANY GROUP OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. PURCHASER SPECIFICALLY ACKNOWLEDGES AND AGREES TO SELLER AND THE SELLER RELATED PARTIES' EXPRESS DISAVOWAL AND DISCLAIMER OF ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER MADE BY SELLER OR THE SELLER RELATED PARTIES OR THEIR RESPECTIVE REPRESENTATIVES, AND OF ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, PROJECTION, FORECAST, STATEMENT, OR INFORMATION MADE, COMMUNICATED, OR FURNISHED (ORALLY OR IN WRITING) TO PURCHASER OR ITS EQUITYHOLDERS, INCORPORATORS, CONTROLLING PERSONS, LIMITED OR GENERAL PARTNERS, MEMBERS, AFFILIATES OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION, OR ADVICE THAT MAY HAVE BEEN OR MAY BE PROVIDED TO PURCHASER OR ITS EQUITYHOLDERS, INCORPORATORS, CONTROLLING PERSONS, LIMITED OR GENERAL PARTNERS, MEMBERS, AFFILIATES OR REPRESENTATIVES BY SELLER, ANY SELLER RELATED PARTY OR ANY OF THEIR REPRESENTATIVES). PURCHASER ACKNOWLEDGES AND AGREES THAT IT HAS CONDUCTED TO ITS SATISFACTION ITS OWN INDEPENDENT INVESTIGATION OF THE CONDITION, OPERATIONS, LIABILITIES AND BUSINESS OF THE COMPANY GROUP AND, IN MAKING ITS DETERMINATION TO PROCEED WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, PURCHASER RELIED

SOLELY ON THE RESULTS OF ITS OWN INDEPENDENT INVESTIGATION AND THE EXPRESS REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN ARTICLE III (AS MODIFIED BY THE SELLER DISCLOSURE LETTER) AND/OR ANY CERTIFICATE DELIVERED PURSUANT TO THIS AGREEMENT. IN FURTHERANCE OF THE FOREGOING, AND NOT IN LIMITATION THEREOF, PURCHASER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER DOES NOT MAKE, NOR HAS ANY OTHER PERSON MADE, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY FINANCIAL PROJECTION OR FORECAST DELIVERED TO PURCHASER OR ITS EQUITYHOLDERS, INCORPORATORS, CONTROLLING PERSONS, LIMITED OR GENERAL PARTNERS, MEMBERS, AFFILIATES OR REPRESENTATIVES WITH RESPECT TO THE PERFORMANCE OF THE COMPANY GROUP OR THE BUSINESS OF THE COMPANY GROUP WHETHER BEFORE, ON OR AFTER THE CLOSING DATE. PURCHASER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER DOES NOT MAKE, NOR HAS MADE (OR HAS AUTHORIZED ANY OTHER PERSON TO MAKE ON THEIR BEHALF), ANY REPRESENTATION OR WARRANTY TO PURCHASER REGARDING THE PROBABLE SUCCESS OR PROFITABILITY OF THE COMPANY GROUP OR THE BUSINESS OF THE COMPANY GROUP. PURCHASER SHALL ACQUIRE THE COMPANY GROUP (I) WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE QUALITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONFORMITY TO SAMPLES, OR CONDITION OF THE COMPANY GROUP, ANY ASSETS OR ANY PART THEREOF AND (II) IN AN "AS IS" CONDITION AND ON A "WHERE IS" BASIS, EXCEPT, IN EACH CASE, FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE III (AS MODIFIED BY THE SELLER DISCLOSURE LETTER) AND/OR ANY CERTIFICATE DELIVERED PURSUANT TO THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 6.03 AND EXCEPT IN THE CASE OF FRAUD, PURCHASER HEREBY WAIVES, ON BEHALF OF ITSELF AND ITS AFFILIATES (INCLUDING, AFTER THE CLOSING, THE COMPANY GROUP), FROM AND AFTER THE CLOSING, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY AND ALL RIGHTS, CLAIMS AND CAUSES OF ACTION IT MAY HAVE AGAINST SELLER, ANY OF THE SELLER RELATED PARTIES, AND ANY OF THEIR REPRESENTATIVES, AND AGREES NO RECOURSE SHALL BE SOUGHT OR GRANTED AGAINST ANY OF THEM, RELATING TO THE OPERATION OF THE COMPANY GROUP OR THE BUSINESS OF THE COMPANY GROUP OR RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING THE REPRESENTATIONS, WARRANTIES, AND COVENANTS CONTAINED HEREIN, THE SCHEDULES AND EXHIBITS HERETO AND ANY CERTIFICATE, INSTRUMENT, OPINION OR OTHER DOCUMENTS DELIVERED IN CONNECTION HERewith) AND THE TRANSACTIONS CONTEMPLATED HEREBY, WHETHER ARISING UNDER OR BASED UPON ANY FEDERAL, STATE, LOCAL OR FOREIGN STATUTE, LAW, ORDINANCE, RULE OR REGULATION OR OTHERWISE (INCLUDING ANY RIGHT, WHETHER ARISING AT LAW OR IN EQUITY, TO SEEK INDEMNIFICATION, CONTRIBUTION, COST RECOVERY, DAMAGES, OR ANY OTHER RECOURSE OR REMEDY, INCLUDING AS MAY ARISE UNDER COMMON LAW). FURTHERMORE, WITHOUT LIMITING THE GENERALITY OF THIS SECTION 6.03 AND EXCEPT IN THE CASE OF FRAUD, NO ACTION, CAUSE OF ACTION, CLAIM,

CROSS-CLAIM OR THIRD-PARTY CLAIM OR LEGAL PROCEEDING OF ANY KIND (WHETHER AT LAW, IN EQUITY, IN CONTRACT, IN TORT OR OTHERWISE) SHALL BE BROUGHT OR MAINTAINED BY PURCHASER OR ANY OF ITS AFFILIATES (INCLUDING, AFTER THE CLOSING, THE COMPANY GROUP) AGAINST SELLER, ANY SELLER RELATED PARTY OR ANY OF THEIR RESPECTIVE REPRESENTATIVES, AND NO RECOURSE SHALL BE SOUGHT OR GRANTED AGAINST ANY OF THEM, BY VIRTUE OF OR BASED UPON (I) ANY ALLEGED MISREPRESENTATION OR INACCURACY IN OR BREACH OF ANY OF THE REPRESENTATIONS, WARRANTIES OR COVENANTS SET FORTH OR CONTAINED IN THIS AGREEMENT, ANY CERTIFICATE, INSTRUMENT, OPINION OR OTHER DOCUMENTS DELIVERED HEREUNDER, THE EXHIBITS AND DISCLOSURE SCHEDULE HERETO OR THE SUBJECT MATTER HEREOF OR THEREOF, OR (II) THE BUSINESS OF THE COMPANY GROUP, THE OWNERSHIP, OPERATION, MANAGEMENT, USE OR CONTROL OF THE COMPANY GROUP AND/OR THE BUSINESS OF THE COMPANY GROUP, ANY OF THEIR ASSETS, ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY ACTIONS OR OMISSIONS AT OR PRIOR TO THE CLOSING DATE. NOTHING IN THIS SECTION 6.03 SHALL LIMIT, DISCLAIM OR OTHERWISE AFFECT ANY REPRESENTATION, WARRANTY, COVENANT OR AGREEMENT EXPRESSLY CONTAINED IN THIS AGREEMENT AND/OR ANY CERTIFICATE DELIVERED PURSUANT TO THIS AGREEMENT (IT BEING EXPRESSLY AGREED AND ACKNOWLEDGED THAT THE PURCHASER IS RELYING ON SUCH REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS, INCLUDING AS A MATERIAL INDUCEMENT TO ITS WILLINGNESS TO ENTER INTO THIS AGREEMENT AND CONSUMMATE THE TRANSACTIONS).

6.04 Taxes.

(a) All Transfer Taxes (if any) that may be due and payable in connection with the transfer of the Transferred Interests by Seller to Purchaser contemplated by this Agreement, whether before, at, or after Closing, shall be borne and paid 50% by Purchaser, on the one hand, and 50% by Seller, on the other hand. Purchaser shall file any Tax Return or other document with respect to such Taxes or fees (and Seller shall cooperate with respect thereto as necessary).

(b) For all purposes of this Agreement, in the case of any Straddle Period, (i) real, personal and intangible property Taxes and any other similar Taxes levied on a per diem basis shall be allocated between the Pre-Closing Tax Period and the taxable period (or portion thereof) beginning after the Closing on a daily pro-rata basis and (ii) any other Taxes of any Person for any Pre-Closing Tax Period shall be computed as if the applicable taxable period ended as of the Closing Date.

