



SUMMER ENERGY HOLDINGS, INC.

State of Incorporation: Nevada

**5847 San Felipe St. Suite 3700
Houston, TX 77057
713-375-2760
www.summerenergy.com**

SIC Code: 4911

ANNUAL REPORT For Fiscal Year Ended December 31, 2023 (the "Reporting Period")

The number of shares outstanding of our Common Stock was 32,752,074 and 32,307,298 as of December 31, 2023, and December 31, 2022, respectively.

Indicate by check mark whether the company is a shell company (as defined in Rule 405 of the Securities Act of 1933 and Rule 12b-2 of the Exchange Act of 1934):

Yes: ☐ No: ☒ (Double-click and select "Default Value" to check)

Indicate by check mark whether the company's shell status has changed since the previous reporting period:

Yes: ☐ No: ☒

Indicate by check mark whether a Change in Control of the company has occurred over this reporting period:

Yes: ☐ No: ☒

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PART A - GENERAL COMPANY INFORMATION

Item 1. The exact name of the issuer and its predecessor (if any).

Exact name of issuer: Summer Energy Holdings, Inc.

Predecessor entities in the past five years and the dates of name changes: N/A

Item 2. The address of the issuer's principal executive offices and address(es) of the issuer's principal place of business.

Principal Executive Offices: Summer Energy Holdings, Inc.
5847 San Felipe St., Suite 3700
Houston, Texas 77057
Telephone: 713-375-2760
Website: www.summerenergy.com

Check box if principal executive office and principal place of business are the same address: ☒

Item 3. The jurisdiction(s) and date of the issuer's incorporation or organization.

Summer Energy Holdings, Inc. ("Summer" or the "Company") was incorporated in the state of Nevada under the name of Castwell Precast Corporation on March 25, 2005. The name of the company was changed from Castwell Precast Corporation to Summer Energy Holdings, Inc., on March 27, 2012.

Summer Energy Holdings, Inc., is currently active and in good standing with the state of Nevada.

PART B - SHARE STRUCTURE

Item 4. The exact title and class of securities outstanding.

Summer has only one class of outstanding stock:

Title: Common Stock, par value \$0.001 per share
CUSIP: 865634109
OTC Trading Symbol: SUME

In addition, as of December 31, 2023, Summer had outstanding options to purchase 3,624,730 shares of its common stock, as well as outstanding warrants to purchase 761,008 shares of its common stock.

No shares of preferred stock are currently outstanding.

Item 5. Par or stated value and description of the security.

Common Stock

The Company is authorized to issue common stock and preferred stock. As of the date of this Report, only shares of common stock were outstanding. The Company's common stock has a par value of \$0.001 per share. The Company's Articles of Incorporation, as amended (the "Articles of Incorporation") authorize 100,000,000 shares of common stock. The holders of common stock are entitled to one vote per share on all matters submitted to a vote of the stockholders. Holders of common stock do not have cumulative voting rights. When a quorum is present at a meeting, the vote of the holders of stock having a majority of the voting power present in person or represented by proxy shall decide all questions brought before such meeting. Therefore, holders of more than 50% of the shares of common stock are able to elect all of the Company's directors eligible for election in a given year. The holders of common stock are entitled to dividends if declared by the Board of Directors (the "Board"). There are no redemption or sinking fund provisions applicable to the common stock, and holders of common stock are not entitled to any preemptive rights with respect to additional issuances of common stock by the Company.

Preferred Stock

The Articles of Incorporation also authorize 10,000,000 shares of preferred stock, par value \$0.001 per share, none of which were outstanding as of the date of this Report. The Company may issue these shares of preferred stock without approval of the holders of common stock. The Board has the discretion to issue the preferred stock in such series and with such preferences and rights as it may designate, including, among other things, dividend, voting, conversion and liquidation rights, as well as any redemption or sinking fund provisions. The purpose of authorizing the Board to issue preferred stock and determine its rights and preferences is to eliminate delays associated with a stockholder vote on specific issuances. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions, future financings and other corporate purposes, could have the effect of making it more difficult for a third party to acquire, or could discourage a third party from seeking to acquire, a majority of the Company's outstanding voting stock. Additionally, the issuance of preferred stock may adversely affect the holders of the Company's common stock by restricting dividends on the Company's common stock, diluting the voting power of the Company's common stock or subordinating the liquidation rights of the Company's common stock. As a result of these or other factors, the issuance of preferred stock could have an adverse impact on the market price of the Company's common stock.

Provisions in the Company's Articles of Incorporation and Bylaws that would Delay, Defer or Prevent a Change of Control

Authorized but Unissued Capital Stock

The authorized but unissued shares of common stock and preferred stock are available for future issuance without stockholder approval, subject to any limitations imposed by the listing standards of the market on which such shares are traded, if any. These additional shares may be used for a variety of corporate finance transactions, acquisitions and employee benefit plans. The existence of authorized but unissued and unreserved common stock and preferred stock could make more difficult or discourage an attempt to obtain control of the Company by means of a proxy contest, tender offer, merger or otherwise.

Classified Board of Directors

The Articles of Incorporation and the Company's Amended and Restated Bylaws adopted March 27, 2012 (the "Bylaws"), include provisions classifying the Board into three classes with staggered three-year terms. Accordingly, only one third of the Board will be elected at each annual meeting of stockholders.

Cumulative Voting

Under Nevada law, the right to vote cumulatively does not exist unless the articles of incorporation specifically authorize cumulative voting. The Articles of Incorporation do not authorize cumulative voting.

Advance Notice

The Bylaws require advance notice relating to certain stockholder business and Board nominees to be considered at stockholder meetings. Under the Bylaws, stockholders are not permitted to call special meetings of stockholders.

Item 6. The number of shares or total amount of the securities outstanding for each class of securities authorized.

The following tables set forth the number of shares outstanding for each class of securities authorized as of the dates set forth below:

Common Stock

	December 31, 2023	December 31, 2022	December 31, 2021
Number of Shares Authorized	100,000,000	100,000,000	100,000,000
Number of Shares Outstanding	32,752,074	32,307,298	31,969,158
Freely Tradable shares (Public Float)	3,655,379	3,655,479	3,655,479
Number of Beneficial Shareholders owning at Least 100 Shares	145	144	144
Total Number of Stockholder of Record	145	144	144

Preferred Stock

	December 31, 2023	December 31, 2022	December 31, 2021
Number of Shares Authorized	10,000,000	10,000,000	10,000,000
Number of Shares Outstanding	-	-	-
Freely Tradable shares (Public Float)	-	-	-
Number of Beneficial Shareholders owning at Least 100 Shares	-	-	-
Total Number of Stockholder of Record	-	-	-

Item 7. The Name and Address of the Transfer Agent

Transfer Agent: Colonial Stock Transfer Co, Inc.
66 Exchange Place, Suite 100
Salt Lake City, UT 84111
Telephone: 801-355-5740

PART C – BUSINESS INFORMATION

Item 8. The nature of the issuer’s business.

General

Summer Energy Holdings, Inc. (“Summer,” the “Company,” “we,” “us,” or “our”) was incorporated in the state of Nevada under the name of Castwell Precast Corporation on March 25, 2005. The name of the company was changed from Castwell Precast Corporation to Summer Energy Holdings, Inc. on March 27, 2012. Summer Energy Holdings, Inc. owns 100% of Summer Energy, LLC (“Summer LLC”), Summer Energy Midwest, LLC (“Summer Midwest”), Summer EM Marketing, LLC (“Marketing LLC”) and Summer Energy Northeast, LLC (“Summer Northeast”).

Summer LLC was organized on April 6, 2011, under the laws of the state of Texas and is a Retail Electricity Provider (“REP”) in the state of Texas under a license with the Public Utility Commission of Texas (“PUCT”). In general, Texas regulatory structure permits REPs, such as Summer LLC, to procure and sell electricity at unregulated prices. REPs pay the local transmission and distribution utilities a regulated tariff rate for delivering electricity to their customers. As a REP, Summer LLC sells electricity and provides the related billing, customer service, collections and remittance services to residential and commercial customers. Summer LLC offers retail electricity to commercial and residential customers in designated target markets within the state of Texas. In the commercial market, the primary target is small to medium-sized customers (less than one megawatt of peak usage), but we also selectively pursue larger commercial customers through Management’s existing, historical relationships. Residential customers are a secondary target market. The majority of Summer LLC’s customers are located in the Houston and Dallas-Fort Worth metropolitan areas; although, we anticipate a growing number will be located in a variety of other metropolitan and rural areas within Texas. Summer LLC began delivering electricity to customers in the Texas market mid-February 2012.

On March 27, 2012, Summer LLC became a wholly-owned subsidiary of Summer Energy Holdings, Inc. (previously known as Castwell Precast Corporation) through a reverse acquisition transaction, which resulted in the former members of Summer LLC owning approximately 92.3% of Summer Energy Holdings, Inc.’s outstanding common stock. The transaction was treated as a recapitalization of Summer LLC, and Summer LLC (and its historical financial statements) is the continuing entity for financial reporting purposes. On February 22, 2024, Summer Energy, LLC (“Summer LLC”), a wholly owned subsidiary of Summer Energy Holdings, Inc., entered into an Asset Purchase Agreement (the “Agreement”) with US Retailers LLC (“Buyer”). Pursuant to the Agreement, Summer LLC agreed to sell to Buyer its book of non-prepaid residential customers in the State of Texas (the “Assets”). The consideration payable for the Assets is estimated at \$8.1 million, payable in cash in three installments, subject to adjustment pursuant to the terms of the Agreement.

Summer Midwest was formed in the state of Ohio on December 16, 2013, to procure and sell electricity in the Pennsylvania, Jersey, Maryland Power Pool (“PJM”) markets. Summer Midwest is a licensed REP in the states of Ohio, Illinois and Pennsylvania. In general, the regulatory structure in these states permits REPs, such as Summer Midwest, to procure and sell electricity at unregulated prices. As a REP, Summer Midwest sells electricity to residential and commercial customers. In the commercial market, the primary target is small to medium-sized customers (less than one megawatt of peak usage), but we will also selectively pursue larger commercial customers through Management’s existing, historical relationships. Residential customers are a secondary target market. Summer Midwest began flowing electricity in the state of Ohio, which is in

the PJM market, during the month of July 2019, in the state of Illinois during the month of January 2020, and in the state of Pennsylvania during the month of August 2020.

Summer Northeast, a Texas limited liability company, was acquired on November 1, 2017, and became a wholly-owned subsidiary of Summer Energy Holdings, Inc. As of March 2023, Summer Northeast is a licensed REP in the states of Massachusetts and New Hampshire. In general, the regulatory structure in these states permits REPs, such as Summer Northeast, to procure and sell electricity at unregulated prices. As a REP, Summer Northeast sells electricity to residential and commercial customers. In the commercial market, the primary target is small to medium-sized customers (less than one megawatt of peak usage), but we will also selectively pursue larger commercial customers through Management's existing, historical relationships. Residential customers are a secondary target market. Summer Northeast currently sells electricity in Massachusetts and previously in New Hampshire. During 2023 all Summer Northeast customers in New Hampshire transferred to other retail electric providers. On March 11, 2024, the Company gave notice to the New Hampshire Department of Energy that it no longer served any customers in New Hampshire and was filing to withdraw its Competitive Electric Power Supplier Registration.

Marketing LLC was formed in the state of Texas on November 6, 2012, to provide marketing services to Summer LLC. Marketing LLC is currently inactive and there is no business activity.

Fiscal Year

Summer's fiscal year end date is December 31.

Employees

As of December 31, 2023, the Company had 46 full-time employees. The Company's future success will depend in part on its ability to continue to attract, retain and motivate highly qualified personnel. We believe that we have been successful in recruiting qualified employees, but there is no assurance that we will continue to be successful in the future.

Bankruptcy, Receivership and Other Legal Proceedings

From time to time, we may become subject to legal proceedings, claims and litigation arising in the ordinary course of business. Litigation can be expensive, lengthy and disruptive to normal business operations. Moreover, the results of complex legal proceedings are difficult to predict. An unfavorable resolution of a particular lawsuit or proceeding could have a material adverse effect on our results of operations, financial position or cash flows. Other than as set forth below, the Company is not a party to any material legal proceedings nor is the Company aware of any pending or threatened litigation that, in its opinion, would have a material adverse effect on its business or its financial position, results of operations or cash flows should such litigation be resolved unfavorably.

On May 26, 2021, the Company filed a lawsuit against Hartman Income REIT Management, Inc. ("Hartman") in state court in Harris County, Texas. In this lawsuit, the Company sought to collect approximately \$8,400,000 owed by Hartman under one or more electricity sales agreements at indexed prices related to Winter Storm Uri. On March 24, 2022, the court entered a judgement in favor of the Company against Hartman in the amount of \$7,871,000 plus customary pre and post judgement interest and attorney's fees. On April 25, 2022, Hartman filed a surety bond totaling \$2,197,000 to suspend enforcement of the judgement and appealed the judgement. On March 7, 2024, the Court of Appeals denied Hartman's motion for rehearing. On April 2, 2024, the Defendant has filed a motion for extension of time to file its petition for review in the Texas Supreme Court.

As of the date of this Report, the Company was not involved in any bankruptcy, receivership, or any similar proceeding.

Merger, Consolidation or Purchase or Sales of Assets

On February 22, 2024, Summer Energy, LLC (“Summer LLC”), a wholly owned subsidiary of Summer Energy Holdings, Inc., entered into an Asset Purchase Agreement (the “Agreement”) with US Retailers LLC (“Buyer”). Pursuant to the Agreement, Summer LLC agreed to sell to Buyer its book of non-prepaid residential customers in the State of Texas (the “Assets”). The consideration payable for the Assets is estimated at \$8.1 million, payable in cash in three installments, subject to adjustment pursuant to the terms of the Agreement.

Defaults Upon Senior Securities

The Company and its wholly owned subsidiary, Summer LLC entered into an Omnibus Amendment No. 1 (“Amendment”) with Digital Lending to extend the maturity date of the Loan to November 11, 2023. As part of the Amendment, the Company and Summer LLC agreed to pay down the principal balance of the Loan by \$2,000,000 on or before September 11, 2023, and the remainder of \$5,000,000 on or before November 11, 2023. The Company and Summer LLC did not make and has not made either of the required payments. Each such failure is an event of default under the Digital Lending Documents. The Company and Summer LLC had five business days to cure the default but did not cure the default. Under the Digital Lending Documents, an event of default triggers an increase of the interest rate of the Revolving Note to the lower of twenty percent (20%) per annum and the maximum rate permitted by law. In addition, Digital Lending at its option and without notice may, subject to an intercreditor agreement with Engie: (a) accelerate amounts outstanding on the Revolving Note and demand immediate payment in full without presentment or other demand, protest, notice of dishonor or any other notice of any kind, all of which are expressly waived; (b) foreclose its lien on the collateral pursuant to the security agreement executed by Summer LLC, as applicable, or take such other actions available under the terms of the Digital Lending Documents; and (c) take such other actions as may otherwise be available in equity or at law. As of December 31, 2023, the outstanding principal balance of the Digital Lending Loan was \$7,000,000.

In addition, under the terms of the Facility Agreement and the other Engie Documents, the default under the Digital Lending Documents is also an event of default under the Engie Documents. At any time during the existence of an event of default under the Engie Documents, Engie may, by notice to the Company, terminate the Engie Documents and all obligations of Engie to provide or cause the provision of any credit extension under the Engie Documents and related Credit Facility and the required payment of an early termination fee of \$3,000,000. An event of default under the Facility Agreement also triggers an increase in the interest rate under the Credit Facility by 1200 basis points, and acceleration of all amounts due to Engie. As of December 31, 2023, the outstanding balance of the Credit Facility was approximately \$44,856,427, exclusive of collateral debt and interest.

Available Information

In February 2021, the Company deregistered its common stock with the U.S. Securities and Exchange Commission (the “SEC”). By deregistering the Common Stock with the SEC, the Company is no longer required to file annual, quarterly and current reports with the SEC. The Company complies with the OTC Alternative Reporting Standard Disclosure Guidelines, posting annual and quarterly reports through OTC.

The Company’s primary SIC code is 4911 (Electric Services). The Company has never been a “shell company” as defined under the Securities Act of 1933, as amended.

Item 9. The nature of products or services offered.

The information in Item 8 is incorporated herein by reference.

We offer retail electricity to commercial and residential customers in designated target markets within the states of Texas, Massachusetts, Ohio, Pennsylvania and Illinois. In the commercial market, the primary targets are small to medium-sized commercial customers (less than one megawatt of peak usage), but we will also selectively pursue larger commercial customers. Residential customers are a secondary target market.

We rely upon established relationships and low-cost branding programs to attract commercial and residential customers. We continue to evaluate opportunities to expand our areas of operations as certain market regions elect to opt-in to deregulation. In addition, we continue to evaluate and pursue opportunities to acquire other REPs to the extent these acquisitions would provide value to us.

In most jurisdictions, we are required to enter into agreements with local transmission and distribution service providers for use of the local distribution and transmission systems and operation of functional interfaces necessary for us to serve our customers. With respect to energy supply, we utilize wholesale purchase agreements with wholesale energy providers. We serve as our own qualified scheduling entity for open market purchases and sales of electricity, forecasting our energy demand, and conducting procurement activities through an experienced team of professionals. The forecast for electricity load requirements is based on our aggregate customer base currently served and anticipated weather conditions, as well as forecasted customer acquisition and attrition. We continuously monitor and update our supply positions based on our retail demand forecasts and market conditions. Our policy is to maintain a balanced supply/demand book to limit commodity risk exposure. At this time, we do not plan on maintaining a financial book in addition to our physical supply/demand book for risk-hedging purposes.

Expansion into New Markets

If the Company enters additional deregulated markets, we will be required to operate within the specific regulatory environment of such state or region. We will evaluate the regulatory environment of each market, in addition to other operational, financial and customer considerations, before determining whether to pursue other market area opportunities.

Principal Supplier

From January 1, 2023, until June 6, 2023, our subsidiaries, Summer LLC, Summer Northeast and Summer Midwest, were parties to an Amended and Restated Energy Services Agreement with EDF Trading North America, LLC (collectively, “EDFTNA”) whereby, with limited exceptions, they are required to purchase all of their electric power and associated services requirements from EDFTNA.

On June 7, 2023, our subsidiaries, Summer LLC and Summer Midwest, closed a transaction with Engie Energy Marketing NA, Inc. (“Engie”). As part of the transaction, the Company and Engie entered into the Facility Agreement pursuant to which the Company agreed to purchase its electric power and associated services requirements from Engie, and Engie agreed to provide the Company with certain credit extension facilities to assist the Company in the purchase of its electric power and associated service requirements. The terms of the Facility Agreement are governed by the ISDA Agreement. In conjunction therewith, the Company and Engie also entered into the Security Agreement and the Guaranty in favor of Engie.

The Facility Agreement has a term of three years, and automatically renews for successive one-year periods unless either party provides written notice of termination 180 days prior to the end of any then-current term.

In addition to the interest in respect of deferred ISDA payments, the Company will also be responsible for paying supply and credit support fees to Engie and for other such mutually agreed upon fees incurred by Engie on the Company's behalf.

We therefore rely substantially on Engie in order to meet our customers' needs.

Marketing and Sales

The Company seeks to employ a multi-tiered marketing and sales strategy. The short-term emphasis is on controlled growth, utilizing indirect marketing through third-party relationships. Indirect marketing efforts, including the following, allow the Company to facilitate growth while keeping expenses low by avoiding the expense associated with creating and managing a full sales team:

- Aggregators, Brokers, Consultants - often referred to as "ABC's" in the retail power industry;
- Affinity Programs - Gift card programs; Company-branded product incentives;
- Multifamily Housing Programs - incentivizing property management companies based on referrals to their tenants;
- Referrals - reaching out to individuals connected to the community and providing incentives for sign-ups; and
- Charitable Programs - enhancing referral programs and offering customers the chance to donate referral fees to local charitable organizations.

As the Company grows, we expect to achieve long-term growth by enhancing our indirect marketing efforts as well as growing our residential customer base. These initiatives include or will include, without limitation:

- Releasing an online portal for third parties to manage their commercial pricing requests and customer data remotely with minimal intervention of sales staff;
- Further business development by strengthening existing and revisiting weakened or less active relationships;
- Improving efficiency of our sales teams through further IT development and automation;
- Increasing our pre-paid electric residential segment via online and relationship marketing; and
- Refining our multi-family marketing division through IT improvements, increased staffing, and onsite marketing support to properties promoting our product.

Direct marketing efforts continue to be a result of management's existing relationships, direct traffic to our enrollment platform on our website, and customer referrals.

Competition and Perceived Competitive Advantages

As more fully set forth under the heading entitled "Risk Factors," the Company faces competition from many competitors who have significantly greater financial resources, well-established brand names, and large, existing installed customer bases. We expect the level of competition to intensify in the future. There is also significant competition from incumbent, traditional, and new electricity providers which may be better capitalized than the Company.

It is understood that there is significant competition in the retail electric market; however, we have observed that most established competitors target the larger customer segment such as large commercial and industrial operations. This creates a niche that we aggressively target. We focus on small to medium size commercial, residential, and select large businesses in our core marketing efforts. We believe this market segment will yield a higher per-unit-margin with improved customer loyalty.

The Company anticipates the addition of new market participants. Recent entries into the marketplace include single-client companies established for a select number of large electricity users such as refineries or industrial plants. These new participants' strategy is to focus most of their marketing dollars on high-end users, as they assume the larger customers provide the highest return. The Company differentiates its strategy by focusing on the small to mid-size customer segment and building lasting relationships through excellent customer service, flexible terms, unique sales techniques, and competitive pricing.

The Company's present management and staff have significant experience working in the Texas retail energy market. Management and staff also have experience with REPs who operate in Maryland, New Hampshire, the District of Columbia and Massachusetts. We believe management's experience with these entities will contribute to management's ability to market and continue to grow the Company in the markets in which we operate.

Because of management's prior experience, management and staff have developed and maintained strong connections with agents, brokers, property owners and others in the markets in which we operate. Through these relationships, the Company anticipates building sales momentum.

Intellectual Property

The Company has not applied for any patents or copyrights. The Company has filed trademark applications for "Summer Energy" and for "Pronto Power." The Company has not spent any significant time since its inception on research and development activities.

Additional Information

As more fully set forth under the heading entitled "Risk Factors," the Company is subject to governmental regulation and will face additional costs in complying with such regulations. At this time, the Company does not have an estimate of its annual regulatory compliance costs.

RISK FACTORS

Risks Factors Related to Our Business and Industry

We depend on key personnel.

For the foreseeable future, our success will depend largely on management's industry knowledge, marketing skills and relationships with key investors, customer bases and industry leaders. The Company has employment agreements with management and other key personnel. We do not maintain key life insurance policies for our executive officers. Should any of these individuals leave the Company, it may have a material adverse effect on our future results of operations.

Recourse to the Company's assets.

Outside of our wholesale contracts, our customer contracts and our REP certificates, the Company currently has limited assets that are available to satisfy liabilities and other obligations of the Company. If the Company becomes subject to a liability, parties seeking to have the liability satisfied may have recourse to the Company's assets.

We will indemnify management and the members of the Board of Directors.

Members of our executive management (“Management”) and other key decision-makers will be entitled to indemnification from the Company except in certain circumstances, as more fully set forth in our Articles of Incorporation, Bylaws and separate indemnification agreements.

Stockholders will have no right to participate in management of the Company.

Stockholders in the Company will not have the right to participate in the management of the Company or in decisions made by Management on the Company’s behalf. As a result, stockholders will have almost no control over their investments in the Company or their prospects with respect thereto.

Uncertain economic conditions.

Recent economic events have created uncertainty with respect to the condition of the economy in the United States. Certain economic factors and indicators have suggested that such events have had a substantial negative effect on the economies of the United States and the states in which we operate. Furthermore, several industries have experienced financial difficulties. Other equity markets have been similarly affected. It is impossible to determine at this time the long-term effects of these events and conditions on the economy. Any negative change in the general economic conditions could adversely affect the financial condition and our operating results. Unforeseen incidents, such as terrorist attacks, corporate fraud or general weakness in the economy, could have a negative impact on the overall economic state of the market in which we intend to market and utilize our products and services. The Company may experience difficulty in raising additional capital necessary for expenses and growth, may experience underfunding due to the timing of payments received and due to the seasonality of the markets in which we operate and customer electricity usage.

Adequacy of funds for operations or capital expenditures.

To the extent that the Company’s expenses increase, unanticipated expenses arise, or capital expenditures are necessary, and accumulated reserves are insufficient to meet such expenses, the Company may be required to obtain cash advances and additional funds through borrowing or additional equity raises, if available. Such debt and/or equity raises may have a material negative adverse effect on the Company’s profitability.

We are substantially dependent on a single party to purchase our electricity.

Our subsidiaries, Summer LLC and Summer Midwest, are parties to the Facility Agreement entered into on June 7, 2023, with Engie whereby, with limited exceptions, they are required to purchase all of their electric power and associated services requirements from Engie. We therefore rely substantially on Engie in order to meet our customers’ needs. If we default in our obligations to Engie, we may be unable to purchase the required electricity supply to service our customers. If we are unable to purchase through Engie, we may be forced to purchase substantial electricity supply in the open market to meet customer demand at a time when energy prices are volatile, which could have an adverse impact on our financial condition. Our obligations to Engie are secured by a first position security interest in all of our assets, equipment and inventory.

Our business is dependent on retaining licenses in the markets in which we operate.

Our business model is dependent on continuing to be licensed in existing markets. If we have a license revoked or are not granted renewal of a license, or if our license is adversely conditioned or modified, it could materially and adversely affect our business, financial condition, cash flows and results of operations.

Volatile energy prices and regulatory risk.

Sustained high energy prices, ongoing price volatility, decreasing reserve margins, and changing environmental regulation all creates a risk of increased regulatory and/or legislative intervention, which may limit our flexibility within the deregulated market. In addition, ISOs, public utility commissions, and state legislatures possess significant regulatory control over our business operations in all markets. Factors outside of our control may cause changes to the deregulated electricity structure at any time, which may have an adverse effect upon our business.

The Company believes that competitive markets yield a broad range of innovative product and service alternatives to consumers and ultimately lead to the most efficient use of resources. We believe regulatory entities should continue to take actions that encourage competition in the industry, but no assurance can be given that this will be the case. Regulatory and/or legislative intervention could disrupt the market structure of electricity prices, which could impact the Company's results of operations. The Company's earnings and cash flows may also be adversely affected in any period in which the demand for power significantly varies from forecasted supply, which may occur due to, among other factors, weather events, competition and economic conditions.

Reliance on TDSPs affiliated with our competitors to perform some functions for our customers.

Under our regulatory structure, we are often required to enter into agreements with local incumbent utilities for use of the local distribution systems, and for the creation and operation of functional interfaces necessary for us to serve our customers. While we are optimistic about our ability to enter into acceptable agreements in relevant markets, any delay in future negotiations for access or our inability to enter into reasonable agreements to operate could delay or negatively impact our ability to serve our customers, which could have a material negative impact on our business, results of operations, and financial condition.

In certain markets we are dependent on TDSPs for maintenance of the infrastructure through which we deliver electricity to our retail customers. Any infrastructure failure that interrupts or impairs delivery of electricity to our customers could negatively impact the satisfaction of our customers with our service and could have a material adverse effect on our results of operations, financial condition and cash flow. Additionally, in certain markets we are dependent on TDSPs for performing service initiations and changes, and for reading our customers' energy meters. We are required to rely on the TDSPs, or, in some cases, ERCOT, to provide us with our customers' information regarding energy usage, and we may be limited in our ability to confirm the accuracy of the information. The provision of inaccurate information or delayed provision of such information by the TDSPs or ERCOT could have a material adverse effect on our business, results of operations, financial condition and cash flow. In addition, any operational problems with our new systems and processes could similarly have a material adverse effect on our business, results of operations, financial condition and cash flow. Further, we rely on the TDSPs to properly repair and maintain electrical lines in outages caused by severe weather, which may produce a delay in providing service to the Company's customers, which can negatively impact the Company.

We are subject to government regulation and extensive government regulation may increase our costs and slow our growth.

Significant regulations imposed at the federal, state and local levels govern the provision of utility services and affect our business and our existing and potential competitors. Delays in receiving required regulatory approvals, the enactment of adverse legislation, regulations or regulatory requirements, or the application of existing laws and regulations to certain services may have a material adverse effect on our business, financial condition, results of operations and cash flow. In addition, future legislative, judicial and regulatory agency actions could alter competitive conditions in the markets in which we intend to operate, in ways not necessarily to our advantage.

Moreover, existing regulations may be revised or reinterpreted and new laws and regulations may be adopted or become applicable to our commercial activities. These actions could have a material adverse effect on our results of operations, financial conditions and cash flows.

New legislation or regulation.

We cannot determine what effect additional state or federal governmental legislation, regulations, or administrative orders, when and if promulgated, would have on our business in the future. New legislation or regulations may require the reformulation of our business to meet new standards, require us to cease operations, impose stricter qualification and/or registration standards, impose additional record keeping, or require expanded consumer protection measures.

Reliance on information technology systems; collection of sensitive customer data.

Our business is dependent on information sharing among market participants. This information includes customer enrollment information, ERCOT transactions, meter readings, invoices for wire line charges, etc. Therefore, our success as an independent REP is impacted by our ability to handle this information, and we are dependent on third parties to provide timely and accurate information to us. We rely on a combination of internal systems including telephone, Internet, load forecasting, as well as systems operated by third parties. Failure to receive timely and accurate information could have an adverse impact on our business.

We have implemented, or intend to implement, both processes and infrastructure to provide for redundancy of core data due to business interruption associated with our billing platform; however, that is only one component of our business model. In addition, our systems and those we rely upon from third parties need continued development and investment to ensure reliability and scalability as our business grows at a rapid rate.

Despite the implementation of security measures, our networks may be vulnerable to unauthorized access, computer viruses and other disruptive problems. A party who is able to circumvent security measures could misappropriate proprietary information or cause interruptions in our Internet operations. We may be required to expend significant capital or other resources to protect against the threat of security breaches or to alleviate problems caused by such breaches. Although we intend to continue to implement industry-standard security measures, there can be no assurance that measures implemented by us will not be circumvented in the future.

Our business requires access to sensitive customer data in the ordinary course of business. Examples of sensitive customer data are names, addresses, account information, historical electricity usage, expected patterns of use, payment history, credit bureau data, credit and debit card account numbers, driver's license numbers, social security numbers and bank account information. We may need to provide sensitive customer data to vendors and service providers who require access to this information in order to provide services. It is possible that our security controls over personal data, our training of employees and consultants on data security, and other practices we follow may not prevent the improper disclosure of personally identifiable

information. If a significant breach occurred, our reputation may be adversely affected, customer confidence may be diminished, or our business may be subject to legal claims, any of which may contribute to the loss of customers and have a negative impact on the business and/or results of operations.

We depend on the accuracy of data in our information management systems, which subjects us to risks.

We depend on the accuracy and timeliness of our information management systems for billing, collections, consumption and other important data. We rely on many internal and external sources for this information, including:

- our marketing, pricing and customer operations functions; and
- various local regulated utilities and independent system operators (ISOs) for volume or meter read information, certain billing rates and billing types (e.g., budget billing) and other fees and expenses.

Inaccurate or untimely information, which may be outside of our direct control, could result in:

- inaccurate and/or untimely bills sent to customers;
- reduced effectiveness and efficiency of our operations;
- inability to adequately hedge our portfolio;
- increased overhead costs;
- inaccurate accounting and reporting of customer revenues, gross margin and accounts receivable activity;
- inaccurate measurement of usage rates, throughput and imbalances;
- customer complaints; and
- increased regulatory scrutiny.

We are also subject to disruptions in our information management systems arising out of events beyond our control, such as natural disasters, epidemics, failures in hardware or software, power fluctuations, telecommunications and other similar disruptions. In addition, our information management systems may be vulnerable to computer viruses, incursions by intruders or hackers and cyber terrorists and other similar disruptions. A successful cyber-attack on our information management systems could severely disrupt business operations, preventing us from billing and collecting revenues, and could result in significant expenses to investigate and repair security breaches or system damage, lead to litigation, fines, other remedial action, heightened regulatory scrutiny, diminished customer confidence and damage to our reputation. We do not maintain cyber-liability insurance that covers certain damage caused by cyber events.

Inaccurate data and disruptions of our information management systems to perform as anticipated for any reason could materially and adversely affect our business, financial condition, cash flows and results of operations.

Certain political and natural events may affect our Company.

Catastrophic events or geo-political conditions may disrupt our business. A disruption or failure of our systems or operations in the event of a major earthquake, weather event, cyber-attack, terrorist attack, or other catastrophic event or natural disaster could cause delays in performing critical functions. A

catastrophic event that results in the destruction or disruption of any of our critical business or information technology systems could harm our ability to conduct normal business operations and our operating results.

Weather and other related commodity risks may affect our ability to manage and maintain a balanced supply/demand book.

Commitments for future purchase of electricity supply (i.e., forward power contracts) are based solely on our current customer base under contract. No speculative positions to buy or sell electricity are allowed by our internal risk policy. Long term supply positions are consistently monitored and rebalanced due to adding or removing customers, long term weather assumptions, and economic indicators. Short term supply positions are also monitored and rebalanced due to changing demand positions. Short term changes in demand are driven primarily by the weather forecasts for the geographical areas in which we operate. We plan to continue to maximize retail earnings through efficient procurement practices, with the primary goal being to protect the earnings generated by the retail business. However, fluctuations in actual weather conditions, generation availability, transmission constraints, and generation reserve margins may all have an impact on the actual power prices and the electricity consumption of our customers on a given day. Extreme weather conditions may force us to purchase electricity in the balancing market on days when weather is unexpectedly severe, and the pricing for balancing market energy may be significantly higher on such days than the cost of electricity in our existing fixed priced contracts. Unusually mild weather conditions could leave us with excess power which may be sold in the balancing market at a loss if the balancing market price is lower than the Company's cost of electricity in our existing fixed priced contracts.

Commodity pricing is an inherent risk component of our business operations and our financial results. The prevailing market prices for electricity and fuel may fluctuate substantially over relatively short periods of time, potentially adversely impacting our results of operations, financial condition and cash flows. Changes in market prices for electricity and fuel may result from any of the following:

- weather conditions;
- seasonality;
- demand for energy commodities and general economic conditions;
- forced or unscheduled plant outages;
- disruption of electricity or gas transmission or transportation infrastructure or other constraints or inefficiencies;
- addition or reduction of generating capacity;
- environmental and emissions regulation;
- availability of competitively priced alternative energy sources;
- availability and levels of storage and inventory for fuel stocks;
- natural gas, crude oil and refined products, and coal production levels;
- the creditworthiness or bankruptcy or other financial distress of market participants;
- changes in market liquidity;
- natural disasters, wars, embargoes, pandemics, acts of terrorism and other catastrophic events; and
- Federal and state governmental regulation and legislation.

Natural disasters, public health crises, and other events beyond our control could negatively impact us and/or our suppliers or customers.

We are subject to the risk of disruption by earthquakes, hurricanes, floods and other natural disasters, fire, power shortages, geopolitical unrest, war, terrorist attacks and other hostile acts, public health issues, epidemics or pandemics and other events beyond our control and the control of the third parties on which we depend. Any of these catastrophic events, whether in the United States or abroad, may have a strong

negative impact on the global economy, our employees, facilities, partners, suppliers, distributors or customers, and could decrease demand for our products and services, create delays and inefficiencies in our supply chain and make it difficult or impossible for us to deliver products or services to our customers. For example, in December 2019 an outbreak of a novel strain of coronavirus originated in Wuhan, China, and has since spread to a number of other countries, including the United States. This outbreak may result in disruptions to our and our customer's supply chain and business operations. Global health concerns, such as coronavirus, could also result in social, economic, and labor instability in the cities and states in which we or our customers and suppliers operate and live. These uncertainties could have a material adverse effect on our business and our results of operation and financial condition. In addition, a catastrophic event that results in the destruction or disruption of our information technology systems would severely affect our ability to conduct normal business operations and, as a result, our operating results would be adversely affected.

Our financial results fluctuate on a seasonal, quarterly and annual basis.

Our overall operating results fluctuate substantially on a seasonal, quarterly and annual basis depending on: (1) the geographic mix of our customer base; (2) the concentration of our product mix; (3) the impact of weather conditions on commodity pricing and demand; (4) variability in market prices for electricity; and (5) changes in the cost of delivery of commodities through energy delivery networks. These factors can have material short-term impacts on monthly and quarterly operating results, which may be misleading when considered outside of the context of our annual operating cycle. In addition, our accounts payable and accounts receivables are impacted by seasonality due to the timing differences between when we pay our suppliers for accounts payable versus when we collect from our customers on accounts receivable.

Accordingly, we may experience seasonal, quarterly and annual fluctuations, which could materially and adversely affect our business, financial condition, cash flows and results of operations.

We may have difficulty retaining our existing customers or obtaining a sufficient number of new customers, due to competition and for other reasons.

The markets in which we compete are highly competitive, and we may face difficulty retaining our existing customers or obtaining new customers due to competition. We encounter significant competition from local regulated utilities or their retail affiliates and traditional and new REPs. Many of these competitors or potential competitors are larger than us, have access to more significant capital resources, have more well-established brand names and have larger existing installed customer bases. Additionally, existing customers may switch to other REPs during their contract terms in the event of a significant decrease in the retail price of electricity in order to obtain more favorable prices. Although we generally have a right to collect a termination fee from each customer on a fixed-price contract that terminates its contract early, we may not be able to collect the termination fees in full or at all.

If we are unable to obtain new customers or maintain our existing customers, due to competition or otherwise, it could materially and adversely affect our business, financial condition, cash flows and results of operations.

We are subject to direct credit risk for certain customers who may fail to pay their bills as they become due.

We bear direct credit risk related to our customers located in markets that have not implemented purchase of accounts receivable ("POR") programs as well as indirect credit risk in those POR markets that pass collection efforts along to us after a specified non-payment period. We generally have the ability to terminate

contracts with customers in the event of non-payment, but in most states in which we operate we cannot disconnect their electricity service. In POR markets where the local regulated utility has the ability to return non-paying customers to us after specified periods, we may realize a loss for one to two billing periods until we can terminate these customers' contracts. We may also realize a loss on fixed-price customers in this scenario due to the fact that we will have already fully hedged the customer's expected commodity usage for the life of the contract and we also remain liable to our suppliers of electricity for the cost of our supply commodities. Furthermore, in the Texas market, we are responsible for billing the distribution charges for the local regulated utility and are at risk for these charges, in addition to the cost of the commodity, in the event customers fail to pay their bills. Changing economic factors, such as rising unemployment rates and energy prices also result in a higher risk of customers being unable to pay their bills when due.

The failure of our customers to pay their bills or our failure to maintain adequate billing and collection procedures could adversely affect our financial results.

We may not be able to manage our growth successfully.

The development of our operations will depend upon, among other things, our ability to create and expand our customer base in our existing markets and to enter new markets in a timely manner and at reasonable costs. In addition, we anticipate that our employee base will grow in order for us to accommodate our increased customer base. We may experience difficulty managing the growth of a portfolio of customers that is diverse both with respect to the types of services they will require, the market rules in their jurisdiction and the infrastructure required to deliver electricity to those customers. Expanding our operations may also require continued development of our operating and financial controls and may place additional stress on our management, finances and operational resources. If we are unable to manage our growth and development successfully, our operating results and financial condition could be materially adversely affected.

Achieving the desired benefits of acquisitions may be subject to a number of challenges and uncertainties which make it hard to predict the future success of each entity.

We acquired Summer Energy Northeast, LLC (formerly known as REP Energy, LLC) with expected benefits including, among other things, operating efficiencies, entering into new markets, procurement savings, innovation, sharing of best practices and increased market share that may allow for future growth. Achieving the anticipated benefits may be subject to a number of significant challenges and uncertainties, including, without limitation, whether unique corporate cultures will work collaboratively in an efficient and effective manner, the coordination of separate organizations, the possibility of imprecise assumptions underlying expectations regarding potential synergies and the integration process, unforeseen expenses and delays, and competitive factors in the marketplace. We could also encounter unforeseen transaction and integration-related costs or other circumstances such as unforeseen liabilities or other issues. Many of these potential circumstances are outside of our control and any of them could result in increased costs, decreased revenue, decreased synergies and the diversion of management time and attention. If we are unable to achieve our objectives within the anticipated time frame, or at all, the expected benefits may not be realized fully or at all, or may take longer to realize than expected, which could have an adverse effect on our business, financial condition and results of operations.

We rely on a third-party vendor for our customer billing and transactions platform that exposes us to third party performance risk.

We have outsourced our back-office customer billing and transactions functions to a third party, and we rely heavily on the continued performance of that vendor under our commercial agreement. Failure of our vendor to operate in accordance with the terms of the agreement or the vendor's bankruptcy or other event that

prevents it from performing under our agreement could materially and adversely affect our business, financial condition, cash flows and results of operations.

We face strong competition from incumbent utilities and other competitors.

The market in which the Company operates is highly competitive. The Company faces competition from many competitors with significantly greater financial resources, well-established brand names and large, existing installed customer bases. We expect the level of competition to intensify in the future. We expect significant competition from incumbent, traditional, and new electricity providers, which may be better capitalized than the Company.

In some markets, our principal competitor may be the local incumbent utility's unregulated affiliates. These affiliates have the advantage of long-standing relationships with their customers, and they may have longer operating histories, greater financial and other resources and greater name recognition in their markets than we do. In addition, incumbent utilities have been subject to regulatory oversight, in some cases for close to a century, and thus have a significant amount of experience regarding the regulators' policy preferences as well as a critical economic interest in the outcome of proceedings concerning their revenues and terms and conditions of service.

Some of our competitors, including affiliated retailers, have formed alliances and joint ventures in order to compete in the restructured, deregulated retail electricity industry. Many customers of these incumbent utilities may decide to stay with their long-time energy provider if they have been satisfied with its service in the past.

In addition to competition from the incumbent utilities and their affiliates, we face competition from a number of other energy service providers, including start-up companies focusing on internet marketing and online services, and other energy industry participants who may develop businesses that will compete with us in both local and national markets. Many of these competitors or potential competitors are larger than the Company and have access to more significant capital resources.

Payment defaults by other REPs to ERCOT.

In the event of a default by a REP of its payment obligations to ERCOT, the portion of that obligation that is unrecoverable by ERCOT from the defaulting REP is assumed by the remaining market participants in proportion to each participant's load ratio. As a REP and market participant in ERCOT, we may have to pay a portion of the amount owed to ERCOT should such a default occur, and ERCOT is not successful in recovering such amounts. As a relatively small company, any such default of a REP in its obligations to ERCOT could have a material adverse effect on our business, results of operations, financial conditions and cash flows.

ERCOT has experienced problems with its information systems.

Problems in the flow of information between ERCOT, TDSPs and the REPs have resulted in delays and other problems in enrolling and billing customers. In some instances, the Company has been erroneously charged by TDSPs for delivered power, resulting in a negative effect on the Company's results of operations and financial condition. When customer enrollment transactions are not successfully processed by all involved parties, ownership records in the various systems supporting the market are not synchronized properly and subsequent transactions for billing and settlement are adversely affected. The impact may mean that we are not listed as the electric provider-of-record for intended or agreed upon time periods, delays in receiving customer consumption data that is necessary for billing and settlement either through ERCOT or

directly with TDSPs, as well as the incorrect application of rates or prices and imbalances in our electricity supply forecast and actual sales.

Our future results of operations may be negatively impacted by settlement adjustments determined by ERCOT related to prior periods.

Settlement information for most operating activity is due from ERCOT within two months after the operating day, and true-up settlements are due from ERCOT within six months after the operating day. ERCOT has the ability to resettle any operating day at any time after the six-month settlement period, usually the result of a lingering dispute, an alternative dispute resolution process, or litigated event. As a result, we are subject to settlement adjustments from ERCOT related to prior periods, which may result in charges or credits impacting our future reported results of operations.

Our results of operations and financial condition could be negatively impacted by any development or event beyond our control that causes economic weakness in the markets in which we operate.

Currently, we operate in Texas, Massachusetts, Illinois, Pennsylvania and Ohio. As a result, regardless of the state of the economy in areas outside the markets in which we operate, economic weakness in these markets could lead to reduced demand for electricity in these markets. Such a reduction could have a material negative impact on our results of operations, liquidity and financial condition.

Risks Related to the Company

We have a substantial amount of indebtedness, which may adversely affect our financial resources and our ability to operate our business.

Our consolidated indebtedness at December 31, 2023, was approximately \$21,165,688 (*See* Note 13) exclusive of indebtedness relating to our accrued wholesale power liability and accrued transportation and distribution charges in the amount of approximately \$57,069,460 as of December 31, 2023. This substantial level of indebtedness could have adverse consequences to our business, including (i) making it more difficult to satisfy our debt obligations as they become due; (ii) impairing our ability to obtain additional financing in the future; (iii) requiring a substantial portion of our cash flows from operations to be used for the payment of principal and interest on our indebtedness, thereby reducing the amount of cash available to fund working capital needs, capital expenditures, and other general corporate purposes; (iv) limiting our flexibility to plan for, or react to, changes in our business; and (v) increasing our vulnerability to adverse economic and industry conditions.

We rely on our operating cash flows to repay our outstanding borrowings, as well as to fund any working capital needs, capital expenditures, dividend payments, share repurchases, and other general corporate purposes. Prolonged periods of adverse economic conditions or business disruptions in any of our key regions, or a combination thereof, could impede our ability to pay our obligations as they become due or return value to our shareholders, as well as delay previously planned expenditures related to our operations. Credit rating agencies also periodically review our capital structure and our ability to generate earnings. A prolonged period of deteriorated financial performance or our inability to comply with debt covenants (as discussed below) could make future financing more difficult to secure and/or expensive. Further, factors beyond our control, such as adverse economic conditions, could disrupt capital markets and limit the availability or willingness of financial institutions to extend capital to us in the future.

Certain of our debt instruments contain a number of affirmative and negative covenants that, among other things, may limit our ability to obtain additional financing for working capital requirements, product development activities, debt service requirements, and general corporate or other purposes including

maintaining a leverage ratio at or below a specified level. Our failure to comply with such covenants or otherwise secure temporary waivers of non-compliance, could result in the termination of the related facilities and/or our lenders demanding any amounts outstanding to be immediately repaid, which could have a material adverse effect on our business. Further, even if we are able to obtain waivers of non-compliance, such waivers may result in incremental fees, higher interest rates, and/or additional restrictions and covenants.

Additionally, the Federal Reserve has raised interest rates multiple times over the last eighteen months in an effort to mitigate inflationary pressures and further increases may occur in the near future. Higher interest rates may increase the cost of any borrowings under our various credit and overdraft facilities, as well as negatively impact consumer sentiment and the global economy as a whole, which could result in a material adverse effect on our business.

There is substantial doubt about our ability to continue as a going concern.

The accompanying consolidated financial statements have been prepared assuming the Company will continue as a going concern. This assumes continuing operations and the realization of assets and liabilities in the normal course of business.

We have incurred significant losses since our inception and expect to continue to incur losses as a result of costs and expenses related to maintaining our properties and general and administrative expenses. As a result of our evaluation of the Company's liquidity for the next twelve months, we have included a discussion about our ability to continue as a going concern in our consolidated financial statements. Management plans to mitigate the Company's current conditions include working with Engie, negotiating with related parties and third parties to refinance existing debt and lease obligations, cost reduction efforts and sales of customer accounts. Notwithstanding management's plans, there can be no assurance that the Company will be successful in its efforts to address its current liquidity and capital resource constraints. These conditions raise substantial doubt about the Company's ability to continue as a going concern for the next twelve months from the issuance of the interim consolidated financial statements. Our capital needs have, in the past, been funded through sales of our debt and equity securities. In the event that we are unable to raise sufficient additional funds, we may be required to delay, reduce or severely curtail our operations or otherwise impede our on-going business efforts, or initiate steps to cease operations or liquidate our assets, which could have a material adverse effect on our business, operating results, financial condition, long-term prospects and ability to continue as a viable business.

Risks Related to Investing in and the Ownership of the Common Stock of the Company

An active, liquid and orderly trading market for our common stock may not develop, and the price of our stock may be volatile and may decline in value.

There currently is not an active public market for our common stock. An active trading market may not develop or, if developed, may not be sustained. The lack of an active market may impair the ability of stockholders to sell shares of common stock at the time they wish to sell them or at a price they consider reasonable. An inactive market may also impair our ability to raise capital by selling shares of common stock and may impair our ability to acquire other companies or assets by using shares of our common stock as consideration.

The stock market in general has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of companies with securities traded in those

markets. Broad market and industry factors may seriously affect the market price of companies' stock, including ours, regardless of actual operating performance.

The Company may not be able to attract the attention of brokerage firms.

Securities analysts of brokerage firms may not provide coverage of the Company. No assurance can be given that brokerage firms will want to conduct any secondary offerings on behalf of the Company in the future, should the need arise.

Our common stock may not be eligible for listing on a national securities exchange.

Our common stock is not currently listed on a national securities exchange, and we do not currently meet the initial quantitative listing standards of a national securities exchange. We cannot assure you that we will be able to meet the initial listing standards of any national securities exchange, or, if we do meet such initial qualitative listing standards, that we will be able to maintain any such listing. Until our common stock is listed on a national securities exchange, we anticipate that it will continue to be eligible and quoted on the OTC Markets, another over-the-counter quotation system, or in the "pink sheets." In these venues, an investor may find it difficult to obtain accurate quotations as to the market value of our common stock. In addition, if we fail to meet the criteria set forth in SEC regulations, various requirements would be imposed by law on broker-dealers who sell our securities to persons other than established customers and accredited investors. Consequently, such regulations may deter broker-dealers from recommending or selling our common stock, which may further affect its liquidity. This would also make it more difficult for us to raise additional capital in the future.

The Company's common stock may be considered "a penny stock" and may be difficult to sell.

The SEC has adopted regulations that generally define "penny stock" to be an equity security that has a market price of less than \$5.00 per share, or an exercise price of less than \$5.00 per share, subject to specific exemptions. The market price of our common stock is likely to be less than \$5.00 per share and, therefore, may be designated as a "penny stock" according to SEC rules. This designation requires any broker or dealer selling these securities to disclose certain information concerning the transaction, obtain a written agreement from the purchaser and determine that the purchaser is reasonably suitable to purchase the securities. These rules may restrict the ability of brokers or dealers to sell our common stock and may affect the ability of investors to sell their shares.

Trading of the Company's common stock may be volatile and sporadic, which could depress the market price of our common stock and make it difficult for our stockholders to resell their shares.

There is currently a limited market for our common stock and the volume of our common stock traded on any day may vary significantly from one period to another. Trading in stock quoted on OTC Market's OTCQB is often thin and characterized by wide fluctuations in trading prices, due to many factors that may have little to do with our operations or business prospects. The availability of buyers and sellers represented by this volatility could lead to a market price for our common stock that is unrelated to operating performance. Moreover, OTC Market's OTCQB is not a stock exchange, and trading of securities quoted on OTC Market's OTCQB is often more sporadic than the trading of securities listed on a stock exchange like Nasdaq or the New York Stock Exchange. There is no assurance that a sufficient market will develop in the stock, in which case it could be difficult for our stockholders to resell their stock.

Our stockholders may experience significant dilution if future equity offerings are used to fund operations or acquire complementary businesses.

If we engage in capital raising activities in the future, including issuances of common stock, to fund the growth of our business, our stockholders could experience significant dilution. In addition, securities issued in connection with future financing activities or potential acquisitions may have rights and preferences senior to the rights and preferences of our common stock. We have an equity incentive plan pursuant to which equity awards may be granted to eligible employees (including our executive officers), directors and consultants, if our board of directors determines that it is in the best interest of the Company and our stockholders to do so. The issuance of shares of our common stock upon the exercise of any such equity awards may result in dilution to our stockholders and adversely affect our earnings.

If securities or industry analysts do not publish, or cease publishing, research or reports about us, our business or our market, or if they change their recommendations regarding our stock adversely, our stock price and trading volume could decline.

The trading market for our common stock will be influenced by whether industry or securities analysts publish research and reports about us, our business, our market or our competitors and, if any analysts do publish such reports, what they publish in those reports. We may not obtain analyst coverage in the future. Any analysts that do cover us may make adverse recommendations regarding our stock, adversely change their recommendations from time to time, and/or provide more favorable relative recommendations about our competitors. If any analyst who may cover us in the future were to cease coverage of our company or fail to regularly publish reports on us, or if analysts fail to cover us or publish reports about us at all, we could lose, or never gain, visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

We do not anticipate paying any dividends in the foreseeable future.

We currently intend to retain our future earnings to support operations and to finance expansion and, therefore, we do not anticipate paying any cash dividends to holders of our common stock in the foreseeable future.

Item 10. The nature and extent of the issuer's facilities.

Our corporate headquarters is located in a leased office in Houston, Texas.

Beginning December 1, 2017, the Company procured approximately 20,073 square feet of office space on the 37th floor of 5847 San Felipe, Houston, Texas, pursuant to a sublease agreement dated October 13, 2017, with ENSCO International Incorporated ("Sublandlord") for a term beginning on December 1, 2017, and terminating on December 31, 2025. The base rent payments are approximately \$15,900 per month during the term of the sublease agreement. The Company is also responsible for 12.08% of the operating expenses, utilities and taxes charged to the Sublandlord.

On December 23, 2020, the sublease agreement with the Sublandlord was terminated, and concurrently, the Company entered into a Commercial Lease Agreement (the "Lease") with PKY-SAN Felipe Plaza, L.P. ("PKY") for such same office space. The term of the Lease with PKY begins on November 1, 2020 and terminates on October 31, 2023. Pursuant to the Lease with PKY, the Company will pay rent of \$15,891 per month and is also responsible for 2.047% of the operating expenses, utilities and taxes.

On April 6, 2023, the company entered into a First Amendment to extend the lease for an additional period of five (5) years commencing on November 1, 2023, and continuing through October 31, 2028. The base rent under the amended lease from and after the effective date shall be all follows:

Period	Annual Base Rent	Monthly Installments
November 1, 2023 - October 31, 2024	\$ 351,277.50	\$ 29,273.13
November 1, 2024 - October 31, 2025	\$ 361,314.00	\$ 30,109.50
November 1, 2025 - October 31, 2026	\$ 371,350.50	\$ 30,945.88
November 1, 2026 - October 31, 2027	\$ 381,387.00	\$ 31,782.25
November 1, 2027 - October 31, 2028	\$ 391,423.50	\$ 32,618.63

We believe the premises are sufficient for the Company's current needs.

PART D - MANAGEMENT AND FINANCIAL INFORMATION

Item 11. Company Insiders (Officers, Directors, and Control Persons).

The following tables sets forth the compensation with respect to our executive officers and directors for the year ended December 31, 2023. Unless otherwise indicated, the principal address of each of the directors and executive officers listed below is: c/o Summer Energy Holdings, Inc., 5847 San Felipe St, Suite 3700, Houston, Texas 77057.

Name	Age	Position	Salary Compensation (\$)	Option Awards (\$)	Stock Awards (\$)
<u>Officers</u>					
Neil Leibman	64	Chief Executive Officer, President, Director	\$ 365,385	\$ -	\$ -
Steve Madden	49	President and Chief Supply Officer	\$ 391,948	\$ -	\$ 750-
Jaleea George	62	Chief Financial Officer, Director	\$ 200,000	\$ -	\$ -
** Travis Andrews	49	Chief Supply Officer	\$ 107,787	\$ -	\$ -
Ryan Thomason	47	Vice President of Operations and Information Technology	\$ 197,550	\$ -	\$ -
<u>Directors</u>					
Stuart Gaylor	62	Director, Chairman of the Board	\$ -	\$ 30,499	\$ -
Tom O'Leary	67	Director	\$ -	\$ 26,688	\$ -
Andrew Bursten	65	Director	\$ -	\$ 26,688	\$ -
James P. Stapleton	61	Director, Chairman of Audit Committee	\$ -	\$ 26,688	\$ -
Mace C. Meeks	58	Director, Chairman of Compensation Committee	\$ -	\$ 26,688	\$ -

** *Travis Andrews departed from Summer Energy, LLC effective May 15, 2023*

DIRECTORS

As of December 31, 2023, our board of directors consists of seven directors divided among three classes. Our Class I Directors, who term will expire in the year 2025 are Jeffery Mace Meeks and Andrew Bursten. Our Class II Directors who terms will expire in the year 2026 are Tom O'Leary and James Stapleton. Our Class III Directors are Jaleea George, Neil Leibman and Stuart Gaylor whose term will expire in the year 2024.

Class I Directors

Andrew Bursten, 65. Andrew Bursten has been a member of the Company's Board since 2013. Since 2007, Andrew Bursten has been a private investor and entrepreneur. Prior to that time, Mr. Bursten served as Chairman of CyrusOne, an outsourced data center service provider, from inception in 2000 until 2007, when it was successfully sold to a private equity investment firm. Prior to CyrusOne, Mr. Bursten co-founded and served as the President of Coastal Telephone Company, a long-distance telecommunications company in 1985. Through his leadership, Coastal Telephone Company grew from a Texas-based company to servicing over 100,000 customers in 19 states. In 1999, Coastal Telephone Company was successfully sold to Eclipse Telecommunications, a subsidiary of IXC Communications (NASDAQ: IIXC).

Mr. Bursten currently serves on the board of directors for a variety of non-profit organizations. He is the former President of the Board of Trustees and remains on the Past President's Advisory Council for The Emery Weiner School and a former Executive Committee member and Advisory Board member for the Holocaust Museum Houston. He has also served on the boards of The Alley Theater, Bellaire Little League, The Fay School, Congregation Emanu El and The Evelyn Rubenstein Jewish Community Center. Mr. Bursten attended Tulane University and later received his law degree from The Thurgood Marshall School of Law.

Jeffery Mace Meeks, 58. Jeffery Mace Meeks has been a member of the Company's Board since March 2012. Mr. Meeks has been a partner at Insgroup Insurance Agency, A Baldwin Risk Partner, since January 1, 2015. Prior to that, and since 1996, Mr. Meeks was a partner at Dean & Draper Insurance Agency, LP. Upon graduating from Rice University with a triple major in 1989, Mr. Meeks entered the insurance industry. He has accumulated 35 years of expertise in his field. As a leading producer over the past 25 years, Mr. Meeks, has developed a broad foundation of knowledge in commercial insurance, personal insurance, and employee benefits. With over 800 specific clients, Mr. Meeks prides himself on developing a tailor-made insurance program to fit each client.

Mr. Meeks' background and experience in the risk management and insurance industry brings to the Board strategic planning and risk management skills that are important to the implementation of our growth strategies and oversight of the Company and operational risk management.

Class II Directors

Tom D. O'Leary, 67. Tom O'Leary has been a member of the Company's Board since 2013. Mr. O'Leary is currently the Chief Executive Officer ("CEO") and Chief Operating Officer ("COO") of Horizon Power and Light, LLC, a retail electric provider in the northeastern United States, and has served in such position since 2006 and CEO of Pinnacle Power, LLC, a retail electric provider in Pennsylvania having served in this position since 2014. Mr. O'Leary is also currently the President of PDS Management Group, LLC, a project development and construction management firm for commercial, industrial, institutional, entertainment and retail, hospitality and mixed-use developments with projects primarily in Texas and the southwest. Mr. O'Leary is currently heading development funding for West Wits Mining Ltd (WWI:ASX) for the Durban Deep location in South Africa. Mr. O'Leary currently serves on the board of directors and as treasurer of USGBC Texas Gulf Coast Chapter, The Houston Arboretum and was the Arboretum's president from 2009-2011. Past Board's include Houston Chapter of AGC Roundtable, Stehlin Foundation and St. Luke's Administrative Board. From 2002-2005, Mr. O'Leary served on the board of Gexa Energy Corp., a pioneer in the Texas retail electricity marketplace. Mr. O'Leary has previously served as a director of other private and public companies, as well as a director of various other charitable organizations. Mr. O'Leary received a bachelor's degree in Architecture and a Masters of Business Administration from the University of Houston.

Mr. O'Leary's industry experience has given him extensive knowledge of the Company's business model and he brings leadership and unique perspective to the Board.

James P. Stapleton, 61. James Stapleton has been a member of the Company's Board since March, 2012. Mr. Stapleton is currently an advisor and consultant to a variety of companies, both public and private. From May 2016 to November 2019 Mr. Stapleton was the Chief Financial Officer ("CFO") at Mount Tam Biotechnologies, a drug discovery and development company. From August 2012 to September 2014, Mr. Stapleton was the CFO at Ozone International, LLC, which provides ozone equipment and solutions to food processors. From February 2012 to June 2012, Mr. Stapleton was the CFO for Jones Soda (NASDAQ: JSDA). From 2007 to 2011, Mr. Stapleton was a consultant and advisor to a variety of companies, both public and private. From May 2005 through July 2007, Mr. Stapleton was the CFO of Bionovo (NASDAQ:

BNVI). From January 2003 through April 2005, Mr. Stapleton was the CFO of Auxilio (OTC BB AUXO). From 1996 through 2002, Mr. Stapleton was employed in a variety of positions for Prosoft Training (NASDAQ: POSO), including Corporate Secretary, Vice President Investor relations, and CFO. Mr. Stapleton was CFO of BioTek Solutions, Inc. from 1995 through February 1996. Mr. Stapleton graduated from the University of California at Irvine (UCI) with an MBA in 1995, and from the University of Washington with a BA in Economics in 1985.

Mr. Stapleton brings corporate governance and financial expertise to the Board garnered through his leadership positions and board service with other entities. His experience and qualifications provide sound governance and financial leadership to the board.

Class III Directors

Stuart C. Gaylor, 62. Stuart Gaylor has been a member of the Company's Board since March 2012 and was elected Chairman of the Board in April 2012. Since August 2017, Mr. Gaylor is the Real Estate President for Prime Communications. Prime is the largest AT&T Authorized Retailer in the US with nearly 2,000 locations coast-to-coast. From August 2016 he is also President of Lighthouse Property Development LLC, a real estate development firm specializing in retail development.

From 1984 through 2017, Mr. Gaylor worked at Al's Formal Wear, a tuxedo specialty retailer which rents and sells formalwear. He was the Chief Executive Officer and Chief Financial Officer from 2014 to 2017. He was born in Houston and attended the University of Texas at Austin, graduating with a BBA in Accounting and Data Processing in 1983. Upon college graduation, Stuart worked briefly at Ernst & Whinney, where he earned his CPA certificate. Stuart served as a member of the board of directors of Gexa Energy from 2002-2005. Stuart is currently President and on the Board of Congregation Emanu El. Stuart is married to Anita for 38 years. They have three adult children.