(c) Any and all Tax allocation or Tax sharing agreements between the Company or any Company Subsidiary, on the one hand, and Seller or any of its Affiliates, on the other hand, shall be terminated as of the Closing Date and, from and after the Closing Date, neither the Company nor any Company Subsidiary shall be obligated to make any payment pursuant to any such agreement for any past or future period.

(d) Withholding Matters.

(i) As promptly as practicable following the date of this Agreement, Seller shall apply for a withholding certificate described in Treasury Regulation Section 1.1445-3, IRS Form 8288-B (or any successor form), and IRS Rev. Proc. 2000-35, requesting a reduction in the withholding Tax that would otherwise be required to be withheld under Section 1445 of the Code with respect to a sale of the Transferred Interests by a foreign person (as defined under Section 1445 of the Code) (the “**IRS Certificate**”) and thereafter will use its commercially reasonable efforts to respond as promptly as practicable to any inquiries from the IRS for additional information or documentation in connection with its application for the IRS Certificate.

(ii) In the event the IRS Certificate is issued by the IRS to Seller at least one Business Day prior to Closing and presented to Purchaser prior to Closing, except as otherwise required by a change in Tax Law, Purchaser shall be permitted to withhold and deduct pursuant to Section 2.05, from the proceeds otherwise payable to Seller pursuant to this Agreement, an amount of withholding pursuant to Section 1445 of the Code not greater than the amount required to be withheld as described in the IRS Certificate. Notwithstanding the foregoing, if any change in Tax Law requires Purchaser to withhold an amount greater than the amount required to be withheld as described in the IRS Certificate, before making such deduction or withholding, Purchaser shall give Seller reasonable advance notice of such anticipated deduction or withholding (together with the legal basis therefor), provide Seller with sufficient opportunity to provide any forms or other documentation or take such other steps in order to avoid such deduction or withholding, and reasonably cooperate with Seller in good faith to attempt to reduce any additional amounts that would otherwise be deducted and withheld (such actions described in this sentence, the “**Mitigation Procedures**”).

(iii) In the event the IRS Certificate is not issued by the IRS at least one Business Day prior to Closing: (a) the Restructuring shall occur pursuant to the terms of the Contribution Agreement; (b) Seller shall assign all of its rights and obligations hereunder to US Seller and US Seller shall be considered the Seller for all purposes hereunder; (c) US Seller shall provide to Purchaser a duly executed and properly completed IRS Form W-9; and (d) except as otherwise required by a change in Tax Law (but, in the case of a change in Tax Law, subject to the Mitigation Procedures), Purchaser shall not be permitted to withhold and deduct any amounts under this Agreement with respect to withholdings otherwise required under Section 1445 of the Code. In such case, promptly following Closing, US Seller shall deposit an amount equal to 110% of the amount (such amount, the “**Withholding Holdback**”) of the Expected Withholding Amount (as defined below) in a segregated bank account and prior to the payment of the Actual Withholding Amount (as defined below) shall not use such amounts for any purpose other than to pay over the Actual Withholding Amount to the IRS. Seller shall not amend or waive any provision set forth in the Contribution Agreement without the prior written consent of Purchaser, except to the extent required in connection with obtaining any Requisite Statutory Approvals.

(iv) In the event the IRS Certificate is not issued at least ten Business Days prior to the Closing, Seller shall provide Purchaser with its good faith calculation with reasonable supporting detail of the amount of Tax it reasonably expects US Seller to be required to pay over to the IRS pursuant to Section 1446(a) of the Code (the “**Expected Withholding Amount**”) and thereafter will cooperate with Purchaser and its Representatives in good faith to answer any questions raised by the Purchaser and its Representatives in connection with their review of such calculation, shall review any comments or changes proposed by Purchaser with respect to such calculation, and shall consider in good faith, in consultation with PricewaterhouseCoopers or another nationally recognized independent certified public accounting firm, any appropriate changes thereto (it being understood that unless Seller agrees to make any modifications in response to Purchaser’s comments, the Seller’s determination of the Expected Withholding Amount shall be conclusive so long as such Expected Withholding Amount is determined in good faith).

(v) In the event the Restructuring occurs, following the Closing and at least 10 Business Days prior to the due date for such tax to be paid to the IRS under the Code and Treasury Regulations thereunder (or, if the Closing takes place within 10 Business Days of the due date for such taxes, then as soon as reasonably practicable following the Closing), Seller shall provide Purchaser with its good faith calculation with reasonable supporting detail of its final determination of the amount of Tax US Seller is required to pay to the IRS pursuant to Section 1446(a) of the Code (the “**Actual Withholding Amount**”) and thereafter will cooperate with Purchaser and its Representatives in good faith to answer any questions raised by the Purchaser and its Representatives in connection with their review of such calculation, shall review any comments or changes proposed by Purchaser with respect to such calculation, and shall consider in good faith, in consultation with PricewaterhouseCoopers or another nationally recognized independent certified public accounting firm, any appropriate changes thereto (it being understood that unless Seller agrees to make any modifications in response to Purchaser’s comments, the Seller’s determination of the Actual Withholding Amount shall be conclusive so long as such Actual Withholding Amount is determined in good faith). Unless otherwise agreed by Purchaser, Seller shall promptly pay to the IRS the Actual Withholding Amount, provided that in no event shall Seller be required to do so prior to the earlier of (i) ten Business Days after its delivery of its calculation thereof to Purchaser and (ii) the due date for such tax to be paid to the IRS under the Code and Treasury Regulations thereunder. Following Seller’s payment to the IRS of the Actual Withholding Amount, any remaining amount of the Withholding Holdback shall be released to Seller in full and shall no longer be subject to the restrictions described in Section 6.04(d)(iii). Within 10 days following Seller’s filing of IRS Form 8804 with respect to Seller’s payment of the Actual Withholding Amount to the IRS, Seller shall provide Purchaser with a copy of the filed IRS Form 8804 (Annual Return for Partnership Withholding Tax (Section 1446)).

(vi) With respect to any details supporting its calculation of the Estimated Withholding Amount or Actual Withholding Amount, Seller shall provide to Purchaser, to the extent reasonably accessible to Seller, such supporting evidence as is reasonably necessary to enable Purchaser to confirm the withholding calculation,

provided that, for the avoidance of doubt, Seller may provide such information on an anonymized and categorized basis (e.g., by providing a schedule containing the aggregate share of proceeds received (and gain that will be recognized) pursuant to this Agreement that will be ultimately distributed by Seller (directly or indirectly) to persons that are U.S. persons, foreign partners (as defined in Section 1446 of the Code) subject to withholding under Section 1446(a) of the Code, and foreign partners not subject to withholding under Section 1446(a) of the Code with respect to the proceeds received under this Agreement (such as persons described in Sections 892 and 897(l) of the Code)). Seller may choose to share such information only with Purchaser's outside tax advisors on an outside advisor only basis, and in no event shall Seller be required to provide any identifying information with respect to its direct and indirect investors.

(e) During the Interim Period, in connection with any payment by the Company of any dividends or distributions to Seller on account of the Transferred Interests, Seller shall deliver to the Company a properly completed IRS Form W-8IMY together with a withholding statement. Properly completed IRS Form W-9s and W-8s from Seller's equity holders, supporting the Company's position as to its Tax withholding obligations with respect thereto will be held in trust by Deloitte or another nationally recognized independent certified public accounting firm. Following the Closing, in the event that the Company is subject to any Claim or investigation by the IRS with respect to the Company's application of withholding Taxes on dividends or distributions paid to Seller prior to the Closing, Seller shall, as promptly as practicable, provide the Company and its Representatives with reasonable documentation supporting the Company's position with respect to its Tax withholding obligations with respect to those dividends or distributions, including a properly completed IRS Form W-8IMY together with a withholding statement. In the event that properly completed IRS Form W-9s and W-8s from Seller's equity holders are required to be delivered to the IRS, Seller will direct that Deloitte or such other nationally recognized independent certified public accounting firm holding such forms provide such forms directly to the IRS promptly following Purchaser's written request therefor. For the avoidance of doubt, in no event shall Seller or Deloitte (or such other firm as described above) be required to deliver to Purchaser any (i) IRS Form W-9s and W-8s from Seller's equity holders, or (ii) identifying information with respect to Seller's direct and indirect investors.