Mr. Gaylor's experience in managing a large organization provides the Board invaluable business strategy and leadership experience. Further, Mr. Gaylor's previous experience on the board of a retail electric provider in Texas proves valuable as the Company continues to execute on its business plan.

Neil M. Leibman, 64. Neil Leibman has been a member of the Company's Board since January 2013. Mr. Leibman is the Company's Chief Executive Officer ("CEO") and President and has served in such capacities since January 2013 and April 2020, respectively. From January 2013 through February 2014, Mr. Leibman also previously served as the Company's President. Since 2006, Mr. Leibman has been Chairman and CEO of Aspen Pipeline, LP, a company which develops and operates midstream pipeline projects, primarily in Texas. Since 2006, Mr. Leibman has also been an officer of Horizon Power and Light, LLC, a retail electric provider in the northeastern United States. Mr. Leibman served, from 2001-2005, as Chairman and CEO of Gexa Energy Corp., a pioneer in the Texas retail electricity marketplace, where he helped grow the company from a start-up to an established firm with revenues of \$500 million, and also oversaw the sale of that company to FPL Group, Inc. (NYSE: FPL) in June 2005. Prior to his time at Gexa, Mr. Leibman was an entrepreneur and corporate attorney, investing in and advising a variety of companies. Mr. Leibman currently serves on the board of the Texas Rangers, the Texas Rangers Foundation, Tumbleweed Resources, LLC and the St. Francis Episcopal Day School. Mr. Leibman has previously served as a director of both private and public companies, as well as a director of various charitable organizations. Mr. Leibman received a BA from Emory University and a Masters of Business Administration and Juris Doctorate, with honors, from the State University of New York, Buffalo.

Mr. Leibman's industry experience has given him extensive knowledge of the Company's business model and brings leadership and unique perspective to the Company and the Board.

Jaleea P. George, 62. Ms. George has been a member of the Company’s Board since March 2012. She has been the Company’s Secretary, Treasurer and Chief Financial Officer since March 2012, was a founding member of Summer Energy, LLC, and manages all financial operations of the Company. Since 2007, Ms. George has performed accounting and financial functions in the Maryland and District of Columbia markets for Horizon Power & Light, LLC (“Horizon”). Horizon is not a competitor of the Company. Ms. George has extensive accounting, taxation and administration experience. Ms. George has served in various financial positions that encompassed a diverse range of industry experience, including a pipeline company covering several states, an international manufacturing company with operations in thirty-two countries, and a project developer of a 50- megawatt wood-waste biomass fired electricity generations facility. Prior to joining Horizon, Ms. George served as the Director of Finance of a not-for-profit organization. Ms. George graduated from The University of Texas at Austin with a BBA in accounting and is certified by the Texas State Board of Public Accountancy. She is a member of the American Institute of Certified Public Accountants (AICPA), Texas Society of CPAs (TSCPA) and the Houston Chapter of TSCPA.

Ms. George’s financial and accounting experience, particularly in the retail electric industry, provides the Board with necessary skills and expertise due to her extensive knowledge of our industry and in-depth knowledge of our business and operations.

EXECUTIVE OFFICERS

Our current executive officers are as follows:

Name	Age	Position
Neil M. Leibman	64	Chief Executive Officer
Steven Madden	49	President and Chief Supply Officer
Jaleea P. George	62	Chief Financial Officer, Secretary, Treasurer
Ryan Thomason	47	Vice President of Operations and Information Technology

All officers serve at the discretion of the Board.

For additional information with respect to Mr. Leibman and Ms. George, who also serve as members of our Board, please refer to their profiles set forth above

Steven Madden, 49. Mr. Madden has over 25 years of experience in the energy industry with a proven track record of building retail and wholesale energy businesses into highly successful enterprises. Mr. Madden began his career at Occidental Petroleum in 1997 where he was responsible for managing its portfolio of generation and load assets in the United States. Previously, Mr. Madden was the Chief Operating Officer of Infinite Energy (“Infinite”), a wholesale and retail business active in natural gas and electricity markets across the United States from 2012 until Infinite was sold to Gas South and Vistra in 2020. Additionally, Mr. Madden co-founded a Texas retail electricity provider in 2004 that was sold to Exelon/Constellation in 2011. Mr. Madden also presently serves on the board of directors of Shyftoff Corp., based in Tampa Bay, Florida. Mr. Madden graduated from Florida State University with an Honors Degree in Chemical Engineering.

Ryan Thomason, Mr. Thomason has over 20 years of leadership experience in the deregulated energy business, with specific areas of expertise in retail energy operations, regulatory compliance and technology. His in-depth knowledge has also led to contributions in other functional areas, including accounting/finance, pricing supply, sales and marketing.

None of the Company’s Executive Officers or Directors have in the last five years been the subject of:

1. A conviction in a criminal proceeding or named as a defendant in a pending criminal proceeding (excluding traffic violations and other minor offenses);
2. The entry of an order, judgment, or decree, not subsequently reversed, suspended or vacated, by a court of competent jurisdiction that permanently or temporarily enjoined, barred, suspended or otherwise limited such person's involvement in any type of business, securities, commodities, or banking activities;
3. A finding or judgment by a court of competent jurisdiction (in a civil action), the Securities and Exchange Commission, the Commodity Futures Trading Commission, or a state securities regulator of a violation of federal or state securities or commodities law, which finding or judgment has not been reversed, suspended, or vacated; or
4. The entry of an order by a self-regulatory organization that permanently or temporarily barred, suspended or otherwise limited such person's involvement in any type of business or securities activities.

There are no family relationships among or between our directors, officers, or beneficial owners of more than five percent (5%) of the any class of our equity securities.

Item 12. Financial information for the issuer's most recent fiscal period. The following documents are filed as part of this Annual Report:

1. Consolidated Financial Statements – The consolidated financial statements listed on the “Index to Consolidated Financial Statements” set forth on page F-1.
2. Exhibits – Certain of the exhibits to this Annual Report are hereby incorporated by reference, as summarized in Part F of this Annual Report.

Item 13. Similar financial information for such part of the two preceding fiscal years as the issuer or its predecessor has been in existence.

The Company's audited consolidated financial statements for the two preceding fiscal periods are included in the Company's Annual Report for the fiscal years ended December 31, 2023 and 2022, which are separately posted on the OTCQB website and can be accessed at www.otcmarkets.com, are incorporated by reference in this Annual Report. The audited consolidated financial statements include the following reports: (i) consolidated balance sheets; (ii) consolidated statements of operations; (iii) consolidated statements of cash flows; (iv) consolidated statements of stockholders' equity; (v) notes to consolidated financial statements; and (vii) audit opinion.

Item 14. The name, address, telephone number, and email address of each of the following outside providers that advise the issuer on matters relating to operations, business development and disclosure.

Investment Banker: None.

Promoter: None.

Securities Counsel:

Holland & Hart LLP
222 South Main Street, Suite 2200
Salt Lake City, UT 84101

801-799-5769
SCDowden@hollandhart.com

Auditor: PWR CPA, LLP
2700 Post Oak Blvd., Suite 2100
Houston, Texas 77056
clopez@thevineadvisors.com

Tax Accountant: Crowe LLP
9 E Greenway Plaza #1700,
Houston, TX 77046
713-353-1999
Melisa.hernandez@crowe.com

**Public Relations
Consultant:** None.

**Investor Relations
Consultant:** None.

Item 15. Management's Discussion and Analysis or Plan of Operation.

The following discussion should be read in conjunction with the information contained in our audited consolidated financial statements, including the notes thereto, and the other financial information appearing elsewhere in this Annual Report. Statements regarding future financial and operating performance, management's plans and objectives, and any statements concerning assumptions related to the foregoing contained in this Management's Discussion and Analysis or Plan of Operation constitute forward-looking statements. See "Disclosure Regarding Forward-Looking Statements." Certain factors, which may cause actual results to vary materially from these forward-looking statements, accompany such statements or appear elsewhere in this Annual Report, including without limitation, the factors disclosed under "Risk Factors" in Item 9 of this Annual Report.

Organization

The consolidated financial statements included in this Report include the accounts of Summer Energy Holdings, Inc. and its wholly-owned subsidiaries Summer Energy, LLC ("Summer LLC"), Summer Energy Midwest, LLC ("Summer Midwest"), Summer EM Marketing, LLC ("Marketing LLC") and Summer Energy Northeast, LLC ("Summer Northeast") (collectively referred to as the "Company," "we," "us," or "our"). All significant intercompany transactions and balances have been eliminated in these consolidated financial statements.

On March 27, 2012, Summer LLC became a wholly-owned subsidiary of Summer Energy Holdings, Inc. (previously known as Castwell Precast Corporation) through a reverse acquisition transaction, which resulted in the former members of Summer LLC owning approximately 92.3% of Summer Energy Holdings, Inc.'s outstanding common stock. The transaction was treated as a recapitalization of Summer LLC, and Summer LLC (and its historical financial statements) is the continuing entity for financial reporting purposes.

Summer LLC is a Retail Electricity Provider ("REP") in the state of Texas under a license with the Public Utility Commission of Texas ("PUCT"). Summer LLC procures wholesale energy and resells to commercial and residential customers. Summer LLC was organized on April 6, 2011, under the laws of the state of

Texas.

Marketing, LLC was formed in the state of Texas on November 6, 2012 to provide marketing services to Summer LLC.

Summer Midwest was formed in the state of Ohio on December 16, 2013 to procure and sell electricity in the state of Ohio. The Public Utilities Commission of Ohio issued a certificate as a Retail Electric Service Provider to Summer Midwest on June 16, 2015. On May 2, 2019, the Illinois Commerce Commission approved Summer Midwest as a Retail Electric Service Provider in the state of Illinois and approved in Pennsylvania in August 2020.

Summer Northeast, a Texas limited liability company, was acquired on November 1, 2017 and became a wholly-owned subsidiary of Summer Energy Holdings, Inc. Summer Northeast is a REP serving electric load to residential and commercial customers in Massachusetts as of December 31, 2023. During 2023, all customers in New Hampshire transferred to other retail electric providers. On March 11, 2024, the Company notified the New Hampshire Department of Energy that it no longer served any customers in the State of New Hampshire and was withdrawing its Competitive Electric Power Supplier Registration.

Plan of Operation

Our wholly-owned subsidiary, Summer LLC, is a licensed REP in the state of Texas. In general, Texas regulatory structure permits REPs, such as Summer LLC, to procure and sell electricity at unregulated prices. REPs pay the local transmission and distribution utilities a regulated tariff rate for delivering electricity to their customers. As a REP, Summer LLC sells electricity and provides the related billing, customer service, collections and remittance services to residential and commercial customers. Summer LLC offers retail electricity to commercial and residential customers in designated target markets within the state of Texas. In the commercial market, the primary target is small to medium-sized customers (less than one megawatt of peak usage), but we also selectively pursue larger commercial customers through Management's existing, historical relationships. Residential customers are a secondary target market. We anticipate that a majority of Summer LLC's customers are located in the Houston and Dallas-Fort Worth metropolitan areas; although, we anticipate a growing number will be located in a variety of other metropolitan and rural areas within Texas. We began delivering electricity to customers in the Texas market mid-February 2012. On February 22, 2024, Summer Energy, LLC ("Summer LLC"), a wholly owned subsidiary of Summer Energy Holdings, Inc., entered into an Asset Purchase Agreement (the "Agreement") with US Retailers LLC ("Buyer"). Pursuant to the Agreement, Summer LLC agreed to sell to Buyer its book of non-prepaid residential customers in the State of Texas (the "Assets"). The consideration payable for the Assets is estimated at \$8.1 million, payable in cash in three installments, subject to adjustment pursuant to the terms of the Agreement.

Our wholly-owned subsidiary, Summer Northeast, is a licensed REP in the state of Massachusetts. In general, the regulatory structure in these states permits REPs, such as Summer Northeast, to procure and sell electricity at unregulated prices. As a REP, Summer Northeast sells electricity to residential and commercial customers. In the commercial market, the primary target is small to medium-sized customers (less than one megawatt of peak usage), but we will also selectively pursue larger commercial customers through Management's existing, historical relationships. Residential customers are a secondary target market. During 2023, the Company anticipates the Company will experience a continued reduction in its customer base in the Northeast market because the business is winding down in ISO New England market.

Our wholly-owned subsidiary, Summer Midwest, is a licensed REP in the states of Ohio, Illinois and Pennsylvania. In general, the regulatory structure in these states permits REPs, such as Summer Midwest, to procure and sell electricity at unregulated prices. As a REP, Summer Midwest sells electricity to residential

and commercial customers. In the commercial market, the primary target is small to medium-sized customers (less than one megawatt of peak usage), but we will also selectively pursue larger commercial customers through Management's existing, historical relationships. Residential customers are a secondary target market. Summer Midwest began flowing electricity in the state of Ohio, which is in the Pennsylvania, Jersey, Maryland Power Pool ("PJM") market, during the month of July 2019, in the state of Illinois during the month of January 2020, and in the state of Pennsylvania during the month of August 2020.

Results of Operations

Year Ended December 31, 2023 compared to the Year Ended December 31, 2022

The success of our business and our profitability is impacted by a number of drivers with customer growth and weather conditions being at the forefront.

Customer Growth

Customer growth is a key driver of our operations as well as our ability to acquire customers organically, by acquisition or through customer attrition. Our organic sales strategies are designed to offer competitive pricing and price certainty to residential and commercial customers. We manage growth on a market-by-market basis by developing price curves in each of the markets we serve and comparing the market prices to the price offered by the local regulated utility. We then determine if there is an opportunity in a particular market based on our ability to create a competitive product on economic terms that provides customer value and satisfies our profitability objectives. We develop marketing campaigns using a combination of sales channels. Our marketing team continuously evaluates the effectiveness of each customer acquisition channel and makes adjustments in order to achieve desired targets. Customer attrition occurs primarily as a result of: (i) customer-initiated switches; (ii) residential moves and (iii) disconnection resulting from customer payment defaults. Our customer growth strategy includes growing organically through traditional sales channels complemented by customer portfolio and business acquisitions as well as our expansion into new markets.

In 2024, the Company's strategy is to focus on the ERCOT pre-paid market as well as the commercial market in the both the ERCOT and PJM markets. Management plans to continue to execute on its current sales and marketing program to solicit commercial accounts and pre-paid customers where they make sense economically or strategically.

Weather Conditions

Weather conditions are a key driver to our success and weather directly influences the demand for electricity and affects the prices of energy commodities. We are particularly sensitive to this variability with our residential customers in which energy is highly sensitive to weather conditions that impart heating and cooling demand. Our hedging strategy is based on forecasted customer energy usage, which can vary substantially as a result of weather patterns deviating from historical norms. Our risk management policies direct that we hedge substantially all of our forecasted demand, which is typically hedged to long-term weather patterns. We also attempt to add additional contracts from time to time to protect us from volatility in markets where we have historically experienced higher exposure to extreme weather conditions. Because we attempt to match commodity purchases to anticipated demand, unanticipated changes in weather patterns can have a significant impact on our operating results and cash flows from period to period.

For the year ended December 31, 2023 compared to 2022, the Company's overall delivered volumes of electricity decreased by 2.65% primarily related to the strategy to exit from the Northeast market as well as the reduction in the delivered volumes for the ERCOT pre-paid market. The delivered volumes in the

Northeast market will continue to decline as the customer base currently serves only month to month customers in Massachusetts. Delivered volumes for the Northeast market declined 53.75% during the year ended December 2023 compared to the year ended December 2022 as the Company exited the market in New Hampshire. Overall profit margins for the year ended December 31, 2023 were 54.78% higher than the year ended December 31, 2022 as the Company sold excess power during the 1st quarter of 2023; thereby, reducing overall cost of power during 2023.

Revenue – For the year ended December 31, 2023, we generated \$300,383,879 in electricity revenue primarily from commercial customers, and from various long and short-term residential customers. The majority of our revenue comes from the flow of electricity to customers and includes revenues from contract cancellation fees, disconnection fees and late fees of \$5,649,931.

Revenues for the year ended December 31, 2022 were \$293,812,369 from electricity revenue and includes \$6,122,947 from cancellation and disconnection and late fees.

	For the Years Ended December 31,							
	2023		2022		Variances			
	Delivered Volume (Mwh)	\$	Delivered Volume (Mwh)	\$	Change in Delivered Volume (Mwh)	Volume Percentage Change	Change in \$	\$ Percentage Change
<i>Electricity Revenues from Contracts with Customers</i>								
ERCOT Market	2,471,982	\$ 264,054,743	2,695,064	\$ 267,986,683	(223,082)	-8.28%	\$ (3,931,940)	-1.47%
ERCOT Pre-Paid Market	43,703	8,416,887	54,947	7,971,251	(11,244)	-20.46%	445,636	5.59%
Northeast Market	3,667	1,392,275	7,928	1,610,300	(4,261)	-53.75%	(218,025)	-13.54%
Midwest Market	337,306	20,870,043	176,358	10,121,188	160,948	91.26%	10,748,855	106.20%
<i>Total</i>	2,856,658	294,733,948	2,934,297	287,689,422	(77,639)	-2.65%	7,044,526	2.45%
<i>Other Revenues:</i>								
Fees Revenue		5,649,931		6,122,947			(473,016)	-7.73%
<i>Total Revenues:</i>		\$ 300,383,879		\$ 293,812,369			\$ 6,571,510	2.24%

Total revenues for the year ended December 31, 2023 compared to December 31, 2022 increased by approximately 2.24%.

The Northeast market had a 13.54% decrease in revenue related to the continuing decrease in the customer base during 2023 compared to 2022. The Company anticipates the continued reduction in the customer base in the Northeast market as the business is winding down business in ISO New England and is currently serving only month to month customers in Massachusetts. All customers in New Hampshire have transferred to other retail electric providers and the Company no longer is serving any customers in New Hampshire.

The Company began flowing electricity in the PJM market in July 2019 and the customer base consists of primarily of small commercial customers and residential customers secondarily. Gross revenues in the PJM market increased by 106.20% during 2023 as the delivered volumes in the PJM market increased during 2023.

On February 22, 2024, the Company entered into an Asset Purchase Agreement (the “Agreement”) with US Retailers LLC (“Buyer”). Pursuant to the Agreement, the Company agreed to sell to Buyer its book of non-prepaid residential customers in the State of Texas (the “Assets”). The consideration payable for the Assets is estimated at \$8.1 million, payable in cash in three installments, subject to adjustment pursuant to the terms of the Agreement.

In 2024, with the sale of the ERCOT residential customers (*See* Note 32), the Company will focus its growth on commercial customers in the ERCOT market, the ERCOT prepaid sector as well as the PJM market. Management plans to continue to execute on its sales and marketing program to realign key sales personnel on building the customer base in these identified targeted areas.

Cost of Goods Sold and Gross Margin – For the year ended December 31, 2023, cost of goods sold and gross profit totaled \$265,497,871 and \$34,886,008, respectively. Cost of goods sold and gross margin for the year ended December 31, 2022 was \$271,273,500 and \$22,538,869, respectively. Overall profit margins for the year ended December 31, 2023 were 54.78% higher than the year ended December 31, 2022.

	For the Years Ended December 31,			Percentage Variance
	2023	2022	Variance	
Revenue	\$ 300,383,879	\$ 293,812,369	\$ 6,571,510	2.24%
Cost of goods sold				
Power purchases and balancing/ancillary	161,607,758	167,354,489	(5,746,731)	-3.43%
Transportation and distribution providers charge	103,890,113	103,919,011	(28,898)	-0.03%
Total cost of goods sold	265,497,871	271,273,500	(5,775,629)	-2.13%
Gross Margin	\$ 34,886,008	\$ 22,538,869	\$ 12,347,139	54.78%

Cost of goods sold for the year ended December 31, 2023 compared to December 31, 2022 decreased in total by approximately 2.13%. The Company sold excess power in the amount of \$22,736,617 during the first quarter of 2023 thereby reducing cost of goods sold.

	For the Years Ended December 31,			Percentage Increase (Decrease)
	2023	2022	Increase/(decrease) in Costs (\$\$)	
ERCOT Market	\$ 243,557,236	\$ 259,353,963	\$ (15,796,727)	-6.09%
Northeast Market	429,039	1,291,887	(862,848)	-66.79%
Midwest Market	21,511,596	10,627,650	10,883,946	102.41%
Total cost of goods sold	\$ 265,497,871	\$ 271,273,500	\$ (5,775,629)	-2.13%

Operating expenses – Operating expenses for the year ended December 31, 2023, totaled \$26,308,382, consisting of general and administrative of \$9,987,413, stock compensation expense of \$223,683, bank services fees of \$2,994,650, collection fees/sales verification fees of \$112,564, outside commissions expense of \$8,552,239, professional fees of \$1,529,377, credit loss allowance of \$1,727,997 and \$1,180,459 of billing fees. Billing fees are primarily costs paid to a third-party Electronic Data Inter-Chain (“EDI”) provider to handle transactions between us, ERCOT and the TSDPs in order to produce customer bills.

Operating expenses for the year ended December 31, 2022, totaled \$31,422,557, consisting of general and administrative of \$16,373,974, stock compensation expense of \$482,698, bank services fees of \$2,774,521, collection fees/sales verification fees of \$471,533, outside commissions expense of \$7,912,295, professional fees of \$1,229,211, credit loss allowance of \$1,313,695 and \$864,630 of billing fees.

For the Years Ended December 31,				
	2023	2022	Variance	Percentage Change
General and administrative	\$ 9,987,413	\$ 16,373,974	\$ (6,386,561)	-39.00%
Stock compensation	223,683	482,698	(259,015)	-53.66%
Bank service fees	2,994,650	2,774,521	220,129	7.93%
Professional fees	1,529,377	1,229,211	300,166	24.42%
Outside commission expense	8,552,239	7,912,295	639,944	8.09%
Collection fees/sales verification fees	112,564	471,533	(358,969)	-76.13%
EDI Billing fees	1,180,459	864,630	315,829	36.53%
Credit loss allowance	1,727,997	1,313,695	414,302	31.54%
	<u>\$ 26,308,382</u>	<u>\$ 31,422,557</u>	<u>\$ (5,114,175)</u>	-16.28%

Total operating expenses for the year ended December 31, 2023 compared to December 31, 2022 decreased by approximately 16.28%.

Net Income (Loss) – Net income (loss) for the years ended December 31, 2023 and December 31, 2022 totaled \$1,863,016, and \$(14,672,567), respectively. The 2023 net income compared to the 2022 net loss relates primarily to the sale of excess power during the first quarter of 2023; thereby, reducing cost of goods sold in 2023.

Liquidity and Capital Resources

At December 31, 2023 and 2022, our cash totaled \$814,543 and \$2,205,050, respectively. Our principal cash requirements for the year ended December 31, 2023 and 2022, were for operating expenses and cost of goods sold, including power purchases, employee cost, capital expenditures and interest payments on outstanding debt.

During the year ended December 31, 2023, the primary source of cash was from electricity revenues and from \$8 million in proceeds from lending from Comerica Bank. During the year ended December 31, 2022, the primary source of cash was from electricity revenue.

General – The Company's increase in net cash flows during the year ended December 31, 2023 is attributable to \$5,319,764 used in operating activities, \$6,431 cash used in investing activities for the purchase of property and equipment, and net cash of \$6,259,182 provided in financing activities primarily consisting of \$8,000,000 financing from Comerica Bank and \$769,000 in net advances from related parties.

During the year ended December 31, 2022, the Company increase in cash flow was attributable to \$1,096,358 provided by operating activities, \$149,986 cash used in investing activities for the purchase of property and equipment, and net cash of \$457,385 used in financing activities primarily consisting of \$1,208,234 paid to Paycheck Protection Program and \$2,000,000 paid to Digital Lending Services, Inc. by the Company to reduce outstanding debt.

Going Concern – During the first quarter 2023, the Company sold excess power in the amount of \$22,736,617 and reported net income in the amount of \$17,344,130. However, the Company sustained

losses during the remainder of 2023 in the amount of \$15,481,114 due to the extremely hot summer as well as the necessity to repurchase power at higher costs.

On September 11, 2023, the Company did not make the required payment of \$2,000,000, and on November 11, 2023, the Company did not make the additional \$5,000,000 required payment to Digital Lending. The non-payment of both required amounts is an event of default under the Digital Lending Documents. The Company had five business days to cure the default options which the Company did not cure. Under the Digital Lending Documents, an event of default triggers an increase of the interest rate of the Revolving Note to the lower of twenty percent (20%) per annum and the maximum rate permitted by law.

This default resulted in a default on Facility Agreement with Engie (*See* Notes 8 and 12 for additional information).

As a result of the defaults, the Facility Agreement with Engie can be called. The Company believes its existing cash, together with any positive cash flows from operations, may not be sufficient to support working capital and capital expenditure requirements for the next twelve months if the Facility Agreement is not renewed or called and the Company may be required to seek additional financing from outside sources.

The following significant transactions and events affecting the Company's liquidity occurred during the year ended December 31, 2023:

On June 7, 2023, the Company and its subsidiaries, Summer LLC and Summer Midwest, closed a transaction with Engie. As part of the transaction, the Company and Engie entered into the Facility Agreement pursuant to which the Company agreed to purchase its electric power and associated services requirements from Engie, and Engie agreed to provide the Company with certain credit extension facilities to assist the Company in the purchase of its electric power and associated service requirements. The terms of the Facility Agreement are governed by the ISDA Agreement. In conjunction therewith, the Company and Engie also entered into the Security Agreement and Guaranty in favor of Engie. The Facility Agreement has a term of three (3) years, and automatically renews for successive one (1) year periods unless either party provides written notice of termination one hundred eighty (180) days prior to the end of any then-current term. In addition to the interest in respect of deferred ISDA payments, the Company will also be responsible for paying supply and credit support fees to Engie and for other such mutually agreed upon fees incurred by Engie on the Company's behalf.

In consideration of the services and credit support provided by Engie to the Company, and pursuant to the Security Agreement, the Company agreed, among other things, to grant a priority security interest to Engie in all of its assets, equipment, and inventory. Also pursuant to the Security Agreement, the Company pledged to Engie, and granted to Engie a security interest in, all of the membership interests of Summer LLC and Summer Midwest owned by the Company. Pursuant to the Guaranty, the Company agreed to guaranty the obligations of Summer LLC and Summer Midwest under the Facility Agreement. As part of the transaction, the Company, Engie and EDF entered into a Novation Agreement whereby the Company transferred by novation to Engie, and Engie accepted, the rights, liabilities, duties and obligations of the Company under and in respect of each transaction entered into pursuant to that certain 1992 ISDA Master Agreement dated as of May 1, 2018, as amended.

On July 27, 2023, the letter of credit issued by Engie to EDF as transition credit support was reduced from \$9,000,000 to \$4,000,000 (*See* Notes 11 and 12).

On August 3, 2023, the Company paid back Neil Leibman \$50,000 related to the advance made by to him to the Company during June 2023 (*See* Note 21).

On August 18, 2023, the surety bond company released \$575,000 collateral posted related to bonds posted on behalf of Summer Midwest with the Illinois Commerce Commission and with the Pennsylvania Public Utility commission (*See Note 4*).

On August 18, 2023, the Company paid back Neil Leibman \$614,000 related to the advance made by him to the Company during June 2023 (*See Note 21*).

On September 8, 2023, Engie increased its outstanding letter of credit issued to EDF on behalf of the company from \$4,000,000 to \$5,500,000. The increase in the letter of credit was a result of the obligation by the Company under the EDF Transition Agreement if not approved for market participation in the PJM market (*See Note 11*).

On September 11, 2023, and November 11, 2023, the Company failed to make required payments of \$2,000,000 and \$5,000,000, respectively, to Digital Lending (*See Note 7*). Each such failure is an event of default under the Digital Lending Documents. Under the Digital Lending Documents, an event of default triggers an increase of the interest rate of the Revolving Note to the lower of twenty percent (20%) per annum and the maximum rate permitted by law. In addition, Digital Lending at its option and without notice may, subject to an intercreditor agreement with Engie: (a) accelerate amounts outstanding on the Revolving Note and demand immediate payment in full without presentment or other demand, protest, notice of dishonor or any other notice of any kind, all of which are expressly waived; (b) foreclose its lien on the collateral pursuant to the security agreement executed by Borrower, as applicable, or take such other actions available under the terms of the Digital Lending Documents; and (c) take such other actions as may otherwise be available in equity or at law.

The default under the Digital Lending Documents (*See Note 7*) is also an event of default under the Engie Documents (*See Note 11*). At any time during the existence of an event of default under the Engie Documents, Engie may, by notice to the Company, terminate the Engie Documents and all obligations of Engie to provide or cause the provision of any credit extension under the Engie Documents and related Credit Facility and the required payment of an early termination fee of \$3,000,000. An event of default under the Facility Agreement also triggers an increase in the interest rate under the Credit Facility by 1200 basis points, and acceleration of all amounts due to Engie.

On October 5, 2023, the Company reimbursed Neil Leibman \$17,000 related to the advance made by him to the Company during June 2023 (*See Note 21*).

On November 9, 2023, the Company reimbursed Neil Leibman \$500,000 related to the advance made by him to the Company during June 2023 (*See Note 21*).

On January 22, 2024, the Company reimbursed \$500,000 to Neil Leibman for his advance (*See Note 24*).

On January 25, 2024, the Company reimbursed \$269,000 to Neil Leibman for his advance and paid Mr. Leibman \$128,746 in accrued interest (*See Note 24*).

On February 22, 2024, Summer Energy, LLC (“Summer LLC”), a wholly owned subsidiary of Summer Energy Holdings, Inc., entered into an Asset Purchase Agreement (the “Agreement”) with US Retailers LLC (“Buyer”). Pursuant to the Agreement, Summer LLC agreed to sell to Buyer its book of non-prepaid residential customers in the State of Texas (the “Assets”). The consideration payable for the Assets is estimated at \$8.1 million, payable in cash in three installments, subject to adjustment pursuant to the terms of the Agreement.

On February 27, 2024, a payment in the amount of \$2 million was made to Digital Lending of which \$1,087,203 was applied towards a principal payment and the remaining \$912,979 for accrued interest and outstanding fees. See Note 8.

As a result of these circumstances, the Company believes its existing cash, together with any positive cash flows from operations, may not be sufficient to support working capital and capital expenditure requirements for the next twelve months, and the Company may be required to seek additional financing from outside sources.

Management's plans to mitigate the Company's current conditions include working with Engie, negotiating with related parties and third parties to refinance existing debt and lease obligations, cost reduction efforts and sales of customer accounts.

Notwithstanding management's plans, there can be no assurance that the Company will be successful in its efforts to address its current liquidity and capital resource constraints. These conditions raise substantial doubt about the Company's ability to continue as a going concern for the next twelve months from the issuance of these consolidated financial statements. The consolidated financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result if the Company is unable to continue as a going concern.

Future Financing Needs

The Company commenced operations and the generation of revenue during the year ended December 31, 2012.

While we believe in the viability of our plan of operations and strategy to generate revenues, there can be no assurances that our plan of operations or our ability to raise capital will be successful. The ability to grow is dependent upon our ability to further implement our business plan, generate revenues, and obtain additional financing, if and as needed.