6.05 **Further Assurances.** Seller and Purchaser each agree that from time to time after the Closing, without further consideration, they will execute and deliver, and will cause their respective Affiliates to execute and deliver, such further instruments, and take, and cause their respective Affiliates to take, such other actions and deliver such other documents as may be reasonably necessary to carry out the purposes and intent of this Agreement.

6.06 **Fees, Costs and Expenses.** Except as provided otherwise in this Agreement, all fees, costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such fees, costs or expenses, whether or not the Closing occurs.

6.07 **Indemnification; Directors' and Officers' Insurance.**

(a) Purchaser agrees that all rights to indemnification, advancement of expenses and exculpation from liabilities for acts or omissions occurring on or prior to the Closing Date now existing in favor of the current or former directors, officers or employees of the Company and the Company Subsidiaries as provided in their respective Organizational Documents and any indemnification or other similar Contracts of the Company or any Company Subsidiary set forth on Section 6.07(a) of the Seller Disclosure Letter, in each case, as in effect on the date of this Agreement, shall continue in full force and effect in accordance with their terms to the extent provided in the following sentence. From and after the Closing Date and for a period of at least six years thereafter, Purchaser agrees that it will cause the Company and the Company Subsidiaries to indemnify and hold harmless each individual who is as of the date of this Agreement, or who becomes prior to the Closing Date, a director, officer or employee of the Company or any Company Subsidiary (collectively, the “**Company Indemnified Parties**”), against all claims, losses, liabilities, damages, judgments, inquiries, fines and reasonable fees, costs and expenses, including reasonable and documented attorneys’ fees and disbursements, incurred in connection with any Claim, whether civil, criminal, administrative or investigative (including with respect to matters existing or occurring at or prior to the Closing Date (including this Agreement and the transactions and actions contemplated hereby)), arising out of or pertaining to the fact that the Company Indemnified Party is or was a director, officer or employee of the Company or any Company Subsidiary, whether asserted or claimed prior to, on, or after the Closing Date, to the fullest extent permitted under applicable Law. In the event of any such Claim, (i) each Company Indemnified Party will, to the fullest extent permitted under applicable Law, be entitled to advancement of expenses incurred in the defense of any such Claim from the Company or any Company Subsidiary within 10 Business Days after receipt by the Company or such Company Subsidiary from the Company Indemnified Party of a request therefor (provided that any Person to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined by final adjudication that such person is not entitled to indemnification), and (ii) the Company or such Company Subsidiary shall cooperate in good faith in the defense of any such matter. In addition, during the period commencing on the Closing Date and ending on the sixth anniversary of the Closing Date, Purchaser will cause the Company and the Company Subsidiaries to cause the Organizational Documents of the Company and the Company Subsidiaries to contain provisions with respect to indemnification, exculpation and the advancement of expenses that are at least as favorable as the indemnification, exculpation and advancement of expenses provisions set forth in the Organizational Documents of the Company and the Company Subsidiaries as of the date of this Agreement.

(b) For a period of six years from and after the Closing Date, Purchaser shall either cause to be maintained in effect the current policies of directors’ and officers’ liability insurance and fiduciary liability insurance maintained by the Company or the Company Subsidiaries or provide substitute policies for the Company and its current and former directors and officers who are currently covered by the directors’ and officers’ and fiduciary liability insurance coverage currently maintained by the Company, in either case, of not less than the existing coverage and having other terms not less favorable to the insured persons than the directors’ and officers’ liability insurance and fiduciary liability insurance coverage currently maintained by the Company with respect to claims arising from facts or events that occurred on or before the Closing Date (with insurance carriers having at least the same credit rating as the Company’s current carrier with respect to directors’ and officers’ liability insurance and fiduciary liability insurance), except that in no event shall Purchaser be required to pay with

respect to such insurance policies in respect of any one policy year more than 200% of the aggregate annual premium most recently paid by the Company prior to the date of this Agreement (the “**Maximum Amount**”), and if Purchaser is unable to obtain the insurance required by this Section 6.07(b) it shall obtain as much comparable insurance as possible for the years within such six year period for an annual premium equal to the Maximum Amount, in respect of each policy year within such period. Purchaser shall maintain such policies in full force and effect, and continue to honor the obligations thereunder, for such six-year period. In lieu of such insurance, Purchaser may, at its option, elect to have Seller purchase (at Purchaser’s cost and expense) a “tail” directors’ and officers’ liability insurance policy and fiduciary liability insurance policy selected by Purchaser for the Company and its current and former directors, officers and employees who are currently covered by the directors’ and officers’ and fiduciary liability insurance coverage currently maintained by the Company, such tail to provide coverage in an amount not less than the existing coverage and to have other terms not less favorable to the insured persons than the directors’ and officers’ liability insurance and fiduciary liability insurance coverage currently maintained by the Company with respect to claims arising from facts or events that occurred on or before the Closing Date for a period of not less than six years.

(c) The provisions of this Section 6.07 (i) shall survive the Closing, (ii) are intended to be for the benefit of, and will be enforceable by, each indemnified or insured party (including the Company Indemnified Parties), his or her heirs and his or her legal representatives and (iii) are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such Person may have under the Organizational Documents of the Company or any of the Company Subsidiaries, by Contract or otherwise.

6.08 Post-Closing Access. In connection with any matter relating to any period prior to, or any period ending on, the Closing Date, Purchaser shall, upon the reasonable request and at the expense of Seller, permit Seller and its Affiliates and its and their representatives reasonable access at reasonable times and upon reasonable prior written notice to the Books and Records of the Company Group as Seller or its Affiliates may reasonably request for any reasonable business purpose, including insurance matters, financial reporting, accounting matters, the preparation and filing of any Tax Return, the defense of any Tax Claim or in connection with any disclosure obligation or the defense of any Claim; provided, however, that Purchaser, the Company and the Company Subsidiaries may withhold from Seller or its Representatives any document or information that Purchaser, the Company or such Company Subsidiary believes is subject to the terms of a confidentiality agreement with a third party or subject to any attorney-client privilege (provided that Purchaser shall promptly notify Seller in writing if any information is withheld by reason of the foregoing exception and Purchaser shall cause the Company or such Company Subsidiary to use its commercially reasonable efforts to obtain the required consent of such third party to disclose such document or information or allow the disclosure of such document or information (or as much of it as possible) in a manner that does not result in a loss of attorney-client privilege, as applicable; provided, further, that commercially reasonable efforts shall not include the making of any concession, incurring any cost or expense, paying any fee or waiving any right). Purchaser shall not dispose of such Books and Records during the seven-year period beginning with the Closing Date without Seller’s consent. Notwithstanding anything to the contrary set forth in this Section 6.08, the Parties acknowledge and agree that if the Parties are in an adversarial relationship in any action or proceeding, the furnishing of information, documents or records in accordance with any provision of this Section

6.08 that are relevant to such action or proceeding shall be subject to applicable rules relating to discovery.

6.09 Financing Cooperation.

(a) During the Interim Period, Seller shall, and shall cause its Subsidiaries to (and use commercially reasonable efforts to cause each of their respective Representatives to), on a timely basis upon Purchaser's reasonable advance notice, provide reasonable cooperation (at Purchaser's sole cost and expense) that is customary and reasonably necessary in the arrangement of financing (including any refinancing or replacement of the Note Purchase Agreement) pursued by Purchaser relating to the transactions contemplated by this Agreement that would take effect at or after the Closing, as may be reasonably requested by Purchaser; provided that, notwithstanding the foregoing, none of Seller, its Subsidiaries, or their respective Representatives shall be required to (i) prepare any financial statements (including pro formas) or other financial information that is not otherwise prepared in the Ordinary Course of Business, (ii) execute any documents or take any actions by its board or similar governing body, other than, solely with respect to the Company and any Company Subsidiary, those resolutions customarily required in connection with the execution of financings of a similar type that will be effective on or after the Closing, (iii) pay any fee or commitment or take any action that would, or would be reasonably expected to, cause any of the foregoing to incur any liability, or (iv) take any action that could reasonably be expected to conflict with or violate such Person's Organizational Documents or any Law, or result in the contravention of, a violation or breach of, or default under, any Contract. Purchaser shall promptly reimburse Seller for any reasonable and documented out-of-pocket expenses actually incurred by Seller or any of its Affiliates in connection with fulfilling their respective obligations under this Section 6.09. Notwithstanding anything to the contrary contained in this Agreement, any failure by Seller to comply with its obligations under this Section 6.09 shall not be taken into account for purposes of determining the satisfaction of the condition set forth in the last sentence of Section 7.03(a) and Purchaser hereby acknowledges and agrees that obtaining any financing is not a condition to the Closing.

(b) Whether or not the Closing shall occur, Purchaser shall indemnify, defend and hold harmless Seller, its Subsidiaries, and their respective Representatives from and against any and all Claims, losses, liabilities, damages, judgments, inquiries, fines and reasonable fees, costs, expenses, including attorneys' fees and disbursements, and the cost of enforcing this indemnity arising out of and resulting from any action taken by Seller, its Subsidiaries or their respective Representatives, in connection with the cooperation obligations set forth in Section 6.09(a) or any information utilized in connection therewith (except to the extent such Claims, losses, liabilities, damages, judgments, inquiries, fines and reasonable fees, costs, and expenses arise out of or result from such Person acting with gross negligence, bad faith, or in material breach of this Agreement).

6.10 280G.

(a) No later than five days prior to the Closing Date, the Company and any Company Subsidiary, as applicable, shall request an excess parachute payment waiver (a "**280G Waiver**") from each Person who the Company determines is, with respect to the Company or any Company Subsidiary, a "disqualified individual" (within the meaning of Section 280G of the

Code) with respect to the transactions contemplated by this Agreement and who would otherwise receive or have the right or entitlement to receive a “parachute payment” (as defined in Section 280G(b)(2) of the Code) as a result of the Closing or the consummation of the transactions contemplated by this Agreement. By the execution of such 280G Waiver, the Person executing the waiver shall agree to waive all of his or her right and entitlement to receive (or if already paid, his or her right and entitlement to retain) any portion of such “parachute payments” that would cause the Person executing the waiver to receive an “excess parachute payment” (as defined in Section 280G(b)(1) of the Code), unless shareholders of the Company approve such waived payments in accordance with Section 280G(b)(5)(A)(ii) of the Code.

(b) Following the execution of the 280G Waivers, the Company shall submit the “parachute payments” that are waived pursuant to the 280G Waiver (the “**Waived 280G Payments**”) to the shareholders of the Company for its approval in accordance with all applicable requirements of such Section 280G(b)(5)(B) of the Code and the Treasury Regulations thereunder, including Q-7 of Section 1.280G-1 of such Treasury Regulations (the “**280G Stockholder Approval**”). No later than seven days before the Closing Date, the Company shall provide to Purchaser or its counsel drafts of the consent, 280G Waiver and disclosure statement necessary to effectuate the 280G Stockholder Approval for review and comment and the Company shall take into account all reasonable comments provided by Purchaser with such consent, waiver and disclosure statement.

(c) Prior to the Closing Date, the Company shall deliver to Purchaser evidence that the 280G Stockholder Approval was solicited in accordance with the foregoing provisions of this Section 6.10 and that either (A) the 280G Stockholder Approval was obtained with respect to the Waived 280G Payments, or (B) that the 280G Stockholder Approval was not obtained, and, as a consequence, the Waived 280G Payments shall not be paid or provided in accordance with the 280G Waiver.

(d) No later than 10 days prior to the Closing Date, Purchaser shall inform the Company of any potential “parachute payments” pursuant to Section 280G of the Code that will or would reasonably be expected to be paid or provided by Purchaser or its Affiliates (including the Company following the Closing) to any “disqualified individual” for inclusion in any 280G analysis and, as necessary or appropriate, the Waived 280G Payments.

6.11 Non-Solicitation of Employees. Seller and its Specified Affiliates agree not to, for a period of two years after the Closing Date, directly or indirectly solicit or hire any employee of any member of the Company Group as of the Closing Date or intentionally encourage any such employee to leave such officer’s or employee’s employment or other role with the Company Group; provided, however, that this Section 6.11 shall not prohibit Seller or its Affiliates from (a) engaging in any general advertisements or solicitations (including general solicitations and advertisements by recruiting firms) which are not directed specifically to any such officers or employees or (b) soliciting and hiring any such officer or employee whose employment or other role with the Company Group is terminated by any member of the Company Group after the Closing Date and without any prior solicitation in violation of this Agreement.

ARTICLE VII CONDITIONS PRECEDENT

7.01 **Conditions to Obligations of Both Parties.** The respective obligations of Seller and Purchaser to consummate the transactions contemplated by this Agreement to be effected at the Closing shall be subject to the satisfaction at or prior to the Closing of the following conditions, any or all of which may be waived in writing by Seller and Purchaser, in whole or in part, to the extent permitted by applicable Law:

(a) the Required Statutory Approvals, including the expiration or termination of any waiting period applicable to the purchase of the Transferred Interests pursuant hereto under the HSR Act, shall have been obtained at or prior to the Closing Date and such Required Statutory Approvals shall have become Final Orders, and such Required Statutory Approvals shall not impose any terms, conditions, liabilities, obligations, commitments or sanctions that, individually or in the aggregate, would reasonably be expected to have a Burdensome Effect. For purposes of this Section 7.01(a), a “Final Order” means an Order by the relevant Governmental Authority that (i) has not been reversed, stayed, enjoined, set aside, annulled or suspended and is in full force and effect, (ii) with respect to which, if applicable, any mandatory waiting period prescribed by Law before the purchase of the Transferred Interests pursuant hereto may be consummated has expired and (iii) as to which all conditions to the consummation of the purchase of the Transferred Interests pursuant hereto prescribed by Law have been satisfied; and

(b) there shall not be in effect any Law of competent jurisdiction, whether preliminary, temporary or permanent, making illegal or prohibiting the consummation of the transactions contemplated by Section 2.01 (or any pending (or threatened in writing) action or proceeding that seeks the foregoing) (any such Law, a “**Legal Restraint**”).

7.02 **Conditions to Obligations of Seller.** The obligation of Seller to consummate the transactions contemplated by this Agreement to be effected at the Closing shall be subject to the satisfaction at or prior to the Closing of the following conditions, any or all of which may be waived in writing by Seller, in whole or in part, to the extent permitted by applicable Law:

(a) Each of the representations and warranties in Article IV hereof shall be true and correct in all respects as of the Closing Date, as though such representations and warranties had been made on and as of the Closing Date (except that representations and warranties that are made as of a specified date need be true and correct in all respects only as of such date), except where the failure of such representations and warranties (other than the representation and warranty in Section 4.06 which need be true and correct in all respects) to be true and correct (in each case disregarding all qualifications and exceptions contained therein relating to materiality) would not reasonably be expected to have a Purchaser Material Adverse Effect. Purchaser shall have duly performed and complied in all material respects with all agreements contained herein required to be performed or complied with by it at or before the Closing; and

(b) Purchaser shall have delivered to Seller a certificate dated the Closing Date and signed by a senior executive officer as to the fulfillment of the conditions set forth in Section 7.02(a).

7.03 **Conditions to Obligations of Purchaser.** The obligation of Purchaser to consummate the transactions contemplated by this Agreement to be effected at the Closing shall be subject to the satisfaction at or prior to the Closing of the following conditions, any or all of which may be waived in writing by Purchaser, in whole or in part, to the extent permitted by applicable Law:

(a) Each of the representations and warranties (i) set forth in Article III hereof (other than in Section 3.01, Section 3.02(a), Section 3.02(c), Section 3.03, Section 3.04, Section 3.21 and the second sentence of Section 3.07) shall be true and correct as of the Closing Date (disregarding all qualifications or limitations as to “materiality” or “Material Adverse Effect” and words of similar import set forth therein), as though such representations and warranties had been made on and as of the Closing Date (except that representations and warranties that are made as of a specified date need be true and correct only as of such date), except where the failure of any such representation or warranty to be so true and correct, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect; (ii) set forth in Section 3.01, Section 3.02(a), Section 3.02(c), Section 3.03, and Section 3.04 shall be true and correct in all respects as of the Closing Date, as though such representations and warranties had been made on and as of the Closing Date (except that representations and warranties that are made as of a specified date need be true and correct in all respects as of the Closing Date), except where the failure of any such representation or warranty to be so true and correct has had, or would reasonably be expected to have, only a *de minimis* impact on Seller, the Company and the Company Subsidiaries, taken as a whole, (iii) set forth in Section 3.21 shall be true and correct in all material respects as of the Closing Date except for any arrangements giving rise to the failure of such representation and warranty to be so true and correct that are taken into account in the calculation of the Transaction Expenses, and (iv) set forth in the second sentence of Section 3.07 shall be true and correct in all respects as of the Closing Date. Seller shall have duly performed and complied in all material respects with all agreements contained herein required to be performed or complied with by it at or prior to Closing; and

(b) Seller shall have delivered to Purchaser a certificate dated the Closing Date and signed by a senior executive officer as to the fulfillment of the conditions set forth in Section 7.03(a).