Off-Balance Sheet Arrangements

Our existing wholesale power purchase agreement provides that we will provide additional credit support to cover mark-to-market risk in connection with the purchase of long-term power. A mark-to-market credit risk occurs when the price of previously purchased long term power is greater than the current market price for power purchased for the same term. While we believe that the current environment of historically low power prices limits our exposure to risk, a collateral call, should it occur, could limit our working capital and, if we fail to meet the collateral call, could cause liquidation of power positions.

As of December 31, 2023, Engie had provided on behalf of the Company transitional credit support in the amount of and ISO and Public Utility commission credit support as follows:

As of December 31, 2023

	<u>Transitional Credit Support</u>	<u>ISO and Public Utility Commission Credit Support</u>
Bonds issued to Illinois Commerce Commission and Pennsylvania Public Utility Commission	\$ 575,000	\$ -
Letter of credit to EDF	5,500,000	-
Letter of credit Public Utility Commission of Texas	-	500,000
Letter of credit Pennsylvania Public Utility Commission	-	250,000
 Bond issued to Illinois Commerce Commission	 -	 500,000
Letter of credit ERCOT	-	2,315,001
As of December 31, 2023	<u>\$ 6,075,000</u>	<u>\$ 3,565,001</u>

Related Party Transactions

Effective March 12, 2020, the Company entered into two separate line of credit agreements with related parties, Mr. Neil Leibman (the “Leibman Line”) and LaRose Holdings LLLP (the “LaRose Line”). Mr. Leibman is an officer of the Company and serves on the Company’s board of directors. LaRose Holdings LLLP is an entity controlled by Al LaRose, Jr. who served on the Company’s board of directors until his resignation on October 30, 2020. The terms for each line of credit agreement allow the Company to borrow a maximum principal amount of \$1,000,000 to be used by the Company for working capital and other purposes determined by the board of directors of the Company. During the term of each line, Mr. Leibman or Mr. LaRose may make periodic loans as requested by the Company so long as the aggregate principal amount outstanding at any time does not exceed the maximum amount of each line. Simple interest accrues on the unpaid principal balance outstanding under the Leibman Lines at the rate of 5% per annum and interest calculates on the basis of a 365-day year. Any unpaid principal and all accrued but unpaid interest is due and payable in full by the Company no later than May 15, 2023. For the years ended December 31, 2023 and 2022, the interest incurred on related party lines of credit was \$0 and \$0, respectively. As of December 31, 2023 and December 31, 2022, the outstanding amounts on the Leibman Line was \$0 and \$0, respectively (See Note 23).

During the year ended December 31, 2023, Neil Liebman who is the Chief Executive Officer of the Company and serves on the Company’s board of directors, advanced the Company \$2,750,000. As of December 31, 2023, the Company had paid back Neil Leibman the amount of \$1,981,000 and the outstanding amount due from the Company to Neil Leibman was \$769,000. For the year ended December 31, 2023, the Company accrued interest on the advances from Neil Leibman in the amount of \$122,260 at an interest rate of 12.5% (See Note 24).

On March 14, 2023, the Company entered into a Master Revolving Note (the “Comerica Bank Note”) with Comerica Bank in the amount of \$8,000,000 with maturity date of May 1, 2024, and bearing an interest rate of the Secured Overnight Financing Rate (“SOFR”) plus 2.5% per annum. On June 7, 2023, the Company drew \$8,000,000 on the Comerica Bank Note (See Note 8). Four members of the Company’s Board of Directors, Stuart Gaylor, Andrew Bursten, Tom O’Leary and Neil Leibman (Mr. Leibman is also Chief Executive Officer of the Company) collectively agreed to personally guarantee the Note. The Company agreed to pay interest to the four individuals with the issuance of the Company’s common stock depending

on the outstanding balance due and owing under the Note. For the year ended December 31, 2023, the Company accrued \$554,666 in compensation expense for the personal loan guarantee and issued 369,775 shares of common stock of the Company to the four guarantors as payment (*See* Note 25).

Neil Leibman and Tom O’Leary who are partners in Pinnacle Power, LLC (“Pinnacle”) both serve on the Company’s board of directors, and Mr. Leibman is the Chief Executive Officer of the Company. During the year ended December 31, 2022, the Company paid the Renewable Energy Credits (“RECS”) on behalf of Pinnacle Power, LLC (“Pinnacle”) in the amount of \$50,538 and the Company provided \$62,732 of back-office services to Pinnacle. Effective January 1, 2023, the Company’s subsidiary, Summer Midwest, entered into a Services Agreement with Pinnacle. Summer Midwest is to provide billing, collections, back-office service including supply and scheduling services, customer service and accounting services on behalf of Pinnacle in exchange for a fee of \$6,000 per month. The Company has recorded services revenue from Pinnacle totaling \$72,000 during the year ended December 31, 2023. On June 15, 2023, Pinnacle reimbursed the Company the \$50,538. At December 31, 2023 and 2022, accounts receivable from Pinnacle to the Company was in the amount of \$660,146 and 113,270, respectively, which is included in the related party accounts receivable in the balance sheet (*See* Note 26).

Neil Leibman and Tom O’Leary who are partners in Horizon Power and Light, LLC (“HPL”) both serve on the Company’s board of directors and Mr. Leibman is the Chief Executive Officer of the Company. During the year ended December 31, 2023, the Company advanced a total of \$1,900,000 to HPL to cover margin calls received by HPL by its wholesale electric provider, Renewable Energy Credits (“RECS”) of HPL in the amount of \$170,894 and \$385,517 for other operating expenses of HPL. The Company has been repaid by HPL in the amount of \$1,400,000. On December 16, 2022, the Company provided credit support to HPL in order for HPL to secure a letter of credit in the amount of \$858,000. As of December 31, 2023, the credit support to HPL has been released and is no longer outstanding. As of December 31, 2023, the net due to the Company by HPL totaled \$1,056,411 which is included in the related party accounts receivable in the balance sheet (*See* Note 27).

On January 4, 2024, HPL reimbursed the Company for advances in the amount of \$71,000 (*See* Note 27).

On January 22, 2024, the Company advanced HPL \$46,000 for operating expenses (*See* Note 27).

On January 22, 2024, the Company reimbursed \$500,000 to Neil Leibman for his advance (*See* Note 24).

On January 24, 2024, HPL reimbursed the company \$500,000 for advances in the amount of \$500,000 (*See* Note 27).

On January 25, 2024, the Company reimbursed \$269,000 to Neil Leibman for his advance and paid Mr. Leibman \$128,746 in accrued interest (*See* Note 24).

On January 31, 2024, the Company advanced HPL \$113,712 for operating expenses (*See* Note 27).

Contractual Obligations, Contingent Liabilities and Commitments

Beginning December 1, 2017, the Company procured approximately 20,073 square feet of office space on the 37th floor of 5847 San Felipe, Houston, Texas, pursuant to a sublease agreement dated October 13, 2017 with ENSCO International Incorporated (“Sublandlord”) for a term beginning on December 1, 2017 and terminating on December 31, 2025. The base rent payments are approximately \$15,900 per month during

the term of the sublease agreement. The Company is also responsible for 12.08% of the operating expenses, utilities and taxes charged to the Sublandlord.

On December 23, 2020, the sublease agreement with the Sublandlord was terminated, and concurrently, the Company entered into a Commercial Lease Agreement (the “Lease”) with PKY-SAN Felipe Plaza, L.P. (“PKY”) for such same office space. The term of the Lease with PKY begins on November 1, 2020 and terminates on October 31, 2023. Pursuant to the Lease with PKY, the Company will pay rent of \$15,891 per month and is also responsible for 2.047% of the operating expenses, utilities and taxes.

On April 6, 2023, the company entered into a First Amendment to extend the lease for an additional period of five (5) years commencing on November 1, 2023 and continuing through October 31, 2028. The base rent under the amended lease from and after the effective date shall be all follows:

Period	Annual Base Rent	Monthly Installments
November 1, 2023 – October 31, 2024	\$ 351,278	\$ 29,273
November 1, 2024 — October 31, 2025	\$ 361,314	\$ 30,110
November 1, 2025 — October 31, 2026	\$ 371,351	\$ 30,946
November 1, 2026 — October 31, 2027	\$ 381,387	\$ 31,782
November 1, 2072 — October 31, 2028	\$ 391,424	\$ 32,619

Critical Accounting Policies and Estimates

Management’s discussion and analysis of the Company’s financial condition and consolidated results of operations are based upon the Company’s consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States (“U.S. GAAP”). The preparation of these financial statements requires the Company’s management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. The Company’s estimates are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for the Company’s conclusions. The Company continually evaluates the information used to make these estimates as its business and the economic environment change. The Company’s management believes that certain estimates, assumptions and judgments derived from the accounting policies have a significant impact on its consolidated financial statements, so the Company considers the following to be its critical accounting policies.

Revenue and Cost Recognition

Our revenues are primarily derived from the sale of electricity to residential and small commercial customers. Revenues for sales of electricity are recognized under the accrual method of accounting.

Direct energy costs are recorded when the electricity is delivered to the customer’s meter.

Cost of goods sold (“COGS”) within the Texas market include electric power purchased and pass-through charges from the transmission and distribution service providers (“TDSPs”) in the areas serviced by the Company. TDSP charges are costs for metering services and maintenance of the electric grid. TDSP charges are established by regulation of the PUCT. COGS within the Independent System Operator (“ISO”) for the New England market is comprised of wholesale costs based upon the wholesale power tariff rate for volumes purchased during the delivery month and scheduling fees. Summer Midwest began flowing

electricity within the Pennsylvania, Jersey, Maryland Power Pool (“PJM”) market in July 2019, and the COGS for the PJM market is comprised of wholesale costs based upon the wholesale power tariff for volumes purchased during the delivery month as well as scheduling fees.

The energy portion of our COGS is comprised of two components: bilateral wholesale costs and balancing/ancillary costs. These two cost components are incurred and recognized differently as follows:

Bilateral wholesale costs are incurred through contractual arrangements with wholesale power suppliers for firm delivery of power at a fixed volume and fixed price. We are invoiced for these wholesale volumes at the end of each calendar month for the volumes purchased for delivery during the month, with payment due 20 days after the end of the month.

Balancing/ancillary costs are based on the customer load and are determined by the Electric Reliability Council of Texas (“ERCOT”), ISO New England and PJM through a multiple step settlement process. Balancing costs/revenues are related to the differential between supply that we provided through our bilateral wholesale supply and the supply required to serve our customer load. The Company endeavors to minimize the amount of balancing/ancillary costs through our load forecasting and forward purchasing programs.

Stock-Based Compensation

Stock-based awards granted to employees are measured at the grant date based on the fair value of the award and recognized as expense over the requisite service or performance period, which is the vesting period.

Stock options and warrants issued to consultants and other non-employees as compensation for services to be provided to us are accounted for based upon the fair value of the services provided or the estimated fair value of the option or warrant, whichever can be more clearly determined. We currently use the Black-Scholes option-pricing model to determine the fair value of stock options. The determination of the fair value of stock-based payment awards on the date of grant using an option-pricing model is affected by our stock price as well as assumptions regarding a number of complex and subjective variables. These variables include our expected stock price volatility over the term of the awards, the expected term of the award, the risk-free interest rate and any expected dividends. Compensation cost associated with grants of restricted stock units are also measured at fair value. We evaluate the assumptions used to value restricted stock units on a quarterly basis. When factors change, including the market price of the stock, share-based compensation expense may differ significantly from what has been recorded in the past. The Company estimates forfeitures at the date of grant and revises the estimates, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

If there are any modifications or cancellations of the underlying unvested securities, we may be required to accelerate, increase or cancel any remaining unearned share-based compensation expense.

Income Taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the period in which those temporary differences are expected to be recovered or settled. The effect on deferred income tax assets and liabilities of a change in tax rates is recognized in income tax expense in the period that includes the enactment date.

The Company recognizes the effect of income tax positions only if those positions are more likely than not of being sustained. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs. The Company records interest related to unrecognized tax benefits and penalties in income tax expense.

Advertising Costs

The Company expenses advertising costs as incurred and such costs are included in the operating expenses on the consolidated statements of operations. For the years ended December 31, 2023 and 2022, advertising costs were \$119,643 and \$201,859, respectively.

New Customer Implementation Costs

We ordinarily incur additional costs to implement our services for new customers. These costs are comprised primarily of additional labor and support. These costs are expensed as incurred and have a negative impact on our statements of operations and cash flows during the implementation phase. We attempt to maintain a disciplined approach to customer implementation costs since these costs influence our profitability. We do not capitalize new customer implementation costs as such costs are typically associated with contracts that are less than one year in duration.

Warrants

The Company's common stock warrants are measured at fair value using the Black-Scholes valuation model, which takes into account, as of the measurement date, factors including the current exercise price, the term of the instrument, the current price of the underlying stock and its expected volatility, expected dividends on the stock and the risk-free interest rate for the term of the item.

Concentration of Credit Risk

The Company maintains its cash in demand deposit accounts or "noninterest-bearing transaction accounts" which, at times, may exceed federally insured limits. The Company's management periodically assesses the financial stability of these banks. The Company has not experienced any losses on such accounts.

Intangibles or Long-lived assets

The Company periodically evaluates the carrying value of definite-lived intangibles when events or changes in circumstances indicate that the carrying value may not be recoverable. Factors the Company considers important that could trigger an impairment review include, but are not limited to, significant under-performance relative to historical or projected future operating results, significant changes in the manner of its use of acquired assets or its overall business strategy, and significant industry or economic trends.

When the Company determines that the carrying value of a long-lived asset may not be recoverable based upon the existence of one or more of the above indicators, the Company determines the recoverability by comparing the carrying amount of the asset to net future undiscounted cash flows that the asset is expected to generate and recognizes an impairment charge equal to the amount by which the carrying amount exceeds the fair market value of the asset.

If the Company's revenues or other estimated operating results are not achieved at or above our forecasted level, and the Company is unable to recover such costs through price increases, the carrying value of certain of the Company's assets may prove to be unrecoverable and we may incur impairment charges of definitive-

live intangible assets. The Company recorded no impairment loss for definite-lived intangible assets during the years ended December 31, 2023 or 2022.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

Cash and Restricted Cash

The Company considers all short-term investments with an original maturity of three months or less to be cash equivalents. There were no such investments at December 31, 2023 or 2022.

Restricted cash represents funds held in escrow for customer deposits, funds held in a controlled account by the wholesale provider (*See* Note 12) and funds securing irrevocable stand-by letters of credit.

	<u>December 31, 2023</u>		<u>December 31, 2022</u>
Cash	\$ 814,543	\$	2,205,050
Restricted cash:			
Segregated customer deposit funds	1,108,594		1,145,588
Segregated prepaid customer deposits	838,693		0
Funds securing letters of credit	0		1,608,000
Funds controlled by wholesale provider	<u>3,373,835</u>		<u>244,040</u>
Total restricted cash	5,321,122		2,997,628
	<u></u>		<u></u>
Total cash and restricted cash	<u>\$ 6,135,665</u>	\$	<u>5,202,678</u>

Accounts Receivable and Unbilled Revenue

Account receivables are comprised of trade receivables and unbilled receivables (accrued revenue). Customers are billed monthly in cycles having billing dates that do not generally coincide with the end of a calendar month. This results in customers having received electricity that they have not been billed for as of month end. Therefore, at the end of each calendar month, revenue is accrued to unbilled receivables based on the estimated amount of power delivered to customers using the flow technique. Unbilled revenue also includes accruals for estimated TDSP charges and monthly service charges applicable to the estimated electricity usage for the period. All charges that were physically billed in the calendar month are recorded from the unbilled account to the customer's receivable account.

Property and Equipment

Property and equipment are stated at cost and depreciated on a straight-line basis over the following estimated useful lives:

	Estimated Lives
Computer software	3 years
Computer hardware	3 years
Furniture and fixtures	5 years
Leasehold improvements	5 years
Website	3 years

Expenditures for additions, major renewals and betterments are capitalized, and expenditures for maintenance and repairs are charged against income as incurred. When property and equipment are retired or otherwise disposed of, the related cost and accumulated depreciation are removed from the accounts, and any resulting gain or loss is reflected in results of operations.

Deferred Financing Costs

The Company capitalized costs related to financing from Digital Lending Services US Corp in the amount of \$522,276 to be amortized over a three-year period ending March, 2023 (*See* Note 8). In March 2023, the Company extended the loan until November 11, 2023 for an amendment fee of \$210,000 and to extend the term of the warrant through November 11, 2025. Amortization of deferred financing costs related to Digital Lending Services US Corp for the year ended December 31, 2023 and 2022 was \$240,348 and \$174,092, respectively, and the remaining unamortized deferred financing costs as of December 31, 2023 and 2022 was \$3,331 and \$29,015, respectively.

In July 2022, the Company paid \$50,000 to Engie Energy Marketing NA, Inc. (“Engie”) as a reservation fee associated with a potential future transaction. The Reservation fee was funded back to the Company in June 2023 when the Company closed the transaction for Engie to become its wholesale electric provided (*See* Note 12).

Derivative Instruments

The Company’s business operations require entering into physically-settled commodity contracts that meets the definition of a derivative. The Company has elected “normal purchases and normal sales” exception, which is a term specific to ASC 815-10-15-22. When the contract satisfies certain criteria, including a requirement that physical delivery of the underlying commodity is probable and is expected to be used in normal course of business. Retail revenues and retail cost of revenues resulting from deliveries of commodities under normal purchase contracts and normal sales contracts are included in earnings at the time of contract settlement.

Fair Value of Financial Instruments

The carrying amounts reported in the consolidated balance sheets for cash, accounts receivable, accounts payable and accrued expenses approximate fair value because of the immediate or short-term maturity of these financial instruments. None of these instruments are held for trading purposes.

The recorded value of short-term and long-term debt approximates the fair value as the interest rate approximates market interest rates.

PART E - ISSUANCE HISTORY

Item 16. List of securities offerings and shares issued for services in the past two years.

The following table sets forth information about options to acquire shares of Summer Energy Holdings, Inc. stock, warrants issued and common shares issued:

Year 2023	Security Type	Number Issued	Option Price or Stock Price Per Share	Issuance Type or Trading Status	Legend Yes/No
<i>Nonqualified Stock Options Award Outside of a Stock Option or Stock Award Plan</i>					
March, 2023	Board of Director Compensation	45,000	\$ 1.50	Restricted	Yes
June, 2023	Board of Director Compensation	45,000	\$ 1.50	Restricted	Yes
<i>2023 Stock Option and Stock Award Plan</i>					
June, 2023	Board of Director Compensation	62,500	\$ 1.50	Restricted	Yes
June, 2023	Executive Compensation	100,000	\$ 1.50	Restricted	Yes
July, 2023	Executive Compensation	75,000	\$ 0.01	Restricted	Yes
September, 2023	Board of Director Compensation	45,000	\$ 1.50	Restricted	Yes
December, 2023	Board of Director Compensation	45,000	\$ 1.50	Restricted	Yes
<i>Warrants</i>					
January, 2023	Warrants Issued as Broker Commission	3	\$ 1.50	Restricted	Yes
July, 2023	Warrants Issued as Broker Commission	2	\$ 1.50	Restricted	Yes
Year 2022	Security Type	Number Issued	Option Price or Stock Price Per Share	Issuance Type or Trading Status	Legend Yes/No
<i>Nonqualified Stock Options Award Outside of a Stock Option or Stock Award Plan</i>					
February, 2022	Executive Compensation	30,000	\$ 1.50	Restricted	Yes
March, 2022	Board of Director Compensation	45,000	\$ 1.50	Restricted	Yes
June, 2022	Executive Compensation	250,000	\$ 1.00	Restricted	Yes
June, 2022	Board of Director Compensation	45,000	\$ 1.50	Restricted	Yes
September, 2022	Board of Director Compensation	45,000	\$ 1.50	Restricted	Yes
December, 2022	Board of Director Compensation	45,000	\$ 1.50	Restricted	Yes
<i>2018 Stock Option and Stock Award Plan</i>					
October, 2022	Employee Incentive Stock Option	5,000	\$ 2.50	Restricted	Yes
December, 2022	Executive Compensation	30,000	\$ 1.50	Restricted	Yes
<i>2015 Stock Option and Stock Award Plan</i>					
November, 2022	Employee Incentive Stock Options	5,000	\$ 1.50	Restricted	Yes
<i>Warrants</i>					
January, 2022	Warrants Issued as Broker Commission	5	\$ 1.50	Restricted	Yes
May, 2022	Warrant Issued as consulting compensation	100,000	\$ 2.00	Restricted	Yes
July, 2022	Warrants Issued as Broker Commission	4	\$ 1.50	Restricted	Yes

Promissory Notes, Convertible Notes, Convertible Debentures: None.

PART F - EXHIBITS

The following exhibits must be either described in or attached to the disclosure statement:

Item 17. Material Contracts.

The following is a list of all contracts which the Company is a party to, and which currently can reasonable be regarded as material to a security holder of the Company as of the date of this Annual Report.

Exhibit No.	Description
10.1	2012 Stock Option and Stock Award Plan, incorporated by reference to Exhibit 10.6 to our Form 8-K filed with the United States Security and Exchange Commission on March 30, 2012
10.2	2015 Stock Option and Stock Award Plan, incorporated by reference to Annex A to the Company's Definitive Proxy Statement on Schedule 14A, filed with the United States Security and Exchange Commission with the Commission on April 29, 2015.
10.3	2018 Stock Option and Stock Award Plan, incorporated by reference to Annex A to the Company's Definitive Proxy Statement on Schedule 14A, filed with the United States Security and Exchange Commission on April 25, 2018.
10.4	2023 Stock Option and Stock Award Plan (previously filed as an exhibit to the Company's quarterly report for the quarter ended March 31, 2023).
10.5	Form of Indemnification Agreement for Officers and Directors, incorporated by reference to Exhibit 10.1 to our Form S-8 filed with the United States Security and Exchange Commission on December 6, 2012
10.6	Executive Employment Agreement, effective January 1, 2021, by and between Summer Energy Holdings, Inc., and Neil M. Leibman.
10.7	Employment Agreement, effective January 1, 2021, by and between Summer Energy Holdings, Inc., and Jaleea P. George.
10.8	First Amendment to Employment Agreement between Summer Energy Holdings, Inc., and Neil Leibman, dated effective January 1, 2022.
10.9	First Amendment to Employment Agreement between Summer Energy Holdings, Inc., and Jaleea George, dated effective January 1, 2022.
10.10	Employment Agreement between Summer Energy Holdings, Inc. and Travis Andrews dated as of July 1, 2017, incorporated by reference to Exhibit 10.1 to our Quarterly Report on Form 10-Q filed with the United States Security and Exchange Commission on November 14, 2019.
10.11	First Amendment to Employment Agreement between Summer Energy Holdings, Inc. and Travis Andrews dated as of August 27, 2019, incorporated by reference to Exhibit 10.2 to our Quarterly Report on Form 10-Q filed with the United States Security and Exchange Commission on November 14, 2019.
10.12	Employment Agreement dated June 7, 2023, between Summer Energy Holdings, Inc., and Stephen Madden (previously filed as an exhibit to the Company's quarterly report for the quarter ended March 31, 2023).
10.13	Sublease Agreement, dated October 13, 2017, by and between Summer Energy Holdings, Inc. and ENSCO International Incorporated, incorporated by reference to Exhibit 10.1 to our Form 8-K filed with the United States Security and Exchange Commission on November 7, 2017.
10.14	ISDA Master Agreement and Schedule thereto between Summer Energy Northeast, LLC and EDF Energy Services, LLC, dated as of February 21, 2018, incorporated by reference to Exhibit 10.2 to our Form 8-K filed with the United States Security and Exchange Commission on February 23, 2018.

10.15	ISDA Credit Support Annex between Summer Energy Northeast, LLC and EDF Energy Services, LLC, dated as of February 21, 2018, incorporated by reference to Exhibit 10.3 to our Form 8-K filed with the United States Security and Exchange Commission on February 23, 2018.
10.16	Security Agreement between Summer Energy Northeast, LLC and EDF Energy Services, LLC, dated as of February 21, 2018, incorporated by reference to Exhibit 10.4 to our Form 8-K filed with the United States Security and Exchange Commission on February 23, 2018.
10.17	Guaranty of Summer Energy Holdings, Inc. in favor of EDF Energy Services, LLC dated as of February 21, 2018, incorporated by reference to Exhibit 10.5 to our Form 8-K filed with the United States Security and Exchange Commission on February 23, 2018
10.18	Energy Services Agreement by and among Summer Energy, LLC, Summer Energy Northeast, LLC, EDF Trading North America, LLC and EDF Energy Services, LLC dated as of May 1, 2018. Portions of this exhibit were redacted pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, incorporated by reference to Exhibit 10.1 to our Form 10-Q filed with the United States Security and Exchange Commission on August 14, 2018.
10.19	ISDA Master Agreement, Power Annex to ISDA Master Agreement Schedule to ISDA Master Agreement and Credit Support Annex thereto, by and among Summer Energy, LLC, Summer Energy Northeast, LLC and EDF Trading North America, LLC dated as of May 1, 2018, incorporated by reference to Exhibit 10.2 to our Form 10-Q filed with the United States Security and Exchange Commission on August 14, 2018.
10.20	Security Agreement by and among Summer Energy, LLC, Summer Energy Northeast, LLC, EDF Trading North America, LLC and EDF Energy Services, LLC dated as of May 1, 2018, incorporated by reference to Exhibit 10.3 to our Form 10-Q filed with the United States Security and Exchange Commission on August 14, 2018.
10.21	Pledge Agreement made by Summer Energy Holdings, Inc. in favor of EDF Trading North America, LLC and EDF Energy Services, LLC dated as of May 1, 2018, incorporated by reference to Exhibit 10.4 to our Form 10-Q filed with the United States Security and Exchange Commission on August 14, 2018
10.22	Guaranty made by Summer Energy Holdings, Inc. in favor of EDF Trading North America, LLC and EDF Energy Services, LLC dated as of May 1, 2018, incorporated by reference to Exhibit 10.5 to our Form 10-Q filed with the United States Security and Exchange Commission on August 14, 2018.
10.23	Amended and Restated Energy Services Agreement among EDF Trading North America, LLC, Summer Energy, LLC, Summer Energy Northeast, LLC and Summer Energy Midwest, LLC, dated as of June 19, 2019, incorporated by reference to Exhibit 10.1 to our Quarterly Report on Form 10-Q filed with the United States Security and Exchange Commission on August 14, 2019.
10.24	First Amendment to Amended and Restated Energy Services Agreement among EDF Trading North America LLC, Summer Energy, LLC, Summer Energy Northeast, LLC and Summer Energy Midwest, LLC, dated effective June 22, 2022.
10.25	Second Amendment to Amended and Restated Energy Services Agreement among EDF Trading North America LLC, Summer Energy, LLC, Summer Energy Northeast, LLC and Summer Energy Midwest, LLC, dated effective August 23, 2022.
10.26	Third Amendment to Amended and Restated Energy Services Agreement among EDF Trading North America LLC, Summer Energy, LLC, Summer Energy Northeast, LLC and Summer Energy Midwest, LLC, dated effective September 23, 2022.
10.27	Fourth Amendment to Amended and Restated Energy Services Agreement among EDF Trading North America LLC, Summer Energy, LLC, Summer Energy Northeast, LLC and Summer Energy Midwest, LLC, dated effective October 25, 2022.
10.28	Fifth Amendment to Amended and Restated Energy Services Agreement among EDF Trading North America LLC, Summer Energy, LLC, Summer Energy Northeast, LLC and Summer Energy Midwest, LLC, dated effective November 30, 2022.

10.29	Sixth Amendment to Amended and Restated Energy Services Agreement among EDF Trading North America LLC, Summer Energy, LLC, Summer Energy Northeast, LLC and Summer Energy Midwest, LLC, dated effective December 29, 2022.
10.30	Seventh Amendment to Amended and Restated Energy Services Agreement among EDF Trading North America LLC, Summer Energy, LLC, Summer Energy Northeast, LLC and Summer Energy Midwest, LLC, dated effective January 31, 2023.
10.31	Eighth Amendment to Amended and Restated Energy Services Agreement among EDF Trading North America LLC, Summer Energy, LLC, Summer Energy Northeast, LLC and Summer Energy Midwest, LLC, dated effective February 28, 2023.
10.32	Ninth Amendment to Amended and Restated Energy Services Agreement among EDF Trading North America LLC, Summer Energy, LLC, Summer Energy Northeast, LLC and Summer Energy Midwest, LLC, dated effective March 31, 2023.
10.33	Tenth Amendment to Amended and Restated Energy Services Agreement among EDF Trading North America LLC, Summer Energy, LLC, Summer Energy Northeast, LLC and Summer Energy Midwest, LLC, dated effective April 30, 2023 (previously filed as an exhibit to the Company's quarterly report for the quarter ended March 31, 2023).
10.34	Amendment to ISDA Master Agreement among EDF Trading North America LLC, Summer Energy, LLC, Summer Energy Northeast, LLC and Summer Energy Midwest, LLC, dated as of June 19, 2019, incorporated by reference to Exhibit 10.2 to our Quarterly Report on Form 10-Q filed with the United States Security and Exchange Commission on August 14, 2019.
10.35	Omnibus Amendment to Pledge Agreement and Security Agreement and Joinder among EDF Trading North America LLC, Summer Energy, LLC, Summer Energy Northeast, LLC and Summer Energy Midwest, LLC, dated as of June 19, 2019, incorporated by reference to Exhibit 10.3 to our Quarterly Report on Form 10-Q filed with the United States Security and Exchange Commission on August 14, 2019.
10.36	Amended and Restated Guaranty of Summer Energy Holdings, Inc. in favor of EDF Trading North America, LLC dated as of June 19, 2019, incorporated by reference to Exhibit 10.4 to our Quarterly Report on Form 10-Q filed with the United States Security and Exchange Commission on August 14, 2019.
10.37	Letter Agreement and Extension of Amended and Restated Energy Services Agreement among EDF Trading North America LLC, Summer Energy, LLC, Summer Energy Northeast, LLC and Summer Energy Midwest, LLC, dated March 10, 2022.
10.38	Sublease Agreement between Summer Energy Northeast, LLC (formerly REP Energy, LLC) and PDS Management Group, LLC dated October 31, 2017, incorporated by reference to Exhibit 10.38 to our Annual Report on Form 10-K filed with the United States Security and Exchange Commission on March 29, 2018.
10.39	Services Agreement between Summer Energy Midwest, LLC and Pinnacle Power, LLC, dated January 1, 2023.
10.40	First Amendment to Lease by and among SF Plaza, LLC and Summer Energy Holdings, Inc., dated April 6, 2023 (previously filed as an exhibit to the Company's quarterly report for the quarter ended March 31, 2023).
10.41	Premium Finance Agreement by and among IPFS Corporation and Summer Energy Holdings, Inc., dated May 4, 2023 (previously filed as an exhibit to the Company's quarterly report for the quarter ended March 31, 2023).
10.42	Borrowing Base Facility Agreement by and among Summer Energy Holdings, Inc., and Engie Energy Marketing NA, Inc., dated June 7, 2023 (previously filed as an exhibit to the Company's quarterly report for the quarter ended March 31, 2023).
10.43	ISDA Master Agreement by and among Summer Energy Holdings, Inc., and Engie Energy Marketing NA, Inc., dated April 11, 2023 (previously filed as an exhibit to the Company's quarterly report for the quarter ended March 31, 2023).
10.44	Security Agreement and Pledge Agreement by Summer Energy Holdings, Inc., in favor of Engie Energy Marketing NA, Inc. dated June 7, 2023 (previously filed as an exhibit to the Company's quarterly report for the quarter ended March 31, 2023).

10.45	Guaranty by Summer Energy Holdings, Inc., in favor of Engie Energy Marketing NA, Inc., dated June 7, 2023 (previously filed as an exhibit to the Company's quarterly report for the quarter ended March 31, 2023).
10.46	Novation Agreement by and among Summer Energy Holdings, Inc., Engie Energy Marketing NA, Inc., and EDF Trading North America, LLC, dated June 7, 2023 (previously filed as an exhibit to the Company's quarterly report for the quarter ended March 31, 2023).
10.47	Transition Agreement by and among Summer Energy Holdings, Inc., Summer Energy, LLC, Summer Energy Midwest, LLC, Summer Energy Northeast, LLC, Engie Energy Marketing NA, Inc., and EDF Trading North America, LLC, dated June 7, 2023 (previously filed as an exhibit to the Company's quarterly report for the quarter ended June 30, 2023).
10.48	Omnibus Amendment No. 1 by and among Summer Energy, LLC, Summer Energy Holdings, Inc., and Digital Lending Services US Corp., dated as of March 10, 2023 (previously filed as an exhibit to the Company's quarterly report for the quarter ended March 31, 2023).
10.49	Letter Agreement dated March 10, 2023, by and among Summer Energy, LLC, Summer Energy Holdings, Inc., and Digital Lending Services US Corp. (previously filed as an exhibit to the Company's quarterly report for the quarter ended March 31, 2023).
10.50	Master Revolving Note by Summer Energy Holdings, Inc., in favor of Comerica Bank, dated March 14, 2023 (previously filed as an exhibit to the Company's quarterly report for the quarter ended March 31, 2023).
10.51*+	Asset Purchase Agreement by and between US Retailers LLC and Summer Energy, LLC
10.52*	First Amendment to Borrowing Base Facility Agreement by and among Summer Energy, LLC, Summer Energy Midwest, LLC, and ENGIE Energy Marketing NA, Inc., dated February 22, 2024.

* Filed herewith.

+ Portions of this exhibit have been omitted or redacted for confidentiality purposes.

Item 18. Articles of Incorporation and Bylaws.

The Company's Articles of Incorporation and Bylaws, have been included in the Company's previous filings with the SEC as set forth below, and are herein incorporated by reference. There have been no amendments to the Certificate of Incorporation or the Bylaws since those previously filed with the SEC.

Articles of Incorporation of the Company dated March 25, 2005, incorporated by reference to Exhibit 3.1 to our Registration Statement on Form SB-2 filed with the United States Securities and Exchange Commission on July 16, 2007.

Certificate of Amendment to Articles of Incorporation filed with the Nevada Secretary of State effective March 27, 2012, incorporated by reference to Exhibit 3.1 to our Form 8-K filed with the United States Securities and Exchange Commission on March 30, 2012.

Amended and Restated Bylaws of the Company, incorporated by reference to Exhibit 3.2 to our Form 8-K filed with the United States Securities and Exchange Commission on March 30, 2012

Item 19. Purchases of Equity Securities by the Issuer and Affiliated Purchasers.

There were no purchases of equity securities by the Company or Affiliated Purchasers as defined in Item 19 of the OTC Disclosure Guidelines during fiscal 2023.

Item 20. Issuer's Certifications.

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Neil Leibman, certify that:

1. I have reviewed this annual disclosure statement of Summer Energy Holdings, Inc.;
2. Based on my knowledge, this disclosure statement does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this disclosure statement; and
3. Based on my knowledge, the financial statements, and other financial information included or incorporated by reference in this disclosure statement, fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of, and for, the period presented in this disclosure statement.

Date: April 16, 2024

By: /s/ Neil Leibman
Neil Leibman
Chief Executive Office

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Jaleea George, certify that:

1. I have reviewed this annual disclosure statement of Summer Energy Holdings, Inc.;
2. Based on my knowledge, this disclosure statement does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this disclosure statement; and
3. Based on my knowledge, the financial statements, and other financial information included or incorporated by reference in this disclosure statement, fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of, and for, the period presented in this disclosure statement.

Date: April 16, 2024

By: /s/ Jaleea George
Jaleea George
Chief Financial Officer

SUMMER ENERGY HOLDINGS, INC.
INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

The following consolidated financial statements are filed as part of this report:

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Independent Auditors' Report

To the Board of Directors and Stockholders of
Summer Energy Holdings, Inc.

Opinion

We have audited the consolidated financial statements of Summer Energy Holdings, Inc., which comprise the consolidated balance sheets as of December 31, 2023 and 2022, and the related consolidated statements of operations, changes in stockholders' equity, and cash flows for the years then ended, and the related notes to the consolidated financial statements.

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the consolidated financial position of Summer Energy Holdings, Inc. as of December 31, 2023 and 2022, and the results of its consolidated operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of Summer Energy Holdings, Inc. and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Substantial Doubt About the Entity's Ability to Continue as a Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the consolidated financial statements, the Company's debt is in default and callable by the lender at its sole discretion which has created substantial doubt about the Company's ability to continue as a going concern. Management's evaluation of the events and conditions and management's plans regarding these matters are also described in Note 2. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. Our conclusion is not modified with respect to this matter.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Summer Energy Holdings, Inc.'s ability to continue as a going concern for one year after the date that the financial statements are issued.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Summer Energy Holdings, Inc.'s internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Summer Energy Holdings, Inc.'s ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audits.

PWR CPA, LLP

Houston, Texas

April 16, 2024

SUMMER ENERGY HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET

	December 31, 2023	December 31, 2022
ASSETS		
Current assets:		
Cash	\$ 814,543	\$ 2,205,050
Restricted cash	5,321,122	2,997,628
Accounts receivables, net	79,692,438	74,855,225
Related party account receivable	1,716,557	113,270
Brazos Settlement Receivable	-	1,498,666
Other receivable	465,662	
Prepaid and other current assets	3,500,895	7,137,870
Total current assets	91,511,217	88,807,709
Property and equipment, net	66,293	127,176
Deferred financing cost, net	3,331	79,015
Operating lease right-of-use assets, net	1,456,997	160,707
Total assets	\$ 93,037,838	\$ 89,174,607
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 3,358,458	\$ 2,819,107
Accrued wholesale power purchased	44,856,427	52,327,001
Accrued transportation and distribution charges	12,213,033	12,881,572
Accrued sales and use tax audit liability	250,000	500,000
Accrued expenses	6,917,217	5,432,235
Related party loan	769,000	-
Current-portion operating lease obligation	224,040	160,707
Current-portion of obligations	19,626,188	14,186,006
Total current liabilities	88,214,363	88,306,628
Long-term liabilities:		
Long-term obligations, net of current portion	1,315,461	-
Total liabilities	89,529,824	88,306,628
Commitments and contingencies		
Stockholders' equity:		
Common stock - \$.001 par value, 100,000,000 shares authorized, 32,752,176 and 32,307,298 shares issued and outstanding at December 31, 2023 and 2022, respectively		
	32,752	32,307
Subscription receivable	(52,000)	(52,000)
Additional paid-in capital	35,273,156	34,496,582
Accumulated deficit	(31,745,894)	(33,608,910)
Total stockholders' equity	3,508,014	867,979
Total liabilities and stockholders' equity	\$ 93,037,838	\$ 89,174,607

See accompanying notes to the consolidated financial statements.

SUMMER ENERGY HOLDINGS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS

	<u>2023</u>	<u>2022</u>
Revenue	\$ 300,383,879	\$ 293,812,369
Cost of goods sold		
Power purchases and balancing/ancillary	161,607,758	167,354,489
Transportation and distribution providers charge	103,890,113	103,919,011
Total cost of goods sold	<u>265,497,871</u>	<u>271,273,500</u>
Gross profit	<u>34,886,008</u>	<u>22,538,869</u>
Operating expenses	26,320,382	31,422,557
Operating (loss) income	<u>8,565,626</u>	<u>(8,883,688)</u>
Other income (expense)		
Sales and use tax audit expense	700,000	1,178,985
Financing costs	(240,348)	(174,092)
Interest expense, net	(6,188,792)	(6,661,502)
Discount of receivable from Brazos Electric settlement	<u>(490,676)</u>	<u>-</u>
Total other expense	<u>(6,219,816)</u>	<u>(5,656,609)</u>
Net (loss) income before income tax	<u>2,345,810</u>	<u>(14,540,297)</u>
Income tax expense		
Federal income tax	230,228	(10,730)
State income tax	<u>252,566</u>	<u>143,000</u>
Income tax expense	<u>482,794</u>	<u>132,270</u>
Net (loss) income	<u>\$ 1,863,016</u>	<u>\$ (14,672,567)</u>

See accompanying notes to the consolidated financial statements.

SUMMER ENERGY HOLDINGS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

Years Ended December 31, 2023 and 2022

	Common Stock		Subscription		Additional paid in		Accumulated	Total
	Shares	Amount	Receivable		Capital		Deficit	
Balance at December 31, 2021	32,307,398	\$ 32,307	\$ (52,000)	\$	33,913,875	\$	(18,936,343)	\$ 14,957,839
Issuance of warrants	-	-	-		100,009		-	100,009
Vesting of stock options and restricted shares associated with the 2018 Stock Option and Award plan	-	-	-		20,000		-	20,000
Vesting of stock options and restricted shares associated with the 2015 Stock Option and Award plan	-	-	-		4,795		-	4,795
Vesting of stock options and restricted shares outside of stock option and award plans	-	-	-		457,903		-	457,903
Net loss	-	-	-		-		(14,672,567)	(14,672,567)
Balance at December 31, 2022	32,307,398	\$ 32,307	\$ (52,000)	\$	34,496,582	\$	(33,608,910)	\$ 867,979
Issuance of warrants	-	-	-		5		-	5
Revaluation of warrant issued to Digital Lending Services US Corp. due to extension of life of warrant	-	-	-		4,664		-	4,664
Issuance of common shares of stock for personal guarantee	369,778	370	-		554,296		-	554,666
Vesting of stock options and restricted shares outside of stock option and award plans	-	-	-		87,745		-	87,745
Vesting of stock options and restricted shares from 2023 stock option and award plans	-	-	-		129,189		-	129,189
Issuance of common stock in accordance with officer compensation agreement	75,000	75	-		675		-	750
Net income	-	-	-		-		1,863,016	1,863,016
Balance at December 31, 2023	<u>32,752,176</u>	<u>\$ 32,752</u>	<u>\$ (52,000)</u>	<u>\$</u>	<u>35,273,156</u>	<u>\$</u>	<u>(31,745,894)</u>	<u>\$ 3,508,014</u>

See accompanying notes to the consolidated financial statements.

SUMMER ENERGY HOLDINGS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS

	For the Years Ended	
	2023	2022
Cash Flows from Operating Activities		
Net income (loss)	\$ 1,863,016	\$ (14,672,567)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Amortization of deferred financing costs	30,348	174,092
Broker warrant compensation expense	5	9
Warrant consultant compensation expense	-	100,000
Stock compensation expense	216,934	482,698
Stock issuance executive compensation	750	-
Interest payment in common stock for personal guaranty	554,666	-
Depreciation of property and equipment	67,314	63,049
Amortization of right-of-use asset	333,844	182,557
Bad debt expense	1,727,996	1,313,694
Changes in operating assets and liabilities:		
Accounts receivable	(6,565,209)	(14,630,289)
Related party account receivable	(1,603,287)	(113,270)
Brazos settlement receivable	1,498,666	(1,498,666)
Accounts receivable, other	(465,662)	-
Uplift securitization proceeds receivable from ERCOT	-	30,668,773
Uplift securitization proceeds credited to customers	-	(1,000,000)
Prepaid and other current assets	3,636,975	(3,212,996)
Accounts payable	288,011	335,413
Accrued wholesale power purchased	(7,470,574)	2,189,827
Accrued transportation and distribution charges	(668,539)	1,216,265
Accrued expenses and other	1,484,982	676,754
Accrued sales and use tax audit liability	(250,000)	(1,178,985)
Net cash (used) provided by operating activities	(5,319,764)	1,096,358
Cash Flows from Investing Activities		
Purchase of property and equipment	(6,431)	(149,986)
Net cash used in investing activities	(6,431)	(149,986)
Cash Flows from Financing Activities		
Deferred financing cost, net	50,000	(50,000)
Payments to Digital Lending Services US Corp.	-	(2,000,000)
Financing of directors and officer's insurance policy	78,179	-
Payments of directors and officer's insurance policy	(51,691)	(49,151)
Financing of cyber insurance	119,536	-
Payments on cyber insurance policy	(94,836)	-
Advance on Comerica Bank loan	8,000,000	-
Advance from EDF	4,000,000	-
Advance from related party	2,750,000	-
Repayments to related party	(1,981,000)	-
Payments on Paycheck Protection Program (PPP)	-	(1,208,234)
Collateral funding provided by Engie	1,935,853	-
Advances for collateral support from EDF	-	3,400,000
Repayments of collateral support to EDF	(8,546,859)	(550,000)
Net cash provided (used) in financing activities	6,259,182	(457,385)
Net Increase in Cash and Restricted Cash	932,987	488,987
Cash and Restricted Cash at Beginning of Period	5,202,678	4,713,691
Cash and Restricted Cash at End of Period	\$ 6,135,665	\$ 5,202,678
Supplemental Disclosure of Cash Flow Information:		
Income taxes paid	\$ 125,000	\$ 827,000
Interest paid in cash	6,237,822	5,901,628
Non-Cash Investing and Financing Activities:		
Issuance of warrants	\$ 5	\$ 100,009
Revaluation of warrant issued to Digital Lending	\$ 4,664	\$ -

See accompanying notes to the consolidated financial statements.

SUMMER ENERGY HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 31, 2023 and 2022

NOTE 1 - ORGANIZATION

The consolidated financial statements include the accounts of Summer Energy Holdings, Inc. and its wholly-owned subsidiaries Summer Energy, LLC (“Summer LLC”), Summer Energy Midwest, LLC (“Summer Midwest”), Summer EM Marketing, LLC (“Marketing LLC”) and Summer Energy Northeast, LLC (“Summer Northeast”) (collectively referred to as the “Company,” “we,” “us,” or “our”). All significant intercompany transactions and balances have been eliminated in these consolidated financial statements.

Summer LLC is a retail electric provider in the state of Texas under a license with the Public Utility Commission of Texas (“PUCT”). Summer LLC procures wholesale energy and resells to commercial and residential customers. Summer LLC was organized on April 6, 2011, under the laws of the state of Texas.

Summer Midwest (formerly Summer Energy of Ohio, LLC) was formed in the state of Ohio on December 16, 2013, to procure and sell electricity in the state of Ohio. The Public Utilities Commission of Ohio issued a certificate as a Retail Electric Service Provider to Summer Midwest on June 16, 2015. On May 2, 2019, the Illinois Commerce Commission approved Summer Midwest as a Retail Electric Service Provider in the state of Illinois and in December 2019, the Pennsylvania Public Utilities Commission approved Summer Midwest as a Retail Electric Provider.

Marketing LLC was formed in the state of Texas on November 6, 2012, to provide marketing services to Summer LLC. Marketing LLC is currently inactive and there is no business activity.

Summer Northeast, a Texas limited liability company formerly named REP Energy, LLC, was acquired on November 1, 2017, and became a wholly-owned subsidiary of Summer Energy Holdings, Inc. Summer Northeast is a retail electric provider serving electric load to both residential and commercial customers in the Northeastern U.S. and currently holds a license in Massachusetts, and previously held a license in New Hampshire. On March 11, 2024, the Company provided notice to the New Hampshire Department of Energy that it had ceased selling electricity to any customers in the state of New Hampshire and was filing to withdraw its Competitive Electric Power Supplier Registration.

NOTE 2 - SIGNIFICANT ACCOUNTING POLICIES

These consolidated financial statements were prepared in conformity with accounting principles generally accepted in the United States (“GAAP”).

Going Concern

As of December 31, 2023, the Company had a cash balance of \$814,543, stockholders’ equity of \$3,508,014 and liabilities, including material debt and lease obligations, of \$89,529,824. During the year ended December 31, 2023, the Company reported cash used in operating activities of \$5,319,764 that included net income of \$1,863,016. During the first quarter 2023, the Company sold excess power in the amount of \$22,736,617 and reported net income in the amount of \$17,344,130. However, the Company sustained losses during the following three quarters of 2023 in the amount of (\$15,481,114), due to the extremely hot summer and the necessity to repurchase power at higher costs. On September 11, 2023, the Company did not make the required payment of \$2,000,000, and on November 11, 2023, the Company did not make the additional \$5,000,000 required payment to Digital Lending. The non-payment of both required amounts is an event of default under the Digital Lending Documents (defined below). The Company had five business days to cure

the default, which the Company did not cure. Under the Digital Lending Documents, an event of default triggers an increase of the interest rate of the Revolving Note (defined below) to the lower of twenty percent (20%) per annum and the maximum rate permitted by law. This default resulted in a default on Facility Agreement (defined below) with Engie Energy Marketing NA, Inc. (“Engie”) See Notes 8 and 12 for additional information. As a result of the defaults, the Facility Agreement with Engie can be called. The Company believes its existing cash, together with any positive cash flows from operations, may not be sufficient to support working capital and capital expenditure requirements for the next 12 months if the Facility Agreement is not renewed or called and the Company may be required to seek additional financing from outside sources. The following significant transactions and events affecting the Company’s liquidity occurred during the calendar year 2023:

On June 7, 2023, the Company and its subsidiaries, Summer LLC and Summer Midwest, closed a transaction with Engie. As part of the transaction, the Company and Engie entered into a Borrowing Base Facility Agreement (the “Facility Agreement”) pursuant to which the Company agreed to purchase its electric power and associated services requirements from Engie, and Engie agreed to provide the Company with certain credit extension facilities to assist the Company in the purchase of its electric power and associated service requirements. The terms of the Facility Agreement are governed by the ISDA Master Agreement dated April 11, 2023, as well as a Schedule and Power Annex thereto and the Credit Support Annex thereto (collectively, the “ISDA Agreement”). In conjunction therewith, the Company and Engie also entered into a Security Agreement and Pledge Agreement (the “Security Agreement”), and a Guaranty (the “Guaranty” and together with the Facility Agreement, ISDA Agreement, Security Agreement, and related documents, the “Engie Documents”) in favor of Engie. The Facility Agreement has a term of three (3) years, and automatically renews for successive one (1) year periods unless either party provides written notice of termination one hundred eighty (180) days prior to the end of any then-current term. In addition to the interest in respect of deferred ISDA payments, the Company will also be responsible for paying supply and credit support fees to Engie and for other such mutually agreed upon fees incurred by Engie on the Company’s behalf.

In consideration of the services and credit support provided by Engie to the Company, and pursuant to the Security Agreement, the Company agreed to, among other things, grant a priority security interest to Engie in all of its assets, equipment, and inventory. Also pursuant to the Security Agreement, the Company pledged to Engie, and granted to Engie a security interest in, all of the membership interests of Summer LLC and Summer Midwest owned by the Company. Pursuant to the Guaranty, the Company agreed to guaranty the obligations of Summer LLC and Summer Midwest under the Facility Agreement. As part of the transaction, the Company, Engie and EDF Trading North America, LLC (“EDF”) entered into a Novation Agreement whereby the Company transferred by novation to Engie, and Engie accepted, the rights, liabilities, duties and obligations of the Company under and in respect of each transaction entered into pursuant to that certain 1992 ISDA Master Agreement dated as of May 1, 2018, as amended.

On July 27, 2023, the letter of credit issued by Engie to EDF as transition credit support was reduced from \$9,000,000 to \$4,000,000 (See Notes 11 and 12).

On August 3, 2023, the Company paid back Neil Leibman \$50,000 related to the advance made by to him to the Company during June 2023 (See Note 24).

On August 18, 2023, the surety bond company released \$575,000 collateral posted related to bonds posted on behalf of Summer Midwest with the Illinois Commerce Commission and with the Pennsylvania Public Utility commission (See Note 6).

On August 18, 2023, the Company paid back Neil Leibman \$614,000 related to the advance made by him to the Company during June 2023 (See Note 24).

On September 8, 2023, Engie increased its outstanding letter of credit issued to EDF on behalf of the company from \$4,000,000 to \$5,500,000. The increase in the letter of credit was a result of the obligation by the Company under the EDF Transition Agreement if not approved for market participation in the PJM market (See Note 11).

On September 11, 2023, and November 11, 2023, the Company failed to make required payments of \$2,000,000 and \$5,000,000, respectively, to Digital Lending (See Note 8). Each such failure is an event of default under the Digital Lending Documents. Under the Digital Lending Documents, an event of default triggers an increase of the interest rate of the Revolving Note to the lower of twenty percent (20%) per annum and the maximum rate permitted by law. In addition, Digital Lending at its option and without notice may, subject to an intercreditor agreement with Engie: (a) accelerate amounts outstanding on the Revolving Note and demand immediate payment in full without presentment or other demand, protest, notice of dishonor or any other notice of any kind, all of which are expressly waived; (b) foreclose its lien on the collateral pursuant to the security agreement executed by Borrower, as applicable, or take such other actions available under the terms of the Digital Lending Documents; and (c) take such other actions as may otherwise be available in equity or at law.

The default under the Digital Lending Documents (See Note 8) is also an event of default under the Engie Documents (See Note 11). At any time during the existence of an event of default under the Engie Documents, Engie may, by notice to the Company, terminate the Engie Documents and all obligations of Engie to provide or cause the provision of any credit extension under the Engie Documents and related credit facility (the “Credit Facility”) and the required payment of an early termination fee of \$3,000,000. An event of default under the Facility Agreement also triggers an increase in the interest rate under the Credit Facility by 1200 basis points, and acceleration of all amounts due to Engie.

On October 5, 2023, the Company reimbursed Neil Leibman \$17,000 related to the advance made by him to the Company during June 2023 (See Note 24).

On November 9, 2023, the Company reimbursed Neil Leibman \$500,000 related to the advance made by him to the Company during June 2023 (See Note 24).

As a result of these circumstances, the Company believes its existing cash, together with any positive cash flows from operations, may not be sufficient to support working capital and capital expenditure requirements for the next twelve months, and the Company may be required to seek additional financing from outside sources.

Management’s plans to mitigate the Company’s current conditions include working with Engie, negotiating with related parties and third parties to refinance existing debt and lease obligations, cost reduction efforts and sales of customer accounts.

Notwithstanding management’s plans, there can be no assurance that the Company will be successful in its efforts to address its current liquidity and capital resource constraints. These conditions raise substantial doubt about the Company’s ability to continue as a going concern for the next twelve months from the issuance of these consolidated financial statements. The consolidated financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result if the Company is unable to continue as a going concern.

Uses and Sources of Liquidity

The consolidated financial statements have been prepared assuming the Company will continue to operate as a going concern, which contemplates the realization of assets and settlement of liabilities in the normal course

of business, and does not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result from uncertainty related to its ability to continue as a going concern within one year from the date of issuance of these consolidated financial statements.

For the years ended December 31, 2023 and 2022, the Company incurred net income (loss) of \$1,863,016 and \$(14,672,567), respectively. Additionally, the Company is currently in technical default with its wholesale power provider.

During the years ended December 31, 2023 and 2022, the Company's operations have been financed principally from electricity revenues and the sale of electricity positions. Cash used in operations during the year ended December 31, 2023 was \$5,319,764 compared to cash provided by operations of \$1,096,358 for the year ended December 31, 2022. The Company's liquidity requirements are to finance current operations, meet financial commitments, fund organic growth and/or acquisitions, and service debt. The liquidity requirements fluctuate with the level of customer acquisition costs, collateral posting requirements, the effects of the timing between the settlement of payables and receivables, including the effect of weather conditions, and our general working capital needs for ongoing operations. Estimating liquidity requirements is highly dependent on then-current market conditions, including, weather events, forward prices for electricity, market volatility and our then-existing capital structure and requirements. In February 2021, the U.S. experienced winter storm Uri, an unprecedented storm bringing extreme cold temperatures to the central U.S., including Texas. In June 2022, the Company received proceeds in the amount of \$30,668,773 relating to its share of settlement proceeds from HB 4492 passed by the Texas Legislature. The Company is currently in technical default with its wholesale power provider, EDF (*See Note 11*).

The Company has implemented risk management strategies related to the purchase of electricity in order to control costs and improve profitability. Management has concluded that its existing capital resources and projected positive cash flow from operations may not be sufficient to cure the technical default with the wholesale provider and to fund operations through the third quarter of 2024.

Revenue and Cost Recognition

Our revenues are primarily derived from the sale of electricity to residential and small commercial customers. Revenues for sales of electricity are recognized under the accrual method of accounting.

Direct energy costs are recorded when the electricity is delivered to the customer's meter.

Cost of goods sold ("COGS") within the Texas market include electric power purchased and pass-through charges from the transmission and distribution service providers ("TDSPs") in the areas serviced by the Company. TDSP charges are costs for metering services and maintenance of the electric grid. TDSP charges are established by regulation of the PUCT. COGS within the Independent System Operator ("ISO") for the New England market is comprised of wholesale costs based upon the wholesale power tariff rate for volumes purchased during the delivery month and scheduling fees. Summer Midwest began flowing electricity within the Pennsylvania, Jersey, Maryland Power Pool ("PJM") market in July 2019, and the COGS for the PJM market is comprised of wholesale costs based upon the wholesale power tariff for volumes purchased during the delivery month as well as scheduling fees.

The energy portion of our COGS is comprised of two components: bilateral wholesale costs and balancing/ancillary costs. These two cost components are incurred and recognized differently as follows:

Bilateral wholesale costs are incurred through contractual arrangements with wholesale power suppliers for firm delivery of power at a fixed volume and fixed price. We are invoiced for these wholesale volumes at

the end of each calendar month for the volumes purchased for delivery during the month, with payment due 20 days after the end of the month.

Balancing/ancillary costs are based on the customer load and are determined by the Electric Reliability Council of Texas (“ERCOT”), ISO New England and PJM through a multiple step settlement process. Balancing costs/revenues are related to the differential between supply that we provided through our bilateral wholesale supply and the supply required to serve our customer load. The Company endeavors to minimize the amount of balancing/ancillary costs through our load forecasting and forward purchasing programs.

Stock-Based Compensation

Stock-based awards granted to employees are measured at the grant date based on the fair value of the award and recognized as expense over the requisite service or performance period, which is the vesting period.

Stock options and warrants issued to consultants and other non-employees as compensation for services to be provided to us are accounted for based upon the fair value of the services provided or the estimated fair value of the option or warrant, whichever can be more clearly determined. We currently use the Black-Scholes option-pricing model to determine the fair value of stock options. The determination of the fair value of stock-based payment awards on the date of grant using an option-pricing model is affected by our stock price as well as assumptions regarding a number of complex and subjective variables. These variables include our expected stock price volatility over the term of the awards, the expected term of the award, the risk-free interest rate and any expected dividends. Compensation cost associated with grants of restricted stock units are also measured at fair value. We evaluate the assumptions used to value restricted stock units on a quarterly basis. When factors change, including the market price of the stock, share-based compensation expense may differ significantly from what has been recorded in the past. The Company estimates forfeitures at the date of grant and revises the estimates, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

If there are any modifications or cancellations of the underlying unvested securities, we may be required to accelerate, increase or cancel any remaining unearned share-based compensation expense.

Income Taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the period in which those temporary differences are expected to be recovered or settled. The effect on deferred income tax assets and liabilities of a change in tax rates is recognized in income tax expense in the period that includes the enactment date.

The Company recognizes the effect of income tax positions only if those positions are more likely than not of being sustained. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs. The Company records interest related to unrecognized tax benefits and penalties in income tax expense.

Advertising Costs

The Company expenses advertising costs as incurred and such costs are included in the operating expenses on the consolidated statements of operations. For the years ended December 31, 2023 and 2022, advertising costs were \$119,643 and \$201,859, respectively.

New Customer Implementation Costs

We ordinarily incur additional costs to implement our services for new customers. These costs are comprised primarily of additional labor and support. These costs are expensed as incurred and have a negative impact on our statements of operations and cash flows during the implementation phase. We attempt to maintain a disciplined approach to customer implementation costs since these costs influence our profitability. We do not capitalize new customer implementation costs as such costs are typically associated with contracts that are less than one year in duration.

Warrants

The Company's common stock warrants are measured at fair value using the Black-Scholes valuation model, which takes into account, as of the measurement date, factors including the current exercise price, the term of the instrument, the current price of the underlying stock and its expected volatility, expected dividends on the stock and the risk-free interest rate for the term of the item.

Concentration of Credit Risk

The Company maintains its cash in demand deposit accounts or "noninterest-bearing transaction accounts" which, at times, may exceed federally insured limits. The Company's management periodically assesses the financial stability of these banks. The Company has not experienced any losses on such accounts.

Intangibles or Long-lived assets

The Company periodically evaluates the carrying value of definite-lived intangibles when events or changes in circumstances indicate that the carrying value may not be recoverable. Factors the Company considers important that could trigger an impairment review include, but are not limited to, significant under-performance relative to historical or projected future operating results, significant changes in the manner of its use of acquired assets or its overall business strategy, and significant industry or economic trends.

When the Company determines that the carrying value of a long-lived asset may not be recoverable based upon the existence of one or more of the above indicators, the Company determines the recoverability by comparing the carrying amount of the asset to net future undiscounted cash flows that the asset is expected to generate and recognizes an impairment charge equal to the amount by which the carrying amount exceeds the fair market value of the asset.

If the Company's revenues or other estimated operating results are not achieved at or above our forecasted level, and the Company is unable to recover such costs through price increases, the carrying value of certain of the Company's assets may prove to be unrecoverable and we may incur impairment charges of definitive-lived intangible assets. The Company recorded no impairment loss for definite-lived intangible assets during the years ended December 31, 2023 or 2022.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

Cash and Restricted Cash

The Company considers all short-term investments with an original maturity of three months or less to be cash equivalents. There were no such investments at December 31, 2023 or 2022.

Restricted cash represents funds held in escrow for customer deposits, funds held in a controlled account by the wholesale provider (See Note 12) and funds securing irrevocable stand-by letters of credit.

	<u>December 31, 2023</u>	<u>December 31, 2022</u>
Cash	\$ 814,543	\$ 2,205,050
Restricted cash:		
Segregated customer deposit funds	1,108,594	1,145,588
Segregated prepaid customer deposits	838,693	0
Funds securing letters of credit	0	1,608,000
Funds controlled by wholesale provider	<u>3,373,835</u>	<u>244,040</u>
Total restricted cash	5,321,122	2,997,628
Total cash and restricted cash	<u>\$ 6,135,665</u>	<u>\$ 5,202,678</u>

Accounts Receivable and Unbilled Revenue

Account receivables are comprised of trade receivables and unbilled receivables (accrued revenue). Customers are billed monthly in cycles having billing dates that do not generally coincide with the end of a calendar month. This results in customers having received electricity that they have not been billed for as of month end. Therefore, at the end of each calendar month, revenue is accrued to unbilled receivables based on the estimated amount of power delivered to customers using the flow technique. Unbilled revenue also includes accruals for estimated TDSP charges and monthly service charges applicable to the estimated electricity usage for the period. All charges that were physically billed in the calendar month are recorded from the unbilled account to the customer's receivable account.