ARTICLE VIII TERMINATION

8.01 **Termination.** This Agreement may be terminated:

(a) at any time prior to the Closing Date by mutual agreement of Purchaser and Seller;

(b) by Purchaser or Seller, by written notice to the other Party, if the Closing shall not have occurred by September 22, 2021 (the “**Outside Date**”); provided that if, prior to the Outside Date, all of the conditions to the Closing set forth in Article VII have been satisfied or waived, as applicable, or, with respect to those conditions that by their terms are to be satisfied at the Closing, shall then be capable of being satisfied, except for any condition set forth in Section 7.01, either Purchaser or Seller may, prior to 5:00 p.m. New York City time on the

Outside Date, extend the Outside Date to a date that is six months after the Outside Date (and if so extended, the “**Outside Date**” shall mean such later date); provided further, that if the Outside Date occurs within twelve Business Days after the day on which all of the conditions have been satisfied or waived in accordance with this Agreement (other than those conditions that by their nature can only be satisfied at the Closing), then the Outside Date shall automatically be extended by an additional fifteen Business Days (and if so extended, the “**Outside Date**” shall mean such later date); provided further, that the right to terminate this Agreement pursuant to this Section 8.01(b) shall not be available to a Party whose failure to fulfill any obligation under this Agreement shall have been a material cause of, or resulted in, the failure of the Closing to occur on or before such date;

(c) by either Purchaser or Seller, by written notice to the other Party, if any Legal Restraint permanently prohibiting the consummation of the transactions contemplated by this Agreement shall have become final and non-appealable; provided that the right to terminate this Agreement pursuant to this Section 8.01(c) shall not be available to a Party whose failure to fulfill any obligation under this Agreement shall have been a material cause of, or resulted in, the Legal Restraint;

(d) by Purchaser, by written notice to Seller, if Seller has breached or failed to perform in any material respect any of its obligations set forth in this Agreement, (i) such that the conditions set forth in Section 7.01 or Section 7.03 cannot be satisfied, and (ii) such breach or failure to perform cannot be cured by Seller or, if capable of being cured, shall not have been cured within the earlier of (x) 30 days after receipt by Seller of notice in writing from Purchaser, specifying the nature of such breach and requesting that it be cured, and (y) three Business Days prior to the Outside Date; provided that Purchaser shall not have the right to terminate this Agreement pursuant to this Section 8.01(d) if it is then in breach of any of its obligations under this Agreement such that the conditions set forth in Section 7.01 or Section 7.02 cannot be satisfied;

(e) by Seller, by written notice to Purchaser, if Purchaser has breached or failed to perform in any material respect any of its obligations set forth in this Agreement, (i) such that the conditions set forth in Section 7.01 or Section 7.02 cannot be satisfied, and (ii) such breach or failure to perform cannot be cured by Purchaser or, if capable of being cured, shall not have been cured within the earlier of (x) 30 days after receipt by Purchaser of notice in writing from Seller, specifying the nature of such breach and requesting that it be cured and (y) three Business Days prior to the Outside Date; provided that Seller shall not have the right to terminate this Agreement pursuant to this Section 8.01(e) if it is then in breach of any of its obligations under this Agreement such that the conditions set forth in Section 7.01 or Section 7.03 cannot be satisfied; or

(f) by Seller, if (1) all of the conditions set forth in Section 7.01 and Section 7.03 have been and continue to be satisfied or waived in accordance with this Agreement as of the date that the Closing should have been consummated pursuant to Section 2.03 (except for those conditions that by their terms are to be satisfied at the Closing; provided those conditions would be or would be capable of being satisfied at the Closing), (2) Purchaser does not complete the Closing on the day that the Closing should have been consummated pursuant to Section 2.03 and (3) Purchaser fails to consummate the Closing within five Business Days following its

receipt of irrevocable written notice from Seller (A) certifying that Seller would be ready, willing and able to consummate the Closing on that date, (B) certifying that all conditions to the Closing set forth in Section 7.01 and Section 7.03 have been satisfied (except for those conditions that by their terms are to be satisfied at the Closing) and that it will waive any unsatisfied conditions in Section 7.02 and (C) requesting such consummation.

8.02 **Effect of Termination; Termination Fee.**

(a) Subject to the other terms hereof, if this Agreement is terminated as provided in this Article VIII, this Agreement shall become null and void and of no further force or effect, except for the provisions of:

- (i) the last sentence of Section 5.04(a);
- (ii) Section 5.04(c);
- (iii) this Section 8.02; and
- (iv) Article IX and any corresponding definitions.

Subject to Section 8.02(d), nothing in this Section 8.02(a) shall be deemed to extinguish any right or remedy of any Party that shall have accrued hereunder prior to any such termination, or release any Party from any liability, for Fraud or any Willful Breach by such Party of the terms and provisions of this Agreement.

(b) If this Agreement is validly terminated pursuant to Section 8.01(e) or Section 8.01(f) (or is validly terminated pursuant to Section 8.01(b) or Section 8.01(c) but at such time Seller could have validly terminated this Agreement pursuant to Section 8.01(e) or Section 8.01(f)), then Purchaser shall pay to Seller the Purchaser Termination Fee. Purchaser shall pay the Purchaser Termination Fee to Seller by wire transfer of same-day funds (to an account designated in writing by Seller) prior to or concurrently with such termination of this Agreement by Purchaser or no later than five Business Days after the date of the applicable termination by Seller.

(c) The Parties acknowledge that the agreements contained in Section 8.02(b) are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, the Parties would not enter into this Agreement. If Purchaser fails to promptly pay an amount due pursuant to Section 8.02(b) and, in order to obtain such payment, Seller commences a Claim that results in a final, non-appealable Order against Purchaser for the amount set forth in Section 8.02(b), or any portion thereof, Purchaser shall pay to Seller (i) Seller's reasonable and documented costs and expenses (including reasonable and documented attorneys' fees and the reasonable and documented fees and expenses of any expert or consultant engaged by Seller) in connection with such Claim, together with (ii) interest on the amount of such payment from the date such payment was required to be made until the date of payment at the U.S. prime rate as quoted by The Wall Street Journal in effect on the date such payment was required to be made up to an aggregate amount (in the case of clauses (i) and (ii)) equal to \$2,500,000 ("**Enforcement Expenses**").

(d) Each of the Parties acknowledges and agrees that the Purchaser Termination Fee is not intended to be a penalty, but rather is liquidated damages in a reasonable amount that will (i) compensate Seller in the circumstances in which such Purchaser Termination Fee is due and payable, for the efforts and resources expended and opportunities forgone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated by this Agreement, which amount would otherwise be difficult to calculate with precision and (ii) limit the liability as set forth in this Agreement in all respects of Purchaser, the Sponsor and any former, current and future direct or indirect Representatives and each of their respective successors and assigns (each, a “**Purchaser Related Party**” and collectively, the “**Purchaser Related Parties**”) of Purchaser and/or the Sponsor, or any Purchaser Related Party of any such Purchaser Related Party. Seller (on behalf of itself and the Seller Related Parties) acknowledges and agrees that (i) following any termination of this Agreement in circumstances under which the Purchaser is required to pay the Purchaser Termination Fee, Purchaser’s payment of the Purchaser Termination Fee and Enforcement Expenses (if any) shall constitute the sole and exclusive remedy of Seller (including in the event of any Willful Breach by Purchaser), and (ii) the payment of the Purchaser Termination Fee and Enforcement Expenses (if any) shall be deemed to extinguish any right or remedy of Seller and the Seller Related Parties that shall have accrued hereunder prior to any such termination, and shall release the Purchaser and the Purchaser Related Parties from any additional liability by Purchaser or the Purchaser Related Parties relating to or arising out of this Agreement or the transactions contemplated by this Agreement or in respect of any other document or theory of law or equity or in respect of any oral representations made or alleged to be made in connection herewith or therewith, whether at law or equity, in contract, in tort or otherwise, and no Party nor any other Person shall be entitled to bring or maintain any Claims against the Purchaser or any Purchaser Related Parties arising out of or in connection with this Agreement, any of the transactions contemplated hereby or thereby (or the abandonment or termination thereof) or any matters forming the basis for such termination. Nothing contained in this Section 8.02 shall prevent, limit, impede or otherwise impair the ability of Seller to seek, enforce or otherwise pursue any remedy available to it pursuant to Section 9.04 at any time prior to termination of this Agreement pursuant to Article VIII, it being understood that Seller shall not be permitted or entitled to receive both (but may seek both in the alternative) a grant of specific performance that results in a Closing and payment of the Purchaser Termination Fee. The Parties acknowledge and agree that in no event shall Purchaser be required to pay the Purchaser Termination Fee on more than one occasion.