Property and Equipment

Property and equipment are stated at cost and depreciated on a straight-line basis over the following estimated useful lives:

	<u>Estimated Lives</u>
Computer software	3 years
Computer hardware	3 years
Furniture and fixtures	5 years
Leasehold improvements	5 years
Website	3 years

Expenditures for additions, major renewals and betterments are capitalized, and expenditures for maintenance and repairs are charged against income as incurred. When property and equipment are retired or otherwise

disposed of, the related cost and accumulated depreciation are removed from the accounts, and any resulting gain or loss is reflected in results of operations.

Deferred Financing Costs

The Company capitalized costs related to financing from Digital Lending Services US Corp in the amount of \$522,276 to be amortized over a three-year period ending March, 2023 (See Note 8). In March 2023, the Company extended the loan until November 11, 2023 for an amendment fee of \$210,000 and to extend the term of the warrant through November 11, 2025. Amortization of deferred financing costs related to Digital Lending Services US Corp for the year ended December 31, 2023 and 2022 was \$240,348 and \$174,092, and the remaining unamortized deferred financing costs as of December 31, 2023 and 2022 was \$3,331 and \$29,015, respectively.

In July 2022, the Company paid \$50,000 to Engie Energy Marketing NA, Inc. (“Engie”) as a reservation fee associated with a potential future transaction. The Reservation fee was funded back to the Company in June 2023 when the Company closed the transaction for Engie to become its wholesale electric provided (Note 12).

Derivative Instruments

The Company’s business operations require entering into physically-settled commodity contracts that meets the definition of a derivative. The Company has elected “normal purchases and normal sales” exception, which is a term specific to ASC 815-10-15-22. When the contract satisfies certain criteria, including a requirement that physical delivery of the underlying commodity is probable and is expected to be used in normal course of business. Retail revenues and retail cost of revenues resulting from deliveries of commodities under normal purchase contracts and normal sales contracts are included in earnings at the time of contract settlement.

Fair Value of Financial Instruments

The carrying amounts reported in the consolidated balance sheets for cash, accounts receivable, accounts payable and accrued expenses approximate fair value because of the immediate or short-term maturity of these financial instruments. None of these instruments are held for trading purposes.

The recorded value of short-term and long-term debt approximates the fair value as the interest rate approximates market interest rates.

NOTE 3 - INCOME TAXES

The components of income tax expense from continuing operations for the years ended December 31, 2023 and 2022 are as follows:

	<u>Current</u>	<u>Deferred</u>	<u>Total</u>
<u>2023</u>			
U.S. Federal States and Local	\$ 230,228	\$ -	\$ 230,228
	<u>252,556</u>	<u>-</u>	<u>252,566</u>
Total	\$ <u>482,794</u>	\$ <u>-</u>	\$ <u>482,794</u>
<u>2022</u>			
U.S. Federal States and Local	\$ (10,730)	\$ -	\$ (10,730)
	<u>143,000</u>	<u>-</u>	<u>143,000</u>
Total	\$ <u>132,270</u>	\$ <u>-</u>	\$ <u>132,270</u>

Actual income tax expense for the years ended December 31, 2023 and 2022 is reconciled from the amount computed by applying the U.S. federal income tax rate of 21% to income before income taxes as follows:

	<u>2023</u>	<u>2022</u>
Expected tax expense (benefit)	\$ 492,620	\$ (3,052,050)
Reconciling items:		
Permanent Differences/Discrete Items	284,574	98,540
Change in Valuation Allowance	<u>(294,400)</u>	<u>3,085,780</u>
Total tax expense	\$ <u>482,794</u>	\$ <u>132,270</u>

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and deferred tax liabilities at December 31, 2023 and 2022 are presented below:

	<u>2023</u>	<u>2022</u>
Deferred tax assets:		
Net operating loss carryforward - Federal	\$ 2,041,300	\$ 2,962,500
Reserve for account receivables	217,400	252,500
Intangibles	492,100	539,200
Disallowed Business Interest Expense	2,777,100	2,086,600
Donations	-	2,600
Accrued expenses	1,294,300	1,303,000
Lease Liabilities	<u>323,300</u>	<u>-</u>
Total gross deferred tax assets	7,145,500	7,146,400
Valuation allowance	<u>(6,839,200)</u>	<u>(7,133,600)</u>
Net deferred tax assets	<u>306,300</u>	<u>12,800</u>
Deferred tax liabilities:		
Depreciation of plant and equipment	(300)	(12,800)
Right-of-use assets	<u>(306,000)</u>	<u>-</u>
Net deferred tax liabilities	<u>(306,300)</u>	<u>(12,800)</u>
Net deferred tax assets	\$ <u><u>-</u></u>	\$ <u><u>-</u></u>

There was a valuation allowance of \$6,839,200 and \$7,133,600 as of December 31, 2023 and 2022, respectively. In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities, projected future taxable income, and tax planning strategies in making this assessment. Based upon the level of historical taxable income, projections for future taxable income over the periods in which the deferred tax assets are deductible, and the scheduled reversal of deferred tax liabilities, management does not believe it is more likely than not the Company will realize the full benefits of these deductible differences at December 31, 2023.

Federal net operating loss carryforwards \$9,720,500 as of December 31, 2023, of which \$368,000 expires at different dates through 2032 and \$9,352,500 is carried forward indefinitely. Due to a Section 382 limitation, some of the net operating loss will be limited each year until 2032.

There is no provision for material uncertain tax positions for the Company as of December 31, 2023.

As of December 31, 2023, with few exceptions, the Company is no longer subject to U.S. Federal income tax examinations by tax authorities for years before 2020 and for state for years before 2019.

NOTE 4 – REVENUE

The table below represents the Company’s reportable revenues for the years ended December 31, 2023 and 2022 from customers, net of respective provisions for refund:

	For the Years Ended December 31,	
	2023	2022
<i>Electricity Revenues from Contracts with Customers</i>		
ERCOT Market	\$ 264,054,743	\$ 267,986,683
ERCOT Pre-paid Market	8,416,887	7,971,251
ISO New England Market	1,392,274	1,610,299
PJM Market	20,870,043	10,121,188
<i>Total Electricity Revenues from Contracts with Customers</i>	<u>294,733,947</u>	<u>287,689,421</u>
<i>Other Revenues:</i>		
Fees Revenue	5,649,932	6,122,948
Total Revenues	<u>\$ 300,383,879</u>	<u>\$ 293,812,369</u>

Presented in the following table are the components of accounts receivable and accrued revenue:

	December 31, 2023	December 31, 2022
<u><i>Accounts receivable from customers</i></u>		
ERCOT Market	\$ 23,419,133	\$ 25,185,229
ISO New England Market	41,422	69,968
PJM Market	2,397,260	1,130,752
<i>Total accounts receivable from customers</i>	<u>25,857,815</u>	<u>26,385,949</u>
<u><i>Accrued revenue from customers</i></u>		
ERCOT Market	53,719,299	48,694,800
ISO New England Market	208,742	448,574
PJM Market	941,592	528,448
<i>Total accrued revenue with customers</i>	<u>54,869,633</u>	<u>49,671,822</u>
Allowance for credit losses	(1,035,010)	(1,202,546)
<i>Total accounts receivable</i>	<u>\$ 79,692,438</u>	<u>\$ 74,855,225</u>

The Company recognizes revenue from the sale of electricity to consumers and is recognized upon the performance obligation to deliver electricity to the customer’s meter. This method of revenue recognition is commonly referred to as the flow method. The Company’s customer base consists of a mix of residential and commercial customers in the ERCOT, ISO New England and PJM markets. Also, the Company recognizes revenues from contract cancellation fees, disconnection fees and late fees.

The invoice practical expedient within the accounting guidance allows for the recognition of revenue from performance obligations in the amount of consideration to which there is a right to invoice the customer and when the amount for which there is a right to invoice corresponds directly to the value transferred to the

customer. The purpose of the invoice practical expedient is to depict an entity's measure of progress toward completion of the performance obligation within a contract and can only be applied to performance obligations that are satisfied over time and when the invoice is representative of services provided to date. The Company elected to apply the invoice practical expedient to recognize revenue for performance obligations satisfied over time as the invoices from the respective revenue streams are representative of services or goods provided to date to the customer.

Performance Obligations

Residential and Commercial – The Company has performance obligations for the service to deliver electricity to its customers and it satisfies these performance obligations over time as electricity is provided continuously to the customer who simultaneously receives and consumes the benefits provided. The Company recognizes revenue at a fixed base amount and a price per kilowatt hour as it provides these services on a fixed term contract. Contracts generally have fixed terms of 3-month increments not to exceed a 24-month fixed term. For customers whose fixed contracts have expired, the Company recognizes revenue at the market price per kilowatt hour as the service is provided.

Residential pre-paid – The Company has performance obligations for the service to deliver electricity to its customers and these performance obligations are satisfied over time as electricity is provided continuously to the customer who simultaneously receives and consumes the benefits provided. Revenues in the pre-paid market are variable at the market rate per kilowatt hour as the service is provided.

Accounts Receivable and Unbilled Revenue

In the Texas market, electricity revenues not billed by month end are accrued based upon estimated deliveries to customers as tracked and recorded by ERCOT multiplied by our average billing rate per kilowatt hour ("kWh") in effect at the time. At the end of each calendar month, revenue is accrued to unbilled receivables based on the estimated amount of power delivered to customers using the flow technique. Unbilled revenue also includes accruals for estimated TDSP charges and monthly service charges applicable to the estimated electricity usage for the period. All charges that were physically billed in the calendar month are recorded from the unbilled account to the customer's receivable account. Accounts receivable are customer obligations billed at the customer's monthly meter read date for that period's electricity usage and due within 16 days of the date of the invoice. The past due customer balances are subject to a late fee that is assessed on that billing. Unbilled accounts in the Texas market as of December 31, 2023 and December 31, 2022 were estimated at \$53,719,229 and \$48,694,800, respectively.

In the ISO New England market, electricity services not billed by month end are accrued based upon estimated deliveries to customers as tracked and recorded by ISO New England multiplied by our average billing rate per kWh in effect at the time. The customer billing in the ISO New England market is performed by the local utility company. Unbilled accounts in the ISO New England market as of December 31, 2023 and December 31, 2022 were estimated at \$208,742 and \$448,574, respectively.

The Company began service in the PJM market during the third quarter of 2019. In the PJM market, electricity services not billed by month end are accrued based upon estimated deliveries to customers as tracked and recorded by PJM multiplied by our average billing rate per kWh in effect at the time. The customer billing in the PJM market is performed by the local utility company. Unbilled accounts in the PJM market as of December 31, 2023 and December 31, 2022 were estimated at \$941,592 and \$528,448, respectively.

The Company's accounts receivables and accrued revenue are recorded at cost less an allowance for credit losses. We estimate losses on receivables at the reporting date based on expected losses resulting from the inability of our customers to make required payments, including our historical experience of actual losses and

the aging of such receivables. These receivables have been pooled by market including the Texas market, the ISO New England market, and PJM market, because the receivables from each market share risk characteristics. Based on known information we may also establish specific reserves for customers in an adverse financial condition or adjust our expectations of changes in conditions that may impact the collectability of outstanding receivables. Receivables past due over 90 days are considered delinquent and are reviewed individually for collectability. After all means of collection have been exhausted, delinquent receivables are written-off. The allowance for credit losses at December 31, 2023 and 2022 was \$1,035,010 and \$1,202,546, respectively.

NOTE 5– CASH DEPOSITS AND LETTERS OF CREDIT

As of December 31, 2023, and December 31, 2022, Summer LLC had cash deposits held by various local utilities in the ERCOT market that totaled \$753,250 and \$4,247,761, respectively. On behalf of the Company, Engie has posted a letter of credit with ERCOT in the amount of \$2,315,001 and a letter of credit to the Public Utility Commission of Texas in the amount of \$500,000 under the Facility Agreement (See Note 12).

As of December 31, 2023, and December 31, 2022, Summer Northeast had cash collateral posted with ISO New England in the amount of \$53,289 and \$99,554, respectively. On January 9, 2023, the State of Connecticut Public Utility Regulatory Authority (“PURA”) granted Summer Northeast’s motion requesting to relinquish its electric supplier license and return the \$250,000 stand-by letter of credit posted. On March 4, 2023, the funds securing the letter of credit were release by the bank and the Company paid back \$250,000 to EDF of collateral debt funding (See Note 11). On May 1, 2023, the secured stand-by letter of credit with the State of New Hampshire Public Utilities Committee in the amount of \$500,000 expired and collateral funds securing the letter of credit were returned on May 19, 2023, to Summer Northeast. As of December 31, 2023, and December 31, 2022, Summer Northeast stand-by letters of credit totaled \$0 and \$750,000, respectively.

As of December 31, 2023, and December 31, 2022, Summer Midwest had cash collateral held by various local utilities in the PJM market totaling \$1,773,651 and \$1,571,000, respectively. On June 12, 2023, Engie on behalf of Summer Midwest issued a \$250,000 letter of credit to the Pennsylvania Public Utility commission (See Note 12). The irrevocable letter of credit has an expiration date of June 9, 2024. On September 11, 2023, Engie on behalf of Summer Midwest increased the letter of credit to EDF by \$1,500,000 for participation in the PJM market.

NOTE 6 - SURETY BONDS

On August 4, 2023, Engie on behalf of Summer Midwest posted \$500,000 for a surety bond issued to The People of the State of Illinois. On August 18, 2023, the surety bond company which had previously issued a bond on behalf of Summer Midwest to the Illinois Commerce Commission in the amount of \$500,000 and a bond to the Pennsylvania Public Utility Commission in the amount of \$250,000 cancelled both bonds and released \$575,000 of collateral posted related to the two bonds. As of December 31, 2023 and 2022, Summer Midwest had cash in the amount of \$0 and \$575,000 held by the surety bond company to secure the two bonds which are included in prepaid and other current assets.

As of December 31, 2023, Summer Northeast had a secured bond in the amount of \$400,000 to the Massachusetts Department of Energy Services and cash in the amount of \$400,000 was held by the surety bond company to secure the one surety bonds which is included in prepaid and other current assets.

NOTE 7 - FINANCING FROM FIRST INSURANCE FUNDING

Effective June 23, 2023, the company entered into a finance agreement with First Insurance Funding to finance the Company's Directors and Officers insurance for the period of June 2023 to May 2024. The amount for the premiums, taxes and fees totals \$136,292. A cash down payment in the amount of 58,412 was made by the Company leaving a remaining balance of \$78,179 to be paid in six installments in the amount of \$13,409. The annual percentage interest rate of the financing is 9.9%.

Effective April 1, 2023, the Company entered into a finance agreement with First Insurance Funding to finance the Company's cyber and excess liability insurance for the period of April 2023 to March 2024. The amount for the premiums, taxes and fees totals \$149,520. A cash down payment in the amount of 29,884 was made by the Company leaving a remaining balance of \$119,536 to be paid in ten installments in the amount of \$12,503. The annual percentage interest rate of the financing is 9.9%.

Effective June 23, 2021, the Company entered into a finance agreement with First Insurance Funding to finance the Company's Directors and Officers insurance policy premium for the period of May 1, 2021, through May 1, 2022. The amount for the premiums, taxes and fees totaled \$146,690. A cash down payment in the amount of \$36,100 was made by the Company in June 2021 leaving a remaining balance of \$110,590 to be paid in nine installments from August 23, 2021, through March 1, 2022. The annual percentage interest rate of the financing is 5.85%. The final payment on the financed insurance policy was made in April 2022.

As of December 31, 2023 and 2022, respectively, the outstanding balance due to First Insurance Funding was \$51,187 and \$0, respectively. For years ended December 31, 2023 and 2022, respectively, the interest expense incurred to First Insurance Funding was as follows:

		For the Years Ended	
		2023	2022
First Insurance Funding interest expense	\$	4,519	\$ 1,458

NOTE 8 – FINANCING FROM DIGITAL LENDING SERVICES US CORP.

On March 12, 2020, Summer LLC (the "Borrower") entered into a Loan Agreement (the "Agreement") with Digital Lending Services US Corp., a Delaware corporation ("Digital Lending"). Pursuant to the Agreement, Digital Lending agreed to provide a revolving loan (the "Loan") to the Borrower, and the Borrower agreed to borrow and repay funds loaned by Digital Lending.

The amount of available credit under the Loan is \$10,000,000. The Loan is revolving in nature and is evidenced by a Revolving Promissory Note (the "Revolving Note" and together with the Agreement and related documents, as amended, the "Digital Lending Documents"). The maturity date of the Loan was March 11, 2023, but was extended to November 11, 2023. The Loan bears interest at a rate of 12.75% per annum, with monthly installment payments of accrued interest only. The principal balance of the Loan may be prepaid at any time at the option of the Borrower, subject to certain prepayment charges.

The Loan was used by the Company to repay indebtedness owed to Blue Water Capital Funding, LLC and additional indebtedness, as well as for working capital and other general corporate purposes.

In connection with the Agreement, the Borrower made certain customary representations and warranties, and agreed that while the Loan amount remains outstanding, it would not take certain actions, including that it will not incur certain debts (as defined in the Agreement); create, assume, or suffer to exist any lien on any property or asset of the Borrower, except those set forth in and allowed by the Agreement; consolidate or merge with any other entity; or sell, lease, or transfer all or substantially all of the assets of the Borrower. Also, in connection with the Agreement, the Borrower made certain affirmative and negative covenants, and agreed to designate a representative of Digital Lending to attend the Company's board of directors' meetings in a non-voting, observer capacity.

In connection with the Agreement, the Borrower and Digital Lending also entered into a Security Agreement (the "DL Security Agreement"), and Summer Energy Holdings, Inc. executed a Guaranty (the "DL Guaranty") and issued a Common Stock Purchase Warrant ("Warrant") in favor of Digital Lending.

Security Agreement

Pursuant to the DL Security Agreement, the Borrower granted to Digital Lending a second position security interest in and to the Borrower's collateral, as more fully defined in the Security Agreement, and which includes receivables, equipment, inventory, personal property, other intangibles, and proceeds from any of these, to secure the Borrower's payment of its obligations under the Loan. The security interest granted to Digital Lending is subordinate to a security interest granted to EDF pursuant to an Amended and Restated Energy Services Agreement dated June 19, 2019, as amended (*See* Note 11) and a security interest granted to Engie pursuant to a Security Agreement and Pledge Agreement (*See* Note 12).

Guaranty

Pursuant to the DL Guaranty, the Company agreed to guaranty the Borrower's obligations under the Agreement and Revolving Note.

Warrant

In connection with the Agreement and the Loan, the Company agreed to issue to Digital Lending a Warrant. Pursuant to the Warrant, Digital Lending may purchase up to 250,000 shares of the Company's common stock. The Warrant has a term of five years, has an exercise price of \$1.50 per share, and is subject to adjustment as set forth in the Warrant. The Warrant also contains a cashless or net exercise provision, pursuant to which the holder of the Warrant may elect to convert all or a portion of the Warrant without the payment of additional consideration, by receiving a net number of shares calculated pursuant to a formula set forth in the Warrant.

On March 10, 2023, the Company and Borrower entered into an Omnibus Amendment No. 1 with Digital Lending to extend the maturity date of the Loan to November 11, 2023. The Company has agreed to pay down the principal balance of the loan by \$2,000,000 on or before September 11, 2023, and prepayment charges under the loan were deleted and the Company may now prepay the loan in whole or in part, at any time without penalty. In addition, the Company agreed to pay Digital Lending an amendment fee of \$210,000 which must be paid upon the earlier of the extended maturity date of the loan and the date on which the loan is repaid in full. The warrant previously issued to Digital Lending was amended pursuant to a Letter Agreement dated March 10, 2023, to reduce the exercise price thereof to \$0.50 per share and extend the term of the warrant through November 11, 2025 (*See* Note 20).

On September 11, 2023, the Company did not make the required payment of \$2,000,000 which is an event of default under the Digital Lending Documents.

On November 11, 2023, the Company did not make the required payment of \$5,000,000 which is an event of default under the Digital Lending Documents.

The Company had five business days to cure the default options which the Company did not cure. Under the Digital Lending Documents, an event of default triggers an increase of the interest rate of the Revolving Note to the lower of twenty percent (20%) per annum and the maximum rate permitted by law. In addition, Digital Lending at its option and without notice may, subject to an intercreditor agreement with Engie: (a) accelerate amounts outstanding on the Revolving Note and demand immediate payment in full without presentment or other demand, protest, notice of dishonor or any other notice of any kind, all of which are expressly waived; (b) foreclose its lien on the collateral pursuant to the security agreement executed by Borrower, as applicable, or take such other actions available under the terms of the Digital Lending Documents; and (c) take such other actions as may otherwise be available in equity or at law.

As of December 31, 2023 and 2022, the outstanding balance of the Digital Lending loan was \$7,000,000 and \$9,000,000, respectively, and the interest expense for years ended December 31, 2023 and 2022, was as follows:

		For the Years Ended	
		2023	2022
Digital Lending interest expense	\$	1,120,584	\$ 946,687

NOTE 9 – COMERICA BANK NOTE

On March 14, 2023, the Company entered into a Master Revolving Note (the “Comerica Bank Note”) with Comerica Bank in the amount of \$8,000,000 with maturity date of May 1, 2024 and bearing an interest rate of the Secured Overnight Financing Rate (“SOFR”) plus 2.5% per annum.

Four members of the Company’s Board of Directors, Stuart Gaylor, Andrew Bursten, Tom O’Leary and Neil Leibman (Mr. Leibman is also an executive officer of the Company) collectively agreed to personally guarantee the Note. The Company agreed to pay interest to the four individuals with the issuance of the Company’s common stock depending on the outstanding balance due and owing under the Note (*See* Note 25).

On June 7, 2023, the Company drew \$8,000,000 on the Comerica Bank Note.

As of December 31, 2023, the outstanding balance of the Comerica Bank Note was \$8,000,000 and interest accrued as follows:

		For the Years Ended	
		2023	2022
Comerica Master Revolver Note interest expense	\$	417,167	\$ -

NOTE 10 – PAYCHECK PROTECTION PROGRAM LOAN

On April 20, 2020, Summer LLC received a loan of \$2,342,300 under the Payroll Protection Program (“PPP Loan”) from the Small Business Administration (“SBA”) established pursuant to the CARES Act. The loan bears a fixed interest rate of 1.0% with a maturity date of April 17, 2022.

Under Section 1106 of the CARES Act, borrowers are eligible for forgiveness of principal and accrued interest on the loans to the extent that the proceeds are used to cover eligible payroll costs, mortgage interest costs, rent and utility costs, otherwise described as qualified expenses.

Guidance from the American Institute of Certified Public Accountants’ (“AICPA”) Technical Question and Answer 3200.18, *Borrower Accounting for a Forgivable Loan Received Under the SBA Payroll Protection Program*, issued in June 2020, states that if a company expects to meet the PPP’s eligibility criteria and concludes that the PPP Loan represents, in substance, a grant that is expected to be forgiven, it may analogize to International Accounting Standards (“IAS”) 20, *Accounting for Government Grants and Disclosure of Government Assistance*, to account for the PPP loan.

IAS 20 provides a model for the accounting of different forms of government assistance, which includes forgivable loans. Under this model, government assistance is not recognized until there is reasonable assurance (similar to the probable threshold in U.S. GAAP) that any conditions attached to the assistance will be met and the assistance will be received.

On November 4, 2021, the Company was notified by the SBA that \$1,134,066 of the PPP loan was forgiven.

On April 25, 2022, the Company made the final payment in the amount of \$246,647 on the outstanding amount due on the PPP loan.

As of December 31, 2023, and December 31, 2022, the outstanding balance due on the PPP loan was \$0 and \$0, respectively.

For the years ended December 31, 2023 and 2022, interest expense was as follows:

	For the Years Ending	
	2023	2022
PPP Loan Interest	\$ -	\$ 1,132

NOTE 11 - WHOLESALE POWER PURCHASE AGREEMENT WITH EDF

On May 1, 2018, the Company, together with its subsidiaries Summer LLC and Summer Northeast closed a transaction with EDF Energy Services, LLC and EDF Trading North America, LLC (referred to in this Note 10 as “EDFTNA” and collectively with EDF Energy Services, LLC as “EDF”). As part of the transaction, Summer LLC, Summer Northeast and EDF entered into an Energy Services Agreement (the “Energy Services Agreement”) pursuant to which Summer LLC and Summer Northeast agreed to purchase their electric power and associated services requirements from EDF, and EDF agreed to provide Summer LLC and Summer Northeast with certain credit facilities to assist Summer LLC and Summer Northeast in the purchase of their electric power and associated service requirements (such transaction with EDF, the “Original Transaction”).

In conjunction therewith, the Company and EDF also entered into a Security Agreement (the “EDF Security Agreement”), a Pledge Agreement (the “Pledge Agreement”) and a Guaranty (the “EDF Guaranty”) in favor

of EDF. The Energy Services Agreement has a term of three years, and automatically renews for successive one-year periods unless either party provides written notice of termination 180 days prior to the renewal date. In addition to the market-based commodity price charged by EDF for each underlying commodity transaction, the Company will pay a “Commodity Fee” for each megawatt hour (“MWh”) of power that the Company requests for delivery from EDF during the term of the Energy Services Agreement. In addition, the Company is responsible for other mutually-agreed-upon fees incurred by EDF on its behalf. The Company is also responsible for any reasonable transmission or transportation costs incurred in connection with power transactions. Monthly supply obligations will accrue interest at a rate equal to three-month LIBOR plus 6% per annum. Any additional credit support bears interest at the per annum rate equal to the lesser of (i) a rate per annum equal to three-month LIBOR rate plus 3% per annum, and (ii) the maximum rate of interest permitted by applicable law.

In consideration of the services and credit support provided by EDF and pursuant to the EDF Security Agreement, Summer LLC, Summer Northeast and Summer Midwest agreed to, among other things (i) grant a priority security interest to EDF in all of their assets, equipment and inventory; (ii) require their customers to remit monthly payments into a lockbox account over which EDF has a security interest; and (iii) deliver monthly and annual forecasted and audited financial statements to EDF.

Pursuant to the Pledge Agreements, the Company pledged to EDF, and granted to EDF a security interest in, all of the membership interests of Summer LLC and Summer Northeast owned by the Company, as well as all additional membership interests of such subsidiaries from time to time acquired by the Company. Pursuant to the EDF Guaranty, the Company agreed to guaranty the obligations of its subsidiaries under the Energy Services Agreement.

On June 19, 2019, the Company closed a transaction (the “Amendment Transaction”) with EDF in order to amend and/or restate certain of the agreements with EDF. Pursuant to the Amendment Transaction, the Company and EDFTNA entered into an Amended and Restated Energy Services Agreement, which amended and restated the Energy Services Agreement (the “Amended Energy Services Agreement”), an amendment to ISDA Master Agreement which amends the ISDA Agreement (the “Amended ISDA Agreement”), an Omnibus Amendment to Pledge Agreement and Security Agreement and Joinder, which amends both the EDF Security Agreement and the Pledge Agreement (the “Omnibus Amendment”) and an Amended and Restated Guaranty, which amends and restates the EDF Guaranty (the “Amended Guaranty”).

On March 10, 2022, the Company and EDF entered into a Letter Agreement and Extension of Amended and Restated Energy Services Agreement to extend the term of the Amended Energy Services Agreement through June 30, 2022.

Then on June 22, 2022, the Company and EDF entered into a First Amendment to Amended and Restated Energy Services Agreement to, among other things, extend the term of the Amended Energy Services Agreement through August 31, 2022. The Company and EDF subsequently entered into additional amendments to extend the term of the Amended Energy Services Agreement pursuant to a Second Amendment to Amended and Restated Energy Services Agreement dated effective August 23, 2022 (which extended the term of the Amended Energy Services Agreement through September 30, 2022), and a Third Amendment to Amended and Restated Energy Services Agreement dated effective September 23, 2022 (which extended the term of the Amended Energy Services Agreement through October 31, 2022). On October 25, 2022, the Company and EDF entered into a Fourth Amendment to Amended and Restated Energy Services Agreement to, among other things, extend the term of the Amended Energy Services Agreement through November 30, 2022. Effective on November 30, 2022, the Company and EDF entered into a Fifth Amendment to Amended and Restated Energy Services Agreement to, among other things, extend the term

of the Amended Energy Services Agreement through December 31, 2022. Effective on December 29, 2022, the Company and EDF entered into a Sixth Amendment to Amended and Restated Energy Services Agreement to, among other things, extend the term of the Amended Energy Services Agreement through January 31, 2023. Effective on January 31, 2023, the Company and EDF entered into a Seventh Amendment to Amended and Restated Energy Services Agreement to, among other things, extend the term of the Amended Energy Services Agreement through February 28, 2023. Effective on February 28, 2023, the Company and EDF entered into an Eighth Amendment to Amended and Restated Energy Services Agreement to, among other things, extend the term of the Amended Energy Services Agreement through March 31, 2023. Effective on March 31, 2023, the Company and EDF entered into a Ninth Amendment to Amended and Restated Energy Services Agreement to, among other things, extend the term of the Amended Energy Services Agreement through April 30, 2023. Effective on April 30, 2023, the Company and EDF entered into a Tenth Amendment to Amended and Restated Energy Services Agreement to, among other things, extend the term of the Amended Energy Services Agreement through June 5, 2023.

On June 7, 2023, the Company terminated the Amended and Restated Energy Services Agreement with EDF when it closed its new Facility Agreement with Engie (*See* Note 11). Also on June 7, 2023, the Company, Summer LLC, Summer Midwest and Summer Northeast (collectively, the “Summer Entities”) entered into a transition agreement with EDF (“EDF Transition Agreement”) whereby the Company would take all steps necessary to cause the transition of the PJM interconnection from EDF’s account to the Summer Entities’ PJM account (the “PJM Transition”) as soon as reasonably practicable, but no later than ninety (90) days after the effective date of the EDF Transition Agreement. If the occurrence of the PJM Transition did not occur by ninety (90) days after such date, such failure would not be considered a default under the EDF Transition Agreement, provided that the Company provide supplemental credit support in the amount of one million five hundred thousand dollars (\$1,500,000) to EDF within five (5) business days after receipt of notice from EDF. Pursuant to the EDF Transition Agreement, EDF discounted the Company’s payoff amount by \$4,000,000 (the “Discount”). As consideration for the Discount, the Company will pay or cause to be paid to EDF an amount equal to the Discount amount from the future receipt of damages from the Hartman Recovery (*See* Note 31) and by future receipt of sale of the assets or membership interest of the Company.

As of December 31, 2023 and 2022, EDF had provided credit support in the amount of \$0 and \$7,186,006, respectively, for cash collateral as well as to secure letters of credit (*See* Note 5) and surety bonds (*See* Note 6) for the benefit of the Company.

As of December 31, 2023 and 2022, the outstanding amounts due to EDF was \$4,000,000 and \$52,327,001, respectively.

For the years ended December 31, 2023 and 2022, the Company expensed interest to EDF as follows:

		For the Years Ended	
		2023	2022
EDF Interest	\$	1,552,804	\$ 5,719,806

NOTE 12 – WHOLESALE POWER PURCHASE AGREEMENT WITH ENGIE

On June 7, 2023, the Company and its subsidiaries, Summer LLC and Summer Midwest, closed a transaction with Engie. As part of the transaction, the Company and Engie entered into the Facility Agreement pursuant to which the Company agreed to purchase its electric power and associated services requirements from Engie, and Engie agreed to provide the Company with certain credit extension facilities to assist the Company in the purchase of its electric power and associated service requirements. The terms of the Facility Agreement are governed by the ISDA Agreement. In conjunction therewith, the Company and Engie also entered into the Security Agreement and the Guaranty in favor of Engie.

The Facility Agreement has a term of three years, and automatically renews for successive one-year periods unless either party provides written notice of termination 180 days prior to the end of any then-current term. In addition to the interest in respect of deferred ISDA payments, the Company will also be responsible for paying supply and credit support fees to Engie and for other such mutually agreed upon fees incurred by Engie on the Company's behalf.

In consideration of the services and credit support provided by Engie to the Company, and pursuant to the Security Agreement, the Company agreed to, among other things grant a priority security interest to Engie in all of its assets, equipment, and inventory. Also pursuant to the Security Agreement, the Company pledged to Engie, and granted to Engie a security interest in, all of the membership interests of Summer LLC and Summer Midwest owned by the Company. Pursuant to the Guaranty, the Company agreed to guaranty the obligations of Summer LLC and Summer Midwest under the Facility Agreement. As part of the transaction, the Company, Engie and EDF entered into a Novation Agreement whereby the Company transferred by novation to Engie, and Engie accepted, the rights, liabilities, duties and obligations of the Company under and in respect of each transaction entered into pursuant to that certain 1992 ISDA Master Agreement dated as of May 1, 2018, as amended.

Under the terms of Engie Facility Agreement and related documents, the default by the Company under the Digital Lending Documents (*See* Note 8) is also an event of default with Engie. At any time during the existence of an event of default under the Engie Documents, Engie may, by notice to the Company, terminate the Engie Documents and all obligations of Engie to provide or cause the provision of any credit extension under the Engie Documents and related Credit Facility and the required payment of an early termination fee of \$3,000,000. An event of default under the Facility Agreement also triggers an increase in the interest rate under the Credit Facility by 1200 basis points, and acceleration of all amounts due to Engie.

As of December 31, 2023 Engie had provided on behalf of the Company transitional credit support in the amount of \$6,075,000 as well as ISO and Public Utility Commission credit support in the amount of \$3,565,001 as follows:

As of December 31, 2023		
	Transitional Credit Support	ISO and Public Utility Commission Credit Support
Bonds issued to Illinois Commerce Commission and Pennsylvania Public Utility Commission	\$ 575,000	\$ -
Letter of credit to EDF	5,500,000	-
Letter of credit Public Utility Commission of Texas	-	500,000
Letter of credit Pennsylvania Public Utility Commission	-	250,000
Bond issued to Illinois Commerce Commission	-	500,000
Letter of credit ERCOT	-	2,315,001
As of December 31, 2023	<u>\$ 6,075,000</u>	<u>\$ 3,565,001</u>

As of December 31, 2023, the outstanding balance due to Engie for wholesale power purchased was \$44,856,427 and the accrued interest as follows:

For the Three Months Ended September 30,			
	2023	2022	
Engie Interest	\$ 2,564,682	\$ 0	

NOTE 13 – LEASE LIABILITIES, COMMITMENTS AND CONTINGENCIES

Office Space

The Company leases office space and equipment. Leases with an initial term of twelve months or less are not recorded on the balance sheet. Lease expense is recognized on a straight-line basis over the term of the lease. For leases beginning in 2019 and later, the Company accounts for lease components separately from the non-lease components. Most leases include one or more options to renew. The exercise of the lease renewal options is at the sole discretion of the Company. Certain leases also include options to purchase the leased property. The depreciable life of the assets and leasehold improvements are limited by the expected lease term, unless there is a transfer of title or purchase option reasonably certain of exercise.

Beginning December 1, 2017, the Company procured approximately 20,073 square feet of office space on the 37th Floor of 5847 San Felipe, Houston, Texas, pursuant to a sublease agreement dated October 13, 2017, with ENSCO International Incorporated (“Sublandlord”) for a term beginning on December 1, 2017, and terminating on December 31, 2025. The base rent payments are approximately \$15,900 per month during the term of the sublease agreement. The Company was also responsible for 12.08% of the operating expenses, utilities and taxes charged to the Sublandlord. On December 23, 2020, the sublease agreement with the Sublandlord was terminated, and concurrently, the Company entered into a Commercial Lease Agreement (the “Lease”) with PKY-SAN Felipe Plaza, L.P. (“PKY”) for such same office space. The term of the Lease with PKY begins on November 1, 2020, and terminates on October 31, 2023. Pursuant to the Lease with PKY, the Company will pay rent of \$15,891 per month and is also responsible for 2.047% of the operating expenses, utilities and taxes.

On April 6, 2023, the Company amended its lease with PKY to provide that the term of the lease is extended for an additional period of five years commencing on November 1, 2023, and continuing through October 31, 2028. The base rent under the amended lease from and after the effective date shall be as follows:

Period	Annual Base Rent	Monthly Installments
November 1, 2023 – October 31, 2024	\$ 351,278	\$ 29,273
November 1, 2024 – October 31, 2025	\$ 361,314	\$ 30,110
November 1, 2025 – October 31, 2026	\$ 371,351	\$ 30,946
November 1, 2026 – October 31, 2027	\$ 381,387	\$ 31,782
November 1, 2027 – October 31, 2028	\$ 391,424	\$ 32,619

As of December 31, 2023, and December 31, 2022, the operating lease right-of-use assets and operating lease liabilities were \$1,539,501 and \$160,707, respectively.

Operating lease future minimum payments together with their present values as of December 31, 2023, are summarized as follows:

	Operating Leases
2024	\$ 342,860
2025	342,860
2026	342,860
2027	342,860
2028	285,716
Total future minimum lease payments	1,657,156
Less amounts representing interest	(117,655)
Present value of lease liability	\$ 1,539,501
Current-portion operating lease liability	(224,040)
Long-term portion operating lease liability	\$ 1,315,461

Lease expense for the office space for the years ended December 31, 2023 and 2022, respectively, was included in operating expenses on the consolidated statements of operations as follows:

	For the years ended	
	2023	2022
Operating Lease expense	\$ 476,356	\$ 182,557

Significant Customers

For the years ended December 31, 2023 and 2022, the Company did not have any significant customers that individually accounted for more than 10% of our consolidated retail revenue.

Significant Suppliers

The Company had contractual commitments as of December 31, 2023 and 2022 to purchase its wholesale electric power from EDF and contracts for billing services with four vendors (Energy Services Group, DYNAMO Programs International, LLC, EC Infosystems, Inc., and SmartGridCIS) totaling \$1,180,459 and \$1,124,330 respectively.

Texas Sales and Use Tax Audit

The Company is currently under audit for Texas sales and use tax by the Comptroller of Public Accounts (“Comptroller”) for the period from August 2016 through December 2019. On March 29, 2022, the Comptroller issued an initial assessment for additional Texas sales and use tax to be paid by the Company in the amount of \$1,386,435 plus penalties and interest of \$292,550. As of December 31, 2023, the Company accrued \$250,000 for the assessment and has filed for a redetermination with the Comptroller.

Legal Proceedings

On May 26, 2021, the Company filed a lawsuit against Hartman Income REIT Management, Inc. (“Hartman”) in state court in Harris County, Texas. In this lawsuit, the Company sought to collect approximately \$8,400,000 owed by Hartman under one or more electricity sales agreements at indexed prices related to Winter Storm Uri. On March 24, 2022, the court entered a judgement in favor of the Company against Hartman in the amount of \$7,871,000 plus customary pre and post judgement interest and attorney’s fees. On April 25, 2022, Hartman filed a surety bond totaling \$2,197,000 to suspend enforcement of the judgement and appealed the judgement. On March 7, 2024, the Court of Appeals denied Hartman’s motion for rehearing. On April 2, 2024, the Defendant has filed a motion for extension of time to file its petition for review in the Texas Supreme Court.

As of December 31, 2023 and 2022, the amount due to the Company by Hartman is classified in accounts receivable in the consolidated balance sheet. See Note 31.

NOTE 14 – LONG TERM OBLIGATIONS

Long-term obligations of the Company are comprised as follows:

	<u>December 31, 2023</u>	<u>December 31, 2022</u>
Financing from First Insurance Funding	\$ 51,187	\$ -
Financing from Digital Lending Services US Corp.	7,000,000	7,000,000
EDF Transition Agreement Obligation	4,000,000	-
Wholesale Power Purchase Agreement with EDF collateral credit support	-	7,186,006
Wholesale Power Purchase Agreement with Engie collateral credit support	575,000	-
Comerica Bank Loan	8,000,000	-
Operating lease obligations	<u>1,539,501</u>	<u>160,707</u>
Total obligations	\$ 21,165,688	\$ 14,346,713
Less current portion of obligations	(19,626,187)	(14,186,006)
Less current portion operating lease obligations	<u>(224,040)</u>	<u>(160,707)</u>
Long-term portion of obligations	\$ <u>1,315,461</u>	\$ -

During the years ended December 31, 2023 and 2022, interest expense incurred on obligations of the Company was as follows:

	For the Years Ended	
	2023	2022
Financing from First Insurance Funding	\$ 4,519	\$ 1,458
Financing from Digital Lending Services US Corp.	1,120,584	946,687
Comerica Master Revolving Note	417,167	-
Paycheck Protection Program Loan	-	1,132
Wholesale Power Purchase Agreement with EDF	1,552,804	5,719,806
Wholesale Power Purchase Agreement with Engie	2,564,682	-
Loan Guaranty Interest	554,668	-
Related party Interest	122,260	-
Other interest	4,378	6,201
Total interest expense	\$ 6,341,061	\$ 6,675,284
Interest income	(152,270)	(13,782)
Interest expense, net	\$ 6,188,792	\$ 6,661,502

NOTE 15 – 2012 STOCK OPTION AND STOCK AWARD PLAN

During 2012, the Company approved the 2012 Stock Option and Stock Award Plan (“2012 Plan”) established to advance the interest of the Company and its stockholders by providing an incentive to attract, retain and reward persons performing services for the Company and by motivating such persons to contribute to the growth and profitability of the Company.

The maximum aggregate number of (i) shares of stock that may be issued under the 2012 Plan, and (ii) shares of stock with respect to which stock appreciation rights may be granted, is 785,000 and consists of authorized but unissued or reacquired shares of stock or any combination thereof. Such number of shares of stock may be may be issued under the 2012 Plan pursuant to incentive stock options, nonstatutory stock options, restricted stock grants, stock appreciation right grants or any combination thereof, so long as the aggregate number of shares so issued does not exceed such number of shares, as adjusted.

The 2012 Plan continues in effect until the earlier of its termination by the Board or the date on which all the shares of stock available for issuance under the 2012 Plan have been issued and all restrictions on such shares under the terms on the 2012 Plan and the agreement evidencing awards granted under the 2012 Plan have lapsed. However, all awards shall be granted, if at all, within ten (10) years from the earlier of the date the 2012 Plan is adopted by the Board or the date the 2012 Plan is duly approved by the stockholders of the Company. As of June 30, 2023, no further awards may be granted pursuant to the 2012 Plan.

On June 16, 2023, the Company cancelled 62,500 stock options from the 2012 Plan which had previously been issued to five members of the Company’s Board of Directors as compensation during the calendar year ended December 31, 2013. The options are soon to expire, and the Company has determined to grant an equivalent number of new option awards under the 2023 Plan.

During the year ended December 31, 2022, the Company cancelled 255,000 stock options from the 2012 Plan which had previously been issued to three key employees during the calendar year ended December 31, 2013.

There were no stock options granted or exercised under the 2012 Plan for the years ended December 31, 2022 or 2021.

During the years ended December 31, 2023 and 2022, the Company had no stock compensation expenses relating to the vesting of stock options issued from the 2012 Plan.

As of December 31, 2023, under the 2012 Plan, there remains 252,000 shares and there are outstanding granted stock options, net of forfeitures, to purchase 382,000 shares summarized as follows:

	<u>Options</u>	<u>Weighted Average Exercise Price</u>	<u>Weighted Average Remaining Contractual Life (in Years)</u>
Outstanding at December 31, 2021	632,000	\$ 1.24	2.84
Options granted	-		
Options exercised	-		
Options cancelled/forfeited/expired	(255,000)		
Outstanding at December 31, 2022	377,000	\$ 1.39	1.41
Options granted	-		
Options exercised	-		
Options cancelled/forfeited/expired	(125,000)		
Outstanding at December 31, 2023	<u>252,000</u>	1.39	0.79
Vested at December 31, 2022	<u>252,000</u>	\$ 1.39	0.79
Exercisable at December 31, 2022	<u>252,000</u>	\$ 1.39	0.79

None of these options were exercised during the years ended December 31, 2023 and 2022.

NOTE 16 – 2015 STOCK OPTION AND STOCK AWARD PLAN

During the year ended December 31, 2015, the Company's stockholders approved the 2015 Stock Option and Stock Award Plan ("2015 Plan"), which was established to advance the interest of the Company and its stockholders by providing an incentive to attract, retain and reward persons performing services for the Company and by motivating such persons to contribute to the growth and profitability of the Company.

The maximum aggregate number of (i) shares of stock that may be issued under the 2015 Plan, and (ii) shares of stock with respect to which stock appreciation rights may be granted, is 1,500,000 and consists of authorized but unissued or reacquired shares of stock or any combination thereof. Such number of shares of stock may be issued under the 2015 Plan pursuant to incentive stock options, nonstatutory stock options, restricted stock grants, stock appreciation right grants or any combination thereof, so long as the aggregate number of shares so issued does not exceed such number of shares, as adjusted.

The 2015 Plan continues in effect until the earlier of its termination by the Board or the date on which all the shares of stock available for issuance under the 2015 Plan have been issued and all restrictions on such shares under the terms on the 2015 Plan and the agreements evidencing awards granted under the 2015 Plan have lapsed. However, all awards shall be granted, if at all, within ten years from the earlier of the date the 2015 Plan is adopted by the Board or the date the 2015 Plan is duly approved by the stockholders of the Company.

During the year ended December 31, 2023, there were no stock options granted or exercised under the 2015 Plan.

During the year ended December 31, 2022, the Company issued two key employees a total of 5,000 nonqualified stock options with a weighted exercise price of \$1.50 as replacement options for the cancelled options (See Note 14) previously issued to the two key employees under the 2012 Plan. The stock options granted had an approximate fair value of \$5,000 determined using the Black-Scholes option pricing model. The weighted average assumptions used to calculate the fair market value are as follows: (i) risk-free interest rate of 4.30% (ii) estimated volatility of 793.98% (iii) dividend yield of 0.00% and (iv) expected life of all options averaging eight years. During the year ended December 31, 2021, there were no stock options granted or exercised under the 2015 Plan.

As of December 31, 2023, there are 717,000 shares that remain available for issuance under the 2015 Plan and the number of unvested shares in the 2015 Plan is zero.

As of December 31, 2023, the Company had outstanding granted stock options from the 2015 Stock Option and Stock Award Plan, net of forfeitures, to purchase 783,000 shares summarized as follows:

	<u>Shares</u>	<u>Weighted Average Exercise Price</u>	<u>Weighted Average Remaining Contractual Life (in Years)</u>
Outstanding at December 31, 2021	1,484,000	\$ 1.76	4.38
Options granted	5,000		
Options exercised	-		
Options cancelled/forfeited/expired	-		
Outstanding at December 31, 2022	1,489,000	\$ 1.76	3.72
Options granted			
Options exercised			
Options cancelled/forfeited/expired	(706,000)		
Vested at December 31, 2023	<u>783,000</u>	\$ 1.90	2.43
Vested at December 31, 2023	<u>783,000</u>	\$ 1.90	2.43
Exercisable at December 31, 2023	<u>783,000</u>	\$ 1.90	2.43

For the years ended December 31, 2023 and 2022, respectively, the stock compensation expense associated with the stock options issued from the 2015 Plan was as follows:

	<u>For the Years Ended</u>	
	<u>2023</u>	<u>2022</u>
2015 Stock Plan	\$ -	\$ 5,000
Remaining value on options previously issued from 2012 Plan	-	(205)
Net stock compensation expense 2015 Stock Plan	<u>\$ -</u>	<u>\$ 4,795</u>

None of these options were exercised during the years ended December 31, 2023 and 2022.

NOTE 17 - 2018 STOCK OPTION AND STOCK AWARD PLAN

Effective February 12, 2018, the Board of Directors of the Company approved and adopted the 2018 Stock Option and Stock Award Plan (“2018 Plan”), which was established to advance the interest of the Company and its stockholders by providing an incentive to attract, retain and reward persons performing services for the Company and by motivating such persons to contribute to the growth and profitability of the Company. The Company’s named executive officers are eligible for grants or awards under the 2018 Plan. The Company’s stockholders approved the 2018 Plan on June 8, 2018.

The maximum aggregate number of (i) shares of stock that may be issued under the 2018 Plan and (ii) shares of stock with respect to which stock appreciation rights may be granted, is 1,500,000 and consists of authorized but unissued or reacquired shares of stock or any combination thereof. Such number of shares of stock may be issued under the 2018 Plan pursuant to incentive stock options, non-statutory stock options, restricted stock grants, restricted stock units, stock appreciation right grants or any combination thereof, so long as the aggregate number of shares so issued does not exceed such number of shares, as adjusted.

The 2018 Plan continues in effect until the earlier of its termination by the Board or the date on which all shares of stock available for issuance under the 2018 Plan have been issued and all restrictions on such shares under the terms on the 2018 Plan and the agreement evidencing awards granted under the 2018 Plan have lapsed. However, all awards shall be granted, if at all, within ten years from the earlier of the date the 2018 Plan is adopted by the Board or the date the 2018 Plan is duly approved by the stockholders of the Company.

During the year ended December 31, 2023, there were no stock options granted or exercised under the 2015 Plan.

During the year ended December 31, 2022, the Company granted under the 2018 Plan a total of 35,000 stock options to with weighted exercise prices of \$1.64 as compensation to key employees of the company. The total 35,000 stock options granted during the year ended December 31, 2021 had an approximate fair value of \$35,000 determined using the Black-Scholes option-pricing model. The weighted average assumptions used to calculate the fair market value are as follows: (i) risk-free interest rate of 4.07% (ii) estimated volatility of 796.91% (iii) dividend yield of 0.00% and (iv) expected life of all options averaging eight years.

As of December 31, 2023 the Company had outstanding granted stock options from the 2018 Stock Option and Stock Award Plan, net of forfeitures to purchase of 850,000 shares and 650,000 shares remaining available for issuance summarized as follows:

	<u>Shares</u>	<u>Weighted Average Exercise Price</u>	<u>Weighted Average Remaining Contractual Life (in Years)</u>
Outstanding at December 31, 2021	1,446,250	\$ 1.94	5.20
Options granted	35,000		
Options exercised	-		
Options cancelled/forfeited/expired	-		
Outstanding at December 31, 2022	1,481,250	1.93	4.28
Options granted	-		
Options exercised	-		
Options cancelled/forfeited/expired	(631,250)		
Outstanding at December 31, 2023	<u>850,000</u>	\$ 2.00	3.34
Vested at December 31, 2023	<u>850,000</u>	\$ 2.00	3.34
Exercisable at December 31, 2023	<u>850,000</u>	\$ 2.00	3.34

For the years ended December 31, 2023 and 2022, respectively, the stock compensation expense associated with the stock options issued from the 2018 Plan was as follows:

	<u>For the Years Ended</u>	
	<u>2023</u>	<u>2022</u>
2018 Stock Plan	\$ -	\$ 20,000

None of these options were exercised during the years ended December 31, 2023 and 2022.

NOTE 18 – 2023 STOCK OPTION AND STOCK AWARD PLAN

Effective May 31, 2023, the Board of Directors and stockholders of the Company approved and adopted the 2023 Stock Option and Stock Award Plan (the “2023 Plan”), which was established to advance the interest of the Company and its stockholders by providing an incentive to attract, retain and reward persons performing services for the Company and by motivating such persons to contribute to the growth and profitability of the Company. The Company’s named executive officers are eligible for grants or awards under the 2023 Plan.

The maximum aggregate number of (i) shares of stock that may be issued under the 2023 Plan and (ii) shares of stock with respect to which stock appreciation rights may be granted, is 1,500,000, plus the number of shares of stock underlying any award granted under any of the Company’s 2012 Plan, 2015 Plan, or 2018 Plan that expires, terminates or is canceled or forfeited under the terms of such plan, for issuance under such plan, and consists of authorized but unissued or reacquired shares of stock or any combination thereof. Such number of shares of stock may be issued under the 2023 Plan pursuant to incentive stock options, non-statutory stock options, restricted stock grants, restricted stock units, stock appreciation right grants or any combination thereof, so long as the aggregate number of shares so issued does not exceed such number of shares, as adjusted.

The 2023 Plan continues in effect until the earlier of its termination by the Board or the date on which all shares of stock available for issuance under the 2023 Plan have been issued and all restrictions on such shares under the terms on the 2023 Plan and the agreement evidencing awards granted under the 2023 Plan have lapsed. However, all awards shall be granted, if at all, within ten years from the earlier of the date the 2023 Plan is adopted by the Board or the date the 2023 Plan is duly approved by the stockholders of the Company.

On June 16, 2023, the Company issued a total of 62,500 nonqualified stock options from the 2023 Plan with a weighted exercise price of \$1.50 as replacement options for the cancelled options previously issued to five members of the Company’s Board of Directors under the 2012 Plan (*See* Note 14). The stock options granted had an approximate fair value of \$46,875 determined using the Black-Scholes option pricing model. The weighted average assumptions used to calculate the fair market value are as follows: (i) risk-free interest rate of 4.32% (ii) estimated volatility of 802.52% (iii) dividend yield of 0.00% and (iv) expected life of all options averaging eight years.

On June 16, 2023, the Company granted an option to purchase 100,000 shares of the Company’s common stock to a key employee from the 2023 Plan with a strike price of \$1.50 per share and vesting in equal fifty (50%) portions on the first year (1st) after date of grant and second (2nd) year after the date of grant. The stock option had an approximate value of \$75,000 determined by the Black-Scholes option pricing model. The weighted average assumptions used to calculate the fair market value are as follows: (i) risk-free interest rate of 4.32% (ii) estimated volatility of 802.52% (iii) dividend yield of 0.00% and (iv) expected life of all options averaging eight years.

On July 13, 2023, the Company issued 75,000 shares fully vested shares of the Company’s common stock as compensation and in accordance with the employment agreement for Steve Madden (*See* Note 25).

On September 30, 2023, the Company issued a total of 45,000 nonqualified stock options from the 2023 Plan with a weighted exercise price of \$1.50. The stock options granted had an approximate fair value of \$33,750 determined using the Black-Scholes option pricing model. The weighted average assumptions used to

calculate the fair market value are as follows: (i) risk-free interest rate of 4.80% (ii) estimated volatility of 802.52% (iii) dividend yield of 0.00% and (iv) expected life of all options averaging eight years.

On December 29, 2023, the Company issued a total of 45,000 nonqualified stock options from the 2023 Plan with a weighted exercise price of \$1.50. The stock options granted had an approximate fair value of \$15,750 determined using the Black-Scholes option pricing model. The weighted average assumptions used to calculate the fair market value are as follows: (i) risk-free interest rate of 3.84% (ii) estimated volatility of 503.55% (iii) dividend yield of 0.00% and (iv) expected life of all options averaging eight years.

As of December 31, 2023, the Company had outstanding granted stock options from the 2023 Stock Option and Stock Award Plan, net of forfeitures to purchase of 252,500 shares and 1,247,500 shares remaining available for issuance summarized as follows:

	<u>Shares</u>	<u>Weighted Average Exercise Price</u>	<u>Weighted Average Remaining Contractual Life (in Years)</u>
Outstanding at December 31, 2022	-	\$ -	-
Options granted	252,500		
Options exercised	-		
Options cancelled/forfeited/expired	-		
Outstanding at December 31, 2023	<u>252,500</u>	1.50	7.60
Vested at December 31, 2023	<u>152,500</u>	\$ 1.50	7.70
Exercisable at December 31, 2023	<u>100,000</u>	\$ 1.50	7.45

For the years ended December 31, 2023, the stock compensation expense associated with the stock options issued from the 2023 Plan was as \$129,189.

NOTE 19 – NONQUALIFIED STOCK OPTIONS GRANTED OUTSIDE OF A STOCK OPTION OR STOCK AWARD PLAN

Company Board of Directors

In September 2022, the Company entered into stock option grant agreements with five non-employee members of the Company's Board of Directors whereby the Company agreed to grant non-qualified stock options outside of a stock option or a stock award plan during the months of September 2022, December 2022, March 2023 and June 2023 as compensation for services.

In September 2021, the Company entered into stock option grant agreements with five non-employee members of the Company's Board of Directors whereby the Company agreed to grant non-qualified stock options outside of a stock option or a stock award plan during the months of September 2021, December 2021, March 2022 and June 2022 as compensation for services.

During the year ended December 31, 2023, pursuant to the aforementioned grant agreements, the Company granted a total of 90,000 nonqualified stock options with a weighted exercise price of \$1.50 to non-employee board members of the Company as compensation. The stock options granted had an approximate fair value of \$87,746 determined using the Black Scholes option pricing model. The weighted average assumptions

used to calculate the fair market value are as follows: (a) risk-free interest rate of 4.00% (ii) estimated volatility of 798.04% (iii) dividend yield of 0.00% and (iv) expected life of all options averaging eight years.

During the year ended December 31, 2022, pursuant to the aforementioned grant agreements, the Company granted a total of 180,000 nonqualified stock options with a weighted exercise price of \$1.50 to non-employee board members of the Company as compensation. The stock options granted had an approximate fair value of \$180,000 determined using the Black Scholes option pricing model. The weighted average assumptions used to calculate the fair market value are as follows: (a) risk-free interest rate of 3.48% (ii) estimated volatility of 790.18% (iii) dividend yield of 0.00% and (iv) expected life of all options averaging eight years.

Key Employees

On February 11, 2022, pursuant to employment agreements of two key employees, the Company issued a total of 30,000 nonqualified stock options with a weighted exercise price of \$1.50 as compensation. The stock options granted had an approximate fair value of \$30,000 determined using the Black Scholes option pricing model. The weighted average assumptions used to calculate the fair market value are as follows: (i) risk-free interest rate of 1.87% (ii) estimated volatility of 778.53% (iii) dividend yield of 0.00% and (iv) expected life of all options averaging eight years.

On June 30, 2022, a key employee was issued a total of 250,000 nonqualified stock options with a weighted exercise price of \$1.00 as replacement options for the cancelled options previously issued to the key employees under the 2012 Plan (See Note 14). The stock options granted had an approximate fair value of \$250,000 determined using the Black-Scholes option pricing model. The weighted average assumptions used to calculate the fair market value are as follows: (i) risk-free interest rate of 3.56% (ii) estimated volatility of 788.30% (iii) dividend yield of 0.00% and (iv) expected life of all options averaging eight years.

As of December 31, 2023, the Company had outstanding stock options, net of forfeitures, granted outside of any stock option or stock award plan summarized as follows:

	Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (in Years)
Outstanding at December 31, 2021	980,980	\$ 1.74	4.35
Options granted	460,000	1.64	7.49
Options exercised	-		
Options cancelled/forfeited/expired	-		
Outstanding at December 31, 2022	1,440,980	1.58	5.16
Options granted	90,000	1.50	7.36
Options exercised			
Options cancelled/forfeited/expired	(43,750)		
Outstanding at December 31, 2023	1,487,230	\$ 1.56	4.54
Vested at December 31, 2023	1,440,980	\$ 1.56	4.54
Exercisable at December 31, 2022	1,440,980	\$ 1.56	4.54

For the years ended December 31, 2023 and 2022, respectively, the stock compensation expense associated with the stock options issued from outside a stock option plan was as follows:

		For the Years Ended	
		2023	2022
Outside of Stock Option or Stock Award Plan	\$	87,745	\$ 457,903

None of these options were exercised during the years ended December 31, 2023 and 2022.

NOTE 20 – WARRANTS

The Company has issued warrants to purchase shares of the Company's common stock associated with various agreements and has vested warrants from a previously terminated Master Marketing Agreement.

During the year ended December 31, 2023, the Company issued 5 warrants of the Company's common stock that had an approximate fair value of \$5 determined using the Black-Scholes option-pricing model. The weighted average assumptions used to calculate the fair market value are as follows: (i) risk-free interest rate of 3.74% (ii) estimated volatility of 797.93% (iii) dividend yield of 0.00% and (iv) expected life of all options averaging five years.

During the year ended December 31, 2022, the Company issued 100,009 warrants of the Company's common stock that had an approximate fair value of \$100,009 determined using the Black-Scholes option-pricing model. The weighted average assumptions used to calculate the fair market value are as follows: (i) risk-free interest rate of 2.88% (ii) estimated volatility of 781.46% (iii) dividend yield of 0.00% and (iv) expected life of all options averaging five years.

Total approximate fair value of warrants issued by the Company for years ended December 31, 2023 and 2022 is summarized as follows:

		For the Years Ended	
		December 31, 2023	December 31, 2022
Broker warrant compensation expense	\$	5	\$ 9
Consultant warrant compensation		-	100,000
	\$	5	\$ 100,009

Warrant activity for the years ended December 31, 2023 and 2022 was as follows:

	Number of Warrants	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (in Years)	Grant Date Fair Value
Outstanding at December 31, 2021	926,231	\$ 1.35	4.76	\$ 551,587
Warrants granted	100,009	2.00	9.33	100,009
Warrants exercised	-	-	-	-
Warrants cancelled/forfeited/expired	-	-	-	-
Outstanding at December 31, 2022	1,026,240	\$ 1.41	4.29	\$ 651,596
Warrants granted	5	5.00	4.26	5
Warrants exercised	-	-	-	-
Warrants cancelled/forfeited/expired	-	-	-	-
Outstanding at December 31, 2023	1,026,245	\$ 1.17	0.91	\$ 651,601
Vested at December 31, 2023	761,008	\$ 1.23	1.21	\$ 611,208
Exercisable at December 31, 2023	761,008	\$ 1.23	1.21	\$ 611,208

NOTE 21 – PROPERTY AND EQUIPMENT

As of December 31, 2023, and 2022, property and equipment consisted of the following:

	<u>2023</u>	<u>2022</u>
Computer software	\$ 283,866	\$ 283,866
Computer hardware	262,080	255,649
Furniture and fixtures	56,023	56,023
Leasehold improvements	128,462	128,462
Website	<u>775,881</u>	<u>775,881</u>
Total property and equipment	1,506,312	1,499,881
Less: Accumulated depreciation	<u>(1,440,019)</u>	<u>(1,372,705)</u>
Property and equipment, net	<u>\$ 66,293</u>	<u>\$ 127,176</u>

Depreciation expense charged to operations totaled \$67,314 and \$63,049 for the years ended December 31, 2023 and 2022, respectively.

NOTE 22 - RELATED PARTY LINES OF CREDIT

Effective March 12, 2020, the Company entered into two separate line of credit agreements with related parties, Mr. Neil Leibman (“the Leibman Line”) and LaRose Holdings LLLP (“the LaRose Line”). Mr. Leibman is an officer of the Company and serves on the Company’s board of directors. LaRose Holdings LLLP is an entity controlled by Al LaRose, Jr. who served on the Company’s board of directors until his resignation on October 30, 2020.