ARTICLE IX GENERAL PROVISIONS

9.01 **Non-Survival.** Except for the representation and warranty set forth in Section 4.06, which shall survive the Closing until 30 days after expiration of the applicable statute of limitations under ERISA and the Code, the representations and warranties set forth in this Agreement (and in any certificate, document or instrument delivered in connection with this Agreement) will terminate effective as of Closing and will not, for any purpose, survive the Closing. Following the Closing, except in the case of the representation and warranty set forth in Section 4.06 or Fraud, no Person will be entitled to any recovery or to make any claim whatsoever (including any claim of detrimental reliance or breach of contract or otherwise) or to assert any other right or remedy (whether in contract, in tort, at law, in equity or otherwise), in

each case in respect of any inaccuracy or breach of any representations and warranties set forth in this Agreement (and in any certificate, document or instrument delivered in connection with this Agreement) against any Party or any of their respective Affiliates. The covenants and agreements requiring performance in full at or prior to Closing will terminate effective as of the Closing and will not for any purpose survive Closing and the other covenants and agreements set forth herein will survive the Closing in accordance with their respective terms. The Parties expressly intend that the foregoing alter any applicable statutes of limitation; provided, that in the event that any written Claim notice is delivered by Seller to Purchaser within the applicable survival period provided above with respect to the representation and warranty set forth in Section 4.06, such representation and warranty shall survive with respect to such Claim until such time as such Claim is fully, finally and indefeasibly resolved and (if applicable) satisfied. Purchaser and Seller hereby acknowledge and agree that these limitations on liability were expressly bargained for and are a material inducement for Seller to enter into this Agreement and consummate the transactions contemplated hereby and in furtherance hereof each Party hereby knowingly, voluntarily and irrevocably waive any and all rights and remedies to which they would otherwise be entitled (whether in contract, in tort, at law, in equity or otherwise) in respect of any such inaccuracy, breach, non-performance or non-compliance that such Party may have against the other Parties or any of their Affiliates. In the event that Purchaser, the Company, any of the Company Subsidiaries or any of their respective successors or assigns (i) consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, in each case, within six years following the Closing Date (in the case of Section 6.07) or within the survival period provided above with respect to the representation and warranty set forth in Section 4.06, then, and in each such case, Purchaser or the Company, as the case may be, shall cause, or cause Purchaser, the Company, or such Company Subsidiary, as applicable, to cause, proper provision to be made so that the successors and assigns of Purchaser, the Company, or such Company Subsidiary, as the case may be, assume the covenants and agreements set forth in Section 6.07 and any Obligations resulting from a breach or inaccuracy in the representation and warranty set forth in Section 4.06.

9.02 **Governing Law.** This Agreement, and all Claims or causes of action of any kind (whether at Law, in equity, in contract, in tort or otherwise) that may be based upon, arise out of or relate to this Agreement (including the exhibits and schedules hereto), any certificate, instrument, opinion or other documents delivered hereunder, or the negotiation, execution or performance hereof or thereof (including any Claim or cause of action of any kind based upon, arising out of or related to any representation or warranty made in or in connection herewith or therewith) shall be governed by and construed in accordance with the Law of the State of Delaware, regardless of the Laws that might otherwise govern under applicable principles of conflicts of Laws.

9.03 **Consent to Jurisdiction.**

(a) Except as provided in Section 2.04, each of the Parties hereto hereby irrevocably and unconditionally (i) submits, for itself and its property, to the exclusive jurisdiction of the Delaware Court of Chancery (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any Federal court of the United States of America sitting in the State of Delaware), and any appellate court from any thereof, in any Claim

or cause of action of any kind arising out of or relating to this Agreement, any certificate, instrument, opinion or other documents delivered hereunder, or the negotiation, execution or performance hereof or thereof (including any Claim or cause of action of any kind based upon, arising out of or related to any representation or warranty made in or in connection herewith or therewith), or for recognition or enforcement of any Order, and agrees that all claims in respect of any such Claim or cause of action of any kind shall be heard and determined in such Delaware Court of Chancery (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any Federal court of the United States of America sitting in the State of Delaware), (ii) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any Claim or cause of action of any kind arising out of or relating to this Agreement, any certificate, instrument, opinion or other documents delivered hereunder, or the negotiation, execution or performance hereof or thereof (including any Claim or cause of action of any kind based upon, arising out of or related to any representation or warranty made in or in connection herewith or therewith) in the Delaware Court of Chancery, any Federal court of the United States of America sitting in the State of Delaware, or in any Delaware State court, (iii) waives, to the fullest extent permitted by Law, the defense of an inconvenient forum to the maintenance of such Claim or cause of action of any kind in any such court and (iv) agrees that a final Order in any such Claim or cause of action of any kind shall be conclusive and may be enforced in other jurisdictions by suit on the Order or in any other manner provided by Law. Each of the Parties hereto agrees that service of process, summons, notice or document by registered mail addressed to it at the applicable address set forth in Section 9.10 below shall be effective service of process for any Claim or cause of action of any kind brought in any such court.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

9.04 **Remedies.** The Parties agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that the Parties do not perform the provisions of this Agreement (including failing to take such actions as are required of them hereunder to consummate the transactions contemplated by this Agreement) in accordance with its specified terms or otherwise breach such provisions. It is accordingly agreed that the Parties shall be entitled to seek an injunction, specific performance and other equitable relief to prevent breaches of this Agreement (including breaches of Section 5.01, irrespective of any other remedies provided for under Section 8.02(b)) and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at Law or in equity (but subject to Section 8.02(d)). Each of the Parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that the Party seeking the injunction, specific performance and other equitable relief has an adequate remedy of Law and no Person shall be required to post a bond or undertaking in connection with any injunction, specific performance or other equitable relief sought. Subject to Section 8.02(d), the remedies available to Seller pursuant to this Section 9.04 shall be in addition

to any other remedy to which it is entitled to seek at Law or in equity. To the extent any Party hereto brings any action to enforce specifically the performance of the terms and provisions of this Agreement (other than an action solely to specifically enforce any provision that expressly survives termination of this Agreement pursuant to Section 8.02 hereof) when available to such party pursuant to the terms of this Agreement, the Outside Date shall automatically be extended by (i) the amount of time during which such action is pending, plus 20 Business Days, or (ii) such other time period established by the court presiding over such action.

9.05 **Modification; Waiver.** This Agreement may be amended, modified or supplemented only by a written instrument executed by the Parties hereto. Any of the terms and conditions of this Agreement may be waived in writing (subject to applicable Law) at any time on or prior to the Closing Date by the Party entitled to the benefits thereof.

9.06 **Entire Agreement.** This Agreement, together with the Seller Disclosure Letter, the Purchaser Disclosure Letter, the Confidentiality Agreement, the Escrow Agreement, the Equity Commitment Letter, the Purchaser Guarantee, and each other agreement or instrument to be delivered hereunder, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersede all other prior agreements and understandings, oral or written, express or implied, between the Parties hereto and their respective Affiliates, Representatives and agents in respect of the subject matter hereof, except that subject to, and except as otherwise provided under Section 5.04(b), this Agreement does not supersede the Confidentiality Agreement, the terms and conditions of which the Parties hereto expressly reaffirm.

9.07 **Severability.** If any term or other provision of this Agreement is found to be, by competent authority with jurisdiction, invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either Party; provided that the remedies and limitations contained in Article VIII shall not be severable in any manner that increases a Party's Obligations hereunder. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties hereto as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible.

9.08 **Parties in Interest.** This Agreement shall be binding upon and inure solely to the benefit of each Party hereto and its successors and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement; provided that: (i) the Company Indemnified Parties shall be considered third party beneficiaries of Section 6.07, (ii) the Seller Related Parties shall be considered third party beneficiaries of Section 6.02 and Section 6.03, (iii) the Purchaser Related Parties shall be considered third party beneficiaries of Section 8.02(d), (iv) the Non-Party Affiliates shall be considered third party beneficiaries of Section 9.16 and (v) ST&B shall be considered a third party beneficiary of Section 9.17, and, in each case, such parties shall have the right to enforce such Sections.

9.09 **Failure or Indulgence Not Waiver.** No failure or delay on the part of any Party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty, covenant or agreement herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof, or of any other right.