The terms for each line of credit agreement allow the Company to borrow a maximum principal amount of \$1,000,000 to be used by the Company for working capital and other purposes determined by the board of directors of the Company. During the term of each line, Mr. Leibman or Mr. LaRose may make periodic loans as requested by the Company so long as the aggregate principal amount outstanding at any time does not exceed the maximum amount of each line. Simple interest accrues on the unpaid principal balance outstanding under the Leibman Lines at the rate of 5% per annum and interest calculates on the basis of a 365-day year. Any unpaid principal and all accrued but unpaid interest is due and payable in full by the Company no later than May 15, 2023.

The Company was advanced \$1,950,000 by Mr. Leibman under the terms and conditions of the Leibman Line to be utilized as short-term working capital for the Company and repaid Mr. Leibman \$1,000,000 during the calendar year ended December 31, 2020. In January 2021, the Company repaid Mr. Leibman the full outstanding balance of \$950,000 on the Leibman Line.

NOTE 23 – RELATED PARTY LINES OF CREDIT

Effective March 12, 2020, the Company entered into two separate line of credit agreements with related parties, Mr. Neil Leibman (the “Leibman Line”) and LaRose Holdings LLLP (the “LaRose Line”). Mr. Leibman is an officer of the Company and serves on the Company’s board of directors. LaRose Holdings LLLP is an entity controlled by Al LaRose, Jr. who served on the Company’s board of directors until his resignation on October 30, 2020.

The terms for each line of credit agreement allow the Company to borrow a maximum principal amount of \$1,000,000 to be used by the Company for working capital and other purposes determined by the board of directors of the Company. During the term of each line, Mr. Leibman or Mr. LaRose may make periodic loans as requested by the Company so long as the aggregate principal amount outstanding at any time does not exceed the maximum amount of each line. Simple interest accrues on the unpaid principal balance outstanding under the Leibman Lines at the rate of 5% per annum and interest calculates on the basis of a 365-day year. Any unpaid principal and all accrued but unpaid interest is due and payable in full by the Company no later than May 15, 2023.

For the years ended December 31, 2023 and 2022, the interest incurred on related party lines of credit was \$0 and \$0, respectively.

As of December 31, 2023 and December 31, 2022, the outstanding amounts on the Leibman Line was \$0 and \$0, respectively.

NOTE 24 – ADVANCE FROM RELATED PARTY

During the month of June 2023, Neil Liebman who is the Chief Executive Officer of the Company and serves on the Company's board of directors, advanced the Company \$2,750,000.

As of December 31, 2023, the Company had paid back Neil Leibman the amount of \$1,981,000 and the outstanding amount due from the Company to Neil Leibman was \$769,000.

For the year ended December 31, 2023, the Company accrued interest on the advances from Neil Leibman in the amount of \$122,260 at an interest rate of 12.5%.

NOTE 25 – COMPENSATION FOR LOAN GUARANTEE

On March 14, 2023, the Company entered into a Master Revolving Note (the "Comerica Bank Note") with Comerica Bank in the amount of \$8,000,000 with maturity date of May 1, 2024, and bearing an interest rate of the Secured Overnight Financing Rate ("SOFR") plus 2.5% per annum. On June 7, 2023, the Company drew \$8,000,000 on the Comerica Bank Note (*See* Note 8).

Four members of the Company's Board of Directors, Stuart Gaylor, Andrew Bursten, Tom O'Leary and Neil Leibman (Mr. Leibman is also an executive officer of the Company) collectively agreed to personally guarantee the Note. The Company agreed to pay interest to the four individuals with the issuance of the Company's common stock depending on the outstanding balance due and owing under the Note.

For the year ended December 31, 2023, the Company accrued \$554,666 in compensation expense for the personal loan guarantee and issued 369,775 shares of common stock of the Company to the guarantors as payment.

NOTE 26 – ADVANCES AND SERVICES AGREEMENT WITH PINNACLE POWER, LLC

Neil Leibman and Tom O'Leary who are partners in Pinnacle Power, LLC ("Pinnacle") both serve on the Company's board of directors, and Mr. Leibman is the Chief Executive Officer of the Company.

Effective January 1, 2023, the Company's subsidiary, Summer Midwest, entered into a Services Agreement with Pinnacle. Summer Midwest is to provide billing, collections, back-office service including supply and scheduling services, customer service and accounting services on behalf of Pinnacle in exchange for a fee of \$6,000 per month. The Company has recorded services revenue from Pinnacle totaling \$72,000 during the year ended December 31, 2023.

During the year ended December 31, 2022, the Company paid the Renewable Energy Credits ("RECS") on behalf of Pinnacle Power, LLC ("Pinnacle") in the amount of \$50,538 and the Company provided \$62,732 of back-office services to Pinnacle. On June 15, 2023, Pinnacle reimbursed the Company the \$50,538.

At December 31, 2023 and 2022, accounts receivable from Pinnacle to the Company was in the amount of \$660,146 and 113,270, respectively, which is included in the related party accounts receivable in the balance sheet.

NOTE 27 – ADVANCES TO HORIZON POWER AND LIGHT, LLC

Neil Leibman and Tom O'Leary who are partners in HPL both serve on the Company's board of directors and Mr. Leibman is the Chief Executive Officer of the Company.

During the year ended December 31, 2023, the Company advanced a total of \$1,900,000 to Horizon Power and Light, LLC ("HPL") to cover margin calls received by HPL by its wholesale electric provider, Renewable Energy Credits ("RECS") of HPL in the amount of \$170,894 and \$385,517 for other operating expenses of HPL. The Company has been repaid by HPL in the amount of \$1,400,000.

On December 16, 2022, the Company provided credit support to HPL in order for HPL to secure a letter of credit in the amount of \$858,000. As of December 31, 2023, the credit support to HPL has been released and is no outstanding.

As of December 31, 2023, the net due to the Company by HPL totaled \$1,056,411 which is included in the related party accounts receivable in the balance sheet.

NOTE 28 – EXECUTIVE EMPLOYMENT AGREEMENT

On June 7, 2023, the Company appointed Stephen "Steve" Madden as its President and entered into an employment agreement (the "Employment Agreement") with Mr. Madden. Pursuant to the Employment Agreement, Mr. Madden will be responsible for the Company's operational and financial performance and other such duties and responsibilities as are commensurate with the position of President, as reasonably and lawfully directed by the board of directors of the Company. The Employment Agreement has a term of two years with a base salary of \$705,000 for the first year of employment and \$750,000 for the second year of employment. Mr. Madden will be entitled to receive a bonus equal to 5% of EBITDA as set forth more fully in the Employment Agreement. In connection with his employment, Mr. Madden was granted 75,000 fully vested shares of the Company's common stock from the 2023 Plan on July 13, 2023 (*See* Note 18).

On January 1, 2022, the Company entered into an Amendment to Employment Agreement with each of Jaleea George, Secretary and Chief Financial Officer (the "George Amendment"), and Neil Leibman, Chief Executive Officer (the "Leibman Amendment"); together with the George Amendment, (the "Amendments") (Ms. George and Mr. Leibman, together, the "Executives"). The Amendments amended Section 1(a) of each Executive's respective employment agreement by extending the terms thereof for an additional term of one year, with the new one-year term commencing effective January 1, 2022. The George Amendment provides

that Ms. George’s annual base salary will be \$200,000 and Mr. Leibman’s annual base salary will be \$250,000. Pursuant to the Amendments, the Executives are also entitled to additional equity compensation in the form of options to purchase common stock of the Company in the event the Company achieves certain performance benchmarks. All other material provisions of the employment agreements remain in full force and effect.

NOTE 29 - SUMMER ENERGY 401(K) PLAN

In January 2017, the Company adopted a qualified 401(K) Retirement Plan (the “Plan”) whereby eligible employees may elect to save for retirement on a tax-advantaged basis. There are two types of salary deferrals: pre-tax 401(K) deferrals and Roth 401(K) deferrals. Eligible employee participants are automatically enrolled at 3% of compensation unless a participant elects an alternative deferral percentage limited to dollar amount of \$22,500 in 2023 or elects not to defer under the Plan. There is no Company match to the Plan.

NOTE 30 - EMPLOYEE STOCK PURCHASE PLAN

Effective May 2017, the Company began offering an Employee Stock Purchase Plan (the “ESPP”) whereby eligible employees may elect to purchase common stock of the Company through a registered broker/dealer. Eligible employees who so elect may authorize payroll deductions for contributions to the ESPP up to a maximum of \$25,000 each calendar year. The Company will match 10% of eligible employee contributions up to an aggregate maximum of \$24,000 for all ESPP participants (not each individual ESPP participant).

The employer match for the year ended December 31, 2023 and 2022 was as follows:

		For the Years Ended	
		2023	2022
Employee Stock Purchase Plan	\$	1,144	\$ 2,202

NOTE 31 – LITIGATION AND HARTMAN JUDGEMENT

On May 26, 2021, the Company filed a lawsuit against Hartman Income REIT Management, Inc. (“Hartman”) in state court in Harris County, Texas. In this lawsuit, the Company sought to collect approximately \$8,400,000 owed by Hartman under one or more electricity sales agreements at indexed prices related to Winter Storm Uri. On March 24, 2022, the court entered a judgement in favor of the Company against Hartman in the amount of \$7,871,000 plus customary pre and post judgement interest and attorney’s fees. On April 25, 2022, Hartman filed a surety bond totaling \$2,197,000 to suspend enforcement of the judgement and appealed the judgement. On March 7, 2024, the Court of Appeals denied Hartman’s motion for rehearing. On April 2, 2024, the Defendant filed a motion for extension of time to file its petition for review in the Texas Supreme Court.

As of December 31, 2023 and 2022, the amount due to the Company by Hartman is classified in accounts receivable in the consolidated balance sheet. See Note 13.

NOTE 32 - SUBSEQUENT EVENTS

In preparing the consolidated financial statements, the Company has evaluated all subsequent events and transactions for potential recognition or disclosure through April 16, 2024, the date the consolidated financial statements were available for issuance.

On January 4, 2024, HPL reimbursed the Company for advances in the amount of \$71,000. See Note 27.

On January 22, 2024, the Company advanced HPL \$46,000 for operating expenses. See Note 27.

On January 22, 2024, the Company reimbursed \$500,000 to Neil Leibman for his advance. See Note 24.

On January 24, 2024, HPL reimbursed the Company \$500,000 for advances in the amount of \$500,000. See Note 27.

On January 25, 2024, the Company reimbursed \$269,000 to Neil Leibman for his advance and paid Mr. Leibman \$128,746 in accrued interest. See Note 24.

On January 31, 2024, the Company advanced HPL \$113,712 for operating expenses. See Note 27.

On February 22, 2024, Summer Energy, LLC (“Summer LLC”), a wholly owned subsidiary of Summer Energy Holdings, Inc., entered into an Asset Purchase Agreement (the “Agreement”) with US Retailers LLC (“Buyer”). Pursuant to the Agreement, Summer LLC agreed to sell to Buyer its book of non-prepaid residential customers in the State of Texas (the “Assets”). The consideration payable for the Assets is estimated at \$8.1 million, payable in cash in three installments, subject to adjustment pursuant to the terms of the Agreement.

On February 27, 2023, a payment in the amount of \$2 million was made to Digital Lending of which \$1,087,203 was applied towards a principal payment and the remaining \$912,979 for accrued interest and outstanding fees. See Note 8.

On March 25, 2024, the Company issued a total of 45,000 nonqualified stock options from the 2023 Plan with a weighted exercise price of \$1.50. The stock options granted had an approximate fair value of \$18,674 determined using the Black-Scholes option pricing model. The weighted average assumptions used to calculate the fair market value are as follows: (i) risk-free interest rate of 4.39% (ii) estimated volatility of 289.38% (iii) dividend yield of 0.00% and (iv) expected life of all options averaging eight years. See Note 18.

On March 26, 2024, the Company issued 161,778 shares of the Company common stock to board members as payment of loan guarantee compensation for the first quarter 2024. See Note 25.

Portions of this Exhibit have been omitted or redacted for confidentiality purposes.

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

US RETAILERS LLC

AND

SUMMER ENERGY, LLC

DATED AS OF FEBRUARY 21, 2024

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”), dated as of February 21, 2024, is by and between US Retailers LLC, a Delaware limited liability company (“**Buyer**”) and Summer Energy, LLC, a Texas limited liability company (“**Seller**”).

RECITALS:

A. Seller is a retail electric provider (“**REP**”) certified by the Public Utility Commission of Texas (“**PUCT**”) engaged in the business of providing retail electric services to residential customers in areas within the State of Texas open to retail electric competition (the “**Business**”).

B. Buyer is a REP certified by the PUCT and is engaged in the business of providing retail electric services to residential and/or commercial customers in areas within the State of Texas open to retail electric competition.

C. The Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, certain customers, customer lists, and related customer agreements, all on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, Seller and Buyer, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged and intending to be legally bound, hereby agree as follows:

ARTICLE I **DEFINITIONS; CONSTRUCTION**

1.1 DEFINITIONS.

In this Agreement:

“**Accounts Receivable**” shall mean all of Seller’s accounts receivable, unbilled receivables and all other rights to payment from Customers for electricity sold by Seller and services provided by Seller pursuant to Customer Contracts.

“**Affiliate**” of a Person shall mean a Person directly or indirectly, through one (1) or more intermediaries, controlled by, controlling, or under common control with the other Person. For the purposes of this definition, “control” means, when used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, or otherwise, and the terms “controlling” and “controlled” have correlative meanings.

“**Applicable Law**” shall mean any statute, law, rule, or regulation, or any judgment, order, ordinance, writ, injunction, or decree of, any Governmental Entity to which a specified Person or property is subject.

“**Assumed Broker Agreement**” shall have the meaning set forth in **Section 7.7**.

Portions of this Exhibit have been omitted or redacted for confidentiality purposes.

“Authorizations and Filings” shall have the meaning set forth in **Section 3.4**.

“Bill of Sale, Assignment and Assumption Agreement” means a Bill of Sale, Assignment and Assumption Agreement in substantially the form attached hereto as Exhibit A pursuant to which Seller is conveying the applicable Included Assets to Buyer.

“Broker Agreements” shall mean the broker agreements listed on **Section 1.1(a) of the Seller Disclosure Schedule**.

“Business” shall have the meaning set forth in Recital A.

“Business Day” means any day other than a Saturday or a Sunday or other day on which banking institutions in the State of Texas are authorized or required by Applicable Law or other governmental action to close.

“Buyer Indemnified Parties” shall have the meaning set forth in **Section 8.2**.

“Buyer Served Customer Contract” shall have the meaning set forth in **Section 2.2(f)**.

“Buyer’s Threshold” shall have the meaning set forth in **Section 8.5(a)**.

“Claim” shall have the meaning set forth in **Section 8.1**.

“Claim Notice” shall have the meaning set forth in **Section 8.3(a)**.

“Closing” shall have the meaning set forth in **Section 5.1**.

“Closing Date” shall have the meaning set forth in **Section 5.1**.

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

“Contemplated Transactions” shall mean the transactions contemplated under this Agreement, including the transfer of electricity services for Customers from Seller to Buyer on the applicable Transfer Date specified in **Section 7.2(a)**.

“Customers” shall mean the individual metered accounts associated with the Customer Contracts.

“Customer Contracts” shall mean those certain retail electricity contracts (and the associated accounts) between Seller and Customers that are set forth in **Section 3.8(a) of the Seller Disclosure Schedule**.

“Customer Data” shall mean, to the extent transferable under Applicable Law, all data to the extent comprising or related solely and exclusively to the Customer Contracts, including, without limitation, all of Seller’s right, title and interest in all data and information of or about any or all Customers subject to Customer Contracts, however or in whatever medium such data is stored, including, without limitation (in each case with respect to the relevant Customers) all: (a) Customer enrollment and product change documentation, including business reply cards, letters of

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authorization, third party verification or other enrollment authorization and verification or product change affirmative consent audio recordings, scripts, screens and Internet and other electronic or paper records; (b) Customer list and billing contact information; (c) account numbers; (d) rate codes; (e) class codes; (f) historical usage information; (g) copies of all formal complaints of Customers and former Customers made to the PUCT and received by Seller within the twelve (12) months immediately preceding the Closing Date, and all associated correspondence and other materials (including to and from Governmental Entities) received or sent by Seller in connection therewith, and all other records of Seller pertaining to any such complaints in any material respect; (h) individual Customer billing histories (in a mutual agreed format); (i) Customer Contract expiration notices (outstanding); (j) tax exemption status; and (k) other information reasonably necessary, convenient or appropriate to enroll, continue servicing and renew the Customers subject to the Customer Contracts as customers of Buyer.

“Customer Deposits” shall have the meaning set forth in **Section 3.8(a)(xi)**.

“Customer Deposit Adjustment” shall have the meaning set forth in **Section 2.2(e)**.

“Customer Notification” shall have the meaning set forth in **Section 7.1(c)**.

“EFL” shall mean an “Electricity Facts Label” document, as described in the PUCT Substantive Rules §25.475(g).

“Encumbrances” shall mean liens, charges, pledges, subordinations, options and other rights of ownership, mortgages, deeds of trust, security interests, restrictions (whether on voting, sale, transfer, disposition, or otherwise), easements, claims, licenses and other rights of usage, and other encumbrances of every type and description, whether imposed by law, agreement, understanding or otherwise.

“Enrolled Customer Contract” shall have the meaning set forth in **Section 3.8(d)**.

“ERCOT” shall mean the Electric Reliability Council of Texas.

“ESI” shall mean an electricity delivery point identified by an electric service identifier assigned by ERCOT.

“Excluded Assets” shall mean all rights, properties, and assets of Seller other than the Included Assets, including, without limitation, all contracts and agreements (whether oral or in writing) of Seller not specifically identified as a Customer Contract, and all brand names, copyrights, trademarks and other intellectual property of Seller.

“Excluded Liabilities” shall mean any liability or obligation of Seller that is not expressly identified in this Agreement as an Included Liability, including the following:

(a) any liability or obligation arising out of or relating to services of Seller to the extent sold, furnished, provided or delivered prior to the applicable Transfer Date, including any liability or obligation (i) with respect to charges to Customers, (ii) charges for electricity purchased by Seller for sale to Customers, and (iii) to collect and remit transmission and

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distribution services charges to the TDSP's with respect to Customers for periods prior to the applicable Transfer Date;

(b) any liability or obligation under any Customer Contract that arises or relates to any period before the applicable Transfer Date for any such Customer Contract (including, without limitation, any obligations to apply or refund any customer deposits held by Seller);

(c) any liability or obligation for any Taxes relating to (i) business operations of Seller not otherwise included within the Business; (ii) the Business and its operations for periods occurring prior to or as of the applicable Transfer Date; (iii) the sale of the Customer Contracts pursuant to this Agreement; or (iv) the Customer Contracts in so far as such Taxes relate to periods prior to or as of the applicable Transfer Date, including (A) any Taxes arising as a result of Seller's operation of the Business or ownership of the Customer Contracts prior to the applicable Transfer Date; (B) any Taxes that will arise as a result of the sale of the Customer Contracts pursuant to this Agreement; and (C) any deferred Taxes of any nature arising in connection with the Business for periods prior to the applicable Transfer Date, in each case (i) – (iv) other than any Taxes for which Buyer is responsible pursuant to **Section 9.1** or **Section 9.2**;

(d) any liability or obligation under any contract, commitment, or other agreement that is not an Included Liability;

(e) any liability or obligation under any employee plans or benefits or relating to payroll, vacation, sick leave, worker's compensation, severance benefits, unemployment benefits, pension benefits, employee stock option or profit-sharing plans, healthcare plans or benefits or any other employee plans or benefits of any kind for Seller's employees or former employees or both;

(f) any liability or obligation arising out of any Proceeding relating to Seller or the Business arising out of or relating to any occurrence or event happening prior to the applicable Transfer Date;

(g) any liability or obligation under any Broker Agreement that is not expressly identified as an Included Liability, it being understood that any upfront commissions or acquisition fees are not being assumed by Buyer and are not an Included Liability;

(h) any liability or obligation pending as of the applicable Transfer Date not otherwise included as an Included Liability, including any credit or refund obligation under any Customer Contract for periods prior to the applicable Transfer Date; and

(i) any liability or obligation arising out of or resulting from Seller's compliance or non-compliance with any Applicable Law or any of its Permits, including with respect to Seller's annual reporting obligations and any compliance audit or other program requirements of the PUCT, including any commitments of Seller under any settlement agreement or other Proceeding with the PUCT.

"Final Settlement Date" shall have the meaning set forth in **Section 2.2(f)**.

Portions of this Exhibit have been omitted or redacted for confidentiality purposes.

“Final Settlement Payment” shall have the meaning set forth in **Section 2.2(h)**.

“Final Settlement Payment Statement” shall have the meaning set forth in **Section 2.2(f)**.

“Governmental Entity” shall mean any (i) court or tribunal in any jurisdiction (domestic or foreign); (ii) any federal, state, municipal or local government or other governmental body, agency, authority, department, commission, board, bureau, instrumentality, arbitrator or arbitral body (domestic or foreign), including the PUCT (to the extent that the rules, regulations or orders of such organization or authority have the force of Applicable Law); or (iii) any independent system operator, regional transmission authority, regional reliability council or other similar organization, including ERCOT and Texas Reliability Entity, Inc. (to the extent that the rules, regulations, protocols, or orders of such organization or authority have the force of Applicable Law).

“Included Assets” shall have the meaning set forth in **Section 2.1(a)**.

“Included Liabilities” shall mean: (i) all obligations of Seller under each Customer Contract only to the extent that such obligations arise from and after the applicable Transfer Date, under the terms of the Customer Contracts; (ii) obligations of Seller under each Assumed Broker Agreement only to the extent of commission obligations with respect to usage and periods after the applicable Transfer Date, pursuant to the terms of such Assumed Broker Agreement; and (iii) the Customer Deposits held by Seller with respect to purchased Customer Contracts that go on-flow as served Customers of Buyer.

“Indemnified Party” shall have the meaning set forth in **Section 8.3(a)**.

“Indemnifying Party” shall have the meaning set forth in **Section 8.3(a)**.

“Initial Purchase Price Payment” shall have the meaning set forth in **Section 2.2(c)**.

“Knowledge of Seller or Seller’s Knowledge” or any other similar knowledge qualification shall mean the actual knowledge of Ryan Thomason, Janie Duron or Neil Leibman.

“Lagging Contracts” shall have the meaning set forth in **Section 2.2(f)**.

“Last Customer Transfer Date” shall have the meaning set forth in **Section 2.2(f)**.

“Material Adverse Effect” shall mean a material adverse effect on the Business or the Included Assets, or the ability of Seller to consummate the Contemplated Transactions.

“Notice” shall have the meaning set forth in **Section 10.1**.

“Notice Period” shall have the meaning set forth in **Section 8.3(b)**.

“Party” shall mean Buyer and Seller, and **“Parties”** shall mean both of them.

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“Permits” shall mean licenses, permits, consents, approvals, variances, exemptions, tariffs, rate schedules and other authorizations of or from Governmental Entities (including the PUCT), or TDSP’s for the conduct of the Business.

“Permitted Encumbrance” means (i) liens for Taxes not yet due and payable or that are being contested in good faith and by appropriate proceedings and for which adequate reserves have been established; (ii) Encumbrances or security interests that arise or are incurred in the ordinary course of business relating to obligations not yet due on the part of Seller or secure a liquidated amount that are being contested in good faith and by appropriate proceedings and for which adequate reserves have been established; (iii) pledges or deposits to secure obligations under workers’ compensation laws or similar Applicable Laws or to secure public or statutory obligations; and (iv) pledges and deposits to secure the performance of bids, trade contracts, leases, surety and appeal bonds, performance bonds and other obligations of a similar nature, in each case in the ordinary course of business.

“Person” shall mean any individual, corporation, partnership, joint venture, trust, limited liability company, unincorporated organization, association, Governmental Entity or other entity.

“Pre-Closing Customer List” shall mean the customer file provided to Buyer by Seller as of January 23, 2024 with file name: “Detail Conversion Data (01-23-24) v2.xlsx”, which is described in **Section 1.1(a) of the Seller Disclosure Schedule**.

“Proceedings” shall mean all proceedings, actions, claims, suits, investigations, and inquiries by or before any arbitrator or Governmental Entity, including all investigations, compliance audits or other proceedings of the PUCT.

“PUCT” means the Public Utility Commission of Texas.

“PUCT Notification” shall have the meaning set forth in **Section 7.1(b)**.

“Purchase Price” shall have the meaning set forth in **Section 2.2(a)**.

“Purchase Price Payment” means any of the Initial Purchase Price Payment, Second Purchase Price Payment or Final Settlement Payment.

“RCE” shall mean residential customer equivalents, to be calculated by dividing (i) the aggregate kilowatt hour usage over the past twelve (12) months (calculated in accordance with the provisions of **Section 2.2(b)**) of all of the Customers who are parties to Customer Contracts that go on-flow as served customers of Buyer for retail electric service for at least thirty (30) days after the applicable Transfer Date, by (ii) [*****] kilowatt hours.

“REP” shall mean retail electric provider.

“Residential Customer” shall mean a residential customer, as such term is defined in the PUCT Substantive Rules §25.5(113) or other applicable PUCT rules (i.e., — Retail customers classified as residential by the applicable bundled utility tariff, unbundled transmission and distribution utility tariff or, in the absence of classification under a residential rate class, those retail

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customers that are primarily end users consuming electricity at the customer's place of residence for personal, family or household purposes and who are not resellers of electricity).

"Restricted Business" means the provision of retail electric service to ERCOT residential customers, other than prepaid products, and the marketing and sale of retail electric service to ERCOT residential customers, other than to prepaid customers.

"Returns" shall mean all reports, estimates, declarations of estimated Tax, information statements and returns relating to, or required to be filed in connection with, any Taxes, including information returns or reports with respect to backup withholding and other payments to Persons other than Seller.

"Second Purchase Price Payment" shall have the meaning set forth in **Section 2.2(d)**.

"Seller Disclosure Schedule" shall have the meaning set forth in **Article III**.

"Seller Indemnified Parties" shall have the meaning set forth in **Section 8.1**.

"Seller's Threshold" shall have the meaning set forth in **Section 8.5(b)**.

"Served Customer Contract" shall have the meaning set forth in **Section 3.8(d)**.

"Supplier Release Agreements" shall have the meaning set forth in **Section 5.2(d)**.

"Taxes" shall mean all taxes, however denominated, including any interest, penalties or other additions to tax that may become payable in respect thereof, imposed by any Governmental Entity, which taxes shall include, without limiting the generality of the foregoing, all income or profits taxes (including, but not limited to, federal income taxes, state income taxes and any liability for the payment of any combined or consolidated tax), gross receipts assessments or taxes (as applicable), sales taxes, use taxes, real property gains or transfer taxes, ad valorem taxes, property taxes, value-added taxes, franchise taxes, production taxes, severance taxes, windfall profit taxes, withholding taxes, payroll taxes, employment taxes, social security, excise taxes and other obligations of the same or similar nature to any of the foregoing, whether disputed or not.

"TDSP's" shall mean the applicable local transmission and distribution service providers, and **"TDSP"** means any of them.

"Territory" means the State of Texas.

"Third Party Claim" shall have the meaning set forth in **Section 8.3(a)**.

"TOS" shall mean a "Terms of Service" document, as described in the PUCT Substantive Rules §25.475(f) or other applicable PUCT rules or law.

"Third Party" shall have the meaning set forth in **Section 8.3(a)**.

"Transfer Date" shall have the meaning set forth in **Section 7.2(a)**.

Portions of this Exhibit have been omitted or redacted for confidentiality purposes.

“Transfer Taxes” shall have the meaning set forth in Section 9.1.

“YRAC” shall mean a “Your Rights as a Customer” document, as described in the PUCT Substantive Rules §25.475(h).

1.2 CONSTRUCTION.

In construing this Agreement, the following principles shall be followed:

(a) the terms “herein,” “hereof,” “hereby,” and “hereunder,” or other similar terms, refer to this Agreement as a whole and not only to the particular Article, Section or other subdivision in which any such terms may be employed;

(b) references to Exhibits, Schedules, Articles, Sections, and other subdivisions refer to the Exhibits, Schedules, Articles, Sections, and other subdivisions of this Agreement unless otherwise expressly indicated, and references to Schedules includes the Seller Disclosure Schedule;

(c) no consideration shall be given to the captions of the Articles, Sections, subsections, or clauses, which are inserted for convenience in locating the provisions of this Agreement and not as an aid in its construction;

(d) examples shall not be construed to limit, expressly or by implication, the matter they illustrate;

(e) “include,” “includes,” and “including” are deemed to be followed by “without limitation,” whether or not they are in fact followed by such words or words of like import;

(f) a defined term has its defined meaning throughout this Agreement, regardless of whether it appears before or after the place in this Agreement where it is defined;

(g) the plural shall be deemed to include the singular, and vice versa, and reference to any gender includes each other gender;

(h) each Exhibit is a part of this Agreement, but if there is any conflict or inconsistency between the main body of this Agreement and any Exhibit, the provisions of the main body of this Agreement shall prevail;

(i) the phrases “set forth in,” “described in,” “listed in,” “disclosed in” and “included in” an identified Seller’s Disclosure Schedule means expressly referred to or contained therein;

(j) reference to any Person includes such Person’s successors and permitted assigns, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

Portions of this Exhibit have been omitted or redacted for confidentiality purposes.

(k) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(l) reference to currency means U.S. currency; and

(m) reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Applicable Law means that provision of such Applicable Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision.

ARTICLE II **THE ACQUISITION**

2.1 AGREEMENT TO PURCHASE AND SELL.

(a) Upon the terms and subject to the conditions of this Agreement, Seller hereby agrees to sell, convey, transfer, assign and deliver to Buyer free and clear of all Encumbrances, and Buyer hereby agrees to purchase from Seller, all of the following assets of Seller (the “**Included Assets**”) and to assume the Included Liabilities (subject to the provisions of **Section 2.3**):

(i) all Customer Contracts and all goodwill associated therewith;

(ii) all Customer Data; and

(iii) copies of all material books and records of Seller related solely and exclusively to the Included Assets and Included Liabilities, but specifically excluding all Returns.

(b) Buyer shall not assume the Excluded Liabilities or any other liability for or obligations of Seller except for the Included Liabilities as described in **Section 2.3**, and Excluded Liabilities and such other liabilities and obligations of Seller shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by Seller.

2.2 PURCHASE PRICE.

(a) Purchase Price. Buyer shall purchase the Included Assets for an aggregate purchase price (the “**Purchase Price**”) equal to [*****] per RCE for each Residential Customer in Texas that is served under a Customer Contract that is listed on the Pre-Closing Customer List and that goes on-flow as a served customer of Buyer for at least thirty (30) days, to be determined and paid as described in **Sections 2.2(b) – 2.2(h)**.

Portions of this Exhibit have been omitted or redacted for confidentiality purposes.

(b) For purposes of determining the RCE of purchased Customer Contracts, the source of the twelve (12) month usage history shall be the enrollment records that Buyer receives after successful enrollment of accounts. Buyer shall identify to Seller any accounts for which Buyer does not receive twelve (12) consecutive above-zero (0) months of usage history and shall also identify monthly data points that are outliers and that do not reasonably reflect the associated account's actual usage. For data points to reasonably reflect the associated account's actual usage, data points should represent 12 complete months of usage with the 12 complete months of usage adding up to between 355 and 375 days of usage and with each service period containing between 25 and 37 days of usage. For accounts on which Buyer does not receive twelve (12) above-zero (0) or otherwise valid months of usage history, the usage for such accounts shall be deemed to be equal to the average annual usage of all other transferred