9.10 **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given or made as follows: (i) if sent by registered or certified mail, return receipt requested, upon receipt; (ii) if sent by reputable overnight air courier (such as UPS, DHL or Federal Express), upon receipt; (iii) if sent by email, upon receipt; or (iv) if otherwise actually personally delivered, when delivered and shall be delivered as follows:

if to Seller:

c/o Global Energy & Power Infrastructure Funds
One Lafayette Place,
Greenwich, CT 06830
Attention: Matt Raben
Email: matthew.raben@blackrock.com

with copies to (which shall not constitute notice):

BlackRock, Inc.
Office of the General Counsel
40 East 52nd Street, 19th floor
New York, NY 10022
Attention: Jelena Napolitano
Email: legaltransactions@blackrock.com

and

Simpson Thacher & Bartlett LLP
600 Travis Street, Suite 5400
Houston, TX 77002
Attention: Christopher May
Brian Chisling
Facsimile: (713) 821-5602
Email: cmay@stblaw.com
bchisling@stblaw.com

if to Purchaser:

Ullico Infrastructure Master Fund, L.P.
8403 Colesville Road
Silver Spring, MD 20910
Attn: Joseph Linehan
Email: jlinehan@ullico.com

with a copy to (which shall not constitute notice):

Milbank LLP
55 Hudson Yards
New York, NY 10001
Attn: John D. Franchini
Email: JFranchini@milbank.com

or to such other address or to such other person as a Party hereto shall have last designated by notice to the other Party.

9.11 **Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, provided that any assignment, by operation of law or otherwise, by a Party hereto shall require the prior written consent of the other Party and any purported assignment or other transfer without such consent shall be void and unenforceable; provided, however, no prior written consent of Purchaser shall be required for the assignment by Seller to US Seller contemplated by Section 6.04.

9.12 **Disclosure Schedules and Exhibits.** The Exhibits to this Agreement, the Seller Disclosure Letter, and the Purchaser Disclosure Letter are hereby incorporated and made a part hereof and are an integral part of this Agreement. Each of Seller and Purchaser may, at its option, include in the Seller Disclosure Letter or the Purchaser Disclosure Letter, respectively, items that are not material in order to avoid any misunderstanding, and such inclusion, or any references to dollar amounts herein or in the Seller Disclosure Letter or the Purchaser Disclosure Letter, as applicable, shall not be deemed to be an acknowledgement or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement or otherwise. Any matter set forth in any section of the Seller Disclosure Letter or Purchaser Disclosure Letter shall be deemed to be referred to and incorporated in any section to which it is specifically referenced or cross-referenced and also in all other sections of the Seller Disclosure Letter or Purchaser Disclosure Letter, as applicable, to which such matter's application or relevance is reasonably apparent on its face. Any capitalized term used in any exhibit or the Seller Disclosure Letter or Purchaser Disclosure Letter but not otherwise defined therein shall have the meaning given to such term herein. An item arising with respect to a specific representation or warranty (other than those set forth in Section 3.06) shall be deemed to be "reflected on" or "set forth in" the Financial Statements to the extent any such phrase appears in any such representation or warranty, if (i) there is a reserve, accrual or other similar item underlying a number on such balance sheet or financial statement reasonably related to the subject matter of such representation or (ii) such item and the amount thereof is otherwise reasonably identified on such balance sheet or financial statement (or the notes thereto).

9.13 **Timing.** If the date specified in this Agreement for giving any notice or taking any action is not a Business Day (or if the period during which any notice is required to be given or any action taken expires on a date which is not a Business Day), then the date for giving such notice or taking such action (and the expiration date of such period during which notice is required to be given or action taken) shall be the next day which is a Business Day.

9.14 **Counterparts.** This Agreement and any amendment, restatement, supplement or other modification hereto or waiver hereunder, (i) may be executed in any number of counterparts (including by means of facsimile or email in .pdf format), each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement and (ii) to the extent signed and delivered by means of a facsimile machine or scanned pages via e-mail, shall be treated in all manner and respect as an original contract and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

9.15 **Interpretation.** Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine and neuter. Terms defined in the singular have the corresponding meanings in the plural, and vice versa. The section headings in this Agreement are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provision hereof. References to Articles and Sections refer to articles and sections of this Agreement, unless otherwise indicated. The words “includes” and “including” mean “including, but not limited to.” The words “hereof,” “hereby,” “herein,” “hereunder” and similar terms in this Agreement shall refer to this Agreement as a whole and not to the particular Section or Article in which such words appear. Any reference to a Contract means such Contract as from time to time amended, modified or supplemented, unless otherwise specifically listed. Any reference to a statute, regulation or law shall include any amendment thereof or any successor thereto and any rules and regulations promulgated thereunder. References to a Person are also to its permitted successors and assigns. Currency amounts referenced herein, unless otherwise specified, are in U.S. Dollars. Whenever evaluating the period of time before which, within which, or following which any act is to be done or step taken pursuant to this Agreement, (i) the date that is the reference date in calculating such period shall be excluded, (ii) if the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day, and (iii) any reference herein to a number of days shall refer to calendar days unless Business Days are specified. In order for any document, information or other item to qualify as having been provided, disclosed, furnished or made available to Purchaser, it shall have been uploaded and actually available for viewing and download by Purchaser in the “Project Cornerstone” Intralinks virtual data room at least one calendar day prior to the date hereof.

9.16 **No Recourse.** Except in the case of Fraud or as set forth in the Confidentiality Agreement, the Escrow Agreement, the Equity Commitment Letter, or the Purchaser Guarantee, all Claims, Obligations, or causes of action (whether at Law, in equity, in contract, in tort or otherwise) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to this Agreement, or the negotiation, execution, or performance of this Agreement (including any representation or warranty made in, in connection with, or as an inducement to, this Agreement), may be made only against (and such representations and warranties are those solely of) the Parties. Except in the case of Fraud, no Person who is not a Party, including any current, former or future equityholder, incorporator, controlling person, general or limited partner, member, Affiliate, assignee or representative of any Party, or any current, former or future equityholder, incorporator, controlling person, general or limited partner, Affiliate, assignee or representative of any of the foregoing or any of their respective successors, predecessors or assigns (or any successors, predecessors or assigns of the foregoing) (collectively, the “**Non-Party Affiliates**”), shall have any Obligations (whether in Law or in

equity, whether in contract or in tort or otherwise) for any Claims, causes of action or Obligations arising under, out of, in connection with, or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, or breach (other than as set forth in the Confidentiality Agreement, the Escrow Agreement, the Equity Commitment Letter, or the Purchaser Guarantee), and, to the maximum extent permitted by Law, each Party hereby waives and releases all Claims, causes of action or Obligations arising under, out of, in connection with, or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, or breach (other than as set forth in the Confidentiality Agreement, the Escrow Agreement, the Equity Commitment Letter, or the Purchaser Guarantee) against any such Non-Party Affiliates. Without limiting the foregoing, to the maximum extent permitted by Law, except in the case of Fraud or to the extent otherwise set forth in the Confidentiality Agreement, the Escrow Agreement, the Equity Commitment Letter, or the Purchaser Guarantee, (a) each Party hereby waives and releases any and all rights, Claims, demands, or causes of action that may otherwise be available, whether at Law, in equity, in contract, in tort or otherwise, to avoid or disregard the entity form of a Party or otherwise impose Obligations of a Party on any Non-Party Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise, in each case arising under, out of, in connection with, or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, or breach (other than as set forth in the Confidentiality Agreement, the Escrow Agreement, the Equity Commitment Letter, or the Purchaser Guarantee); and (b) each Party disclaims any reliance upon any Non-Party Affiliates with respect to the performance of this Agreement or any representation or warranty made in, in connection with, or as an inducement to this Agreement. Notwithstanding anything to the contrary contained herein or otherwise, after the Closing, no party may seek to rescind this Agreement or any of the transactions contemplated hereby. For the avoidance of doubt, nothing in this Section 9.16 shall limit the right of Seller to bring a Claim with respect to any breach of the Sponsor's obligation to pay or fund the payment of the amounts set forth in the Equity Commitment Letter and the Purchaser Guarantee under circumstances in which the amounts thereunder are payable in accordance with and pursuant to the terms and conditions thereof.

9.17 Provision Respecting Legal Representation. Purchaser (on its behalf and, from and after the Closing, on behalf of the Company Group) hereby waives, and agrees to cause its Affiliates to waive, any conflicts that may arise in connection with ST&B representing Seller or any Seller Related Party after the Closing as such representation may relate to Purchaser, the Company Group or the transactions contemplated by this Agreement. Purchaser (on its behalf and, from and after the Closing, on behalf of the Company Group) hereby agrees that, in the event that a dispute arises after the Closing between Purchaser or the Company Group, on the one hand, and Seller or any Seller Related Party, on the other hand, ST&B may represent any or all of Seller or any Seller Related Party in such dispute even though the interests of Seller or the Seller Related Parties may be directly adverse to Purchaser, the Company Group or any of their respective Affiliates, and even though ST&B formerly may have represented the Company Group in a matter substantially related to such dispute. In addition, all communications involving attorney-client confidences by Seller, the Company Group or the Seller Related Parties in the course of the negotiation, documentation and consummation of the transactions contemplated hereby shall be deemed to be attorney-client confidences that belong solely to Seller and the

Seller Related Parties (and not Purchaser or the Company Group). Accordingly, Purchaser and the Company Group shall not have access to any such communications, or to the files of ST&B relating to the engagement described in this Section 9.17, whether or not the Closing shall have occurred. Without limiting the generality of the foregoing, upon and after the Closing, (i) Seller and the Seller Related Parties (and not Purchaser, the Company Group or their respective Affiliates) shall be the sole holders of the attorney-client privilege with respect to such engagement, and none of Seller, the Company Group or their respective Affiliates shall be a holder thereof, (ii) to the extent that the files of ST&B in respect of such engagement constitute property of the client, only Seller and the Seller Related Parties (and not Purchaser, the Company Group or their respective Affiliates) shall hold the property rights to such files (it being understood that nothing in this Section 9.17 shall affect or impair the rights of, or use by, Purchaser, the Company Group or their respective Affiliates of any of the information contained in such files, to the extent available to Purchaser, the Company Group or their respective Affiliates through other sources) and (iii) ST&B shall have no duty whatsoever to reveal or disclose any such attorney-client communications or files to Purchaser, the Company Group or their respective Affiliates by reason of any attorney-client relationship between ST&B and any of Purchaser, the Company Group or their respective Affiliates or otherwise.


[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the date first above written.

GEPF II ECHO AIV, L.P.


By: Global Energy & Power Infrastructure GP II,
L.P., its general partner

By: Global Energy & Power Infrastructure GP II
Limited, its general partner

By: 
Name: Ryan Shockey
Title: Authorized Signatory

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the date first above written.

**ULLICO INFRASTRUCTURE
HEARTHSTONE HOLDCO, LLC**

By:  _____

Name: Rohit Syal

Title: Vice President

Exhibit A
Transferred Interests Assignment Agreement

TRANSFERRED INTERESTS ASSIGNMENT AGREEMENT

This TRANSFERRED INTERESTS ASSIGNMENT AGREEMENT is entered into as of [●], 2021 (this “**Assignment Agreement**”), by and between [Seller] (“**Assignor**”) and Ullico Infrastructure Hearthstone Holdco, LLC (“**Assignee**”).

RECITALS

A. The Assignor and Assignee have entered into that certain Stock Purchase and Sale Agreement, dated as of December [●], 2020 (the “**Transaction Agreement**”), by and among Assignor and Assignee.

B. Capitalized terms used and not otherwise defined herein shall have their respective meanings as defined in the Transaction Agreement.

C. Assignor has agreed, pursuant to the Transaction Agreement, to sell, convey, assign, transfer and deliver to Assignee, at the Closing, and Assignee shall purchase, acquire and accept from Assignor, 100% of the issued and outstanding common stock, par value \$0.01 (the “**Company Common Stock**”) of GEP Bison Holdings, Inc., a Delaware corporation (the “**Company**”) (such Company Common Stock, the “**Transferred Interests**”).

D. Assignor and Assignee have agreed pursuant to Section 2.03 of the Transaction Agreement to enter into this Assignment Agreement with respect to the sale, conveyance, assignment, transfer and delivery of the Transferred Interests at the Closing.

NOW THEREFORE, in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **Assignment and Assumption.** Assignor does hereby sell, convey, assign, transfer and deliver the Transferred Interests to Assignee, and Assignee hereby purchases, acquires and accepts the Transferred Interests from Assignor.

2. **Transaction Agreement.** For the avoidance of doubt, the parties hereto agree that any conflict between this Assignment Agreement and the Transaction Agreement shall be resolved in favor of the Transaction Agreement.

3. **Binding Effect.** This Assignment Agreement shall be binding upon and inure solely to the benefit of each party hereto and its successors and nothing in this Assignment Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Assignment Agreement.

4. **Modification.** This Assignment Agreement may be modified only by a written instrument executed by the parties hereto.

5. Assignments. This Assignment Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, provided that any assignment, by operation of law or otherwise, by a party hereto shall require the prior written consent of the other party hereto and any purported assignment or other transfer without such consent shall be void and unenforceable.

6. Further Assurances. The Assignor and Assignee each agree that from time to time after the Closing, without further consideration, they will execute and deliver, and will cause their respective Affiliates to execute and deliver, such further instruments, and take, and cause their respective Affiliates to take, such other actions and deliver such other documents as may be reasonably necessary to carry out the purposes and intent of this Agreement.

7. Counterparts. This Assignment Agreement and any amendment, restatement, supplement or other modification hereto or waiver hereunder, (i) may be executed in any number of counterparts (including by means of facsimile or email in .pdf format), each of which will be deemed to be an original copy of this Assignment Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement and (ii) to the extent signed and delivered by means of a facsimile machine or scanned pages via e-mail, shall be treated in all manner and respect as an original contract and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

8. Governing Law. This Assignment Agreement, and all Claims or causes of action of any kind (whether at Law, in equity, in contract, in tort or otherwise) that may be based upon, arise out of or relate to this Assignment Agreement, any certificate, instrument, opinion or other documents delivered hereunder, or the negotiation, execution or performance hereof or thereof (including any Claim or cause of action of any kind based upon, arising out of or related to any representation or warranty made in or in connection herewith or therewith) shall be governed by and construed in accordance with the Law of the State of Delaware, regardless of the Laws that might otherwise govern under applicable principles of conflicts of Laws.

9. Consent to Jurisdiction. Each of the parties hereto hereby irrevocably and unconditionally (i) submits, for itself and its property, to the exclusive jurisdiction of the Delaware Court of Chancery (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any Federal court of the United States of America sitting in the State of Delaware), and any appellate court from any thereof, in any Claim or cause of action of any kind arising out of or relating to this Assignment Agreement, any certificate, instrument, opinion or other documents delivered hereunder, or the negotiation, execution or performance hereof or thereof (including any Claim or cause of action of any kind based upon, arising out of or related to any representation or warranty made in or in connection herewith or therewith), or for recognition or enforcement of any Order, and agrees that all claims in respect of any such Claim or cause of action of any kind shall be heard and determined in such Delaware Court of Chancery (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any Federal court of the United States of America sitting in the State of Delaware), (ii) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any Claim or cause of action of any kind arising out of or relating to this Assignment Agreement, any certificate, instrument, opinion or other documents delivered hereunder, or the negotiation, execution or performance hereof or

thereof (including any Claim or cause of action of any kind based upon, arising out of or related to any representation or warranty made in or in connection herewith or therewith) in the Delaware Court of Chancery, any Federal court of the United States of America sitting in the State of Delaware, or in any Delaware State court, (iii) waives, to the fullest extent permitted by Law, the defense of an inconvenient forum to the maintenance of such Claim or cause of action of any kind in any such court and (iv) agrees that a final Order in any such Claim or cause of action of any kind shall be conclusive and may be enforced in other jurisdictions by suit on the Order or in any other manner provided by Law. Each of the parties hereto agrees that service of process, summons, notice or document by registered mail addressed to it at the applicable address set forth in Section 9.10 of the Transaction Agreement shall be effective service of process for any Claim or cause of action of any kind brought in any such court. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS ASSIGNMENT AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS ASSIGNMENT AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS ASSIGNMENT AGREEMENT.

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IN WITNESS WHEREOF, the undersigned have each caused this Assignment Agreement to be duly executed and delivered as of the date first written above.

ASSIGNOR

[Seller]

By: _____
Name:
Title:

ASSIGNEE

**ULLICO INFRASTRUCTURE
HEARTHSTONE HOLDCO, LLC**

By: _____

Name:

Title:

Exhibit B
Target CapEx

Hearthstone Consolidated 2021 Capital Expenditures Projected Monthly Breakdown

2021 Target	\$ 19,712,000		
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	\$ 19,712,000		

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/3/2021 1:29:16 PM

in

Case No(s). 21-0093-GA-UNC

Summary: Notice of Filing of Re-redacted Agreement electronically filed by Sarah Siewe on behalf of Northeast Ohio Natural Gas Corp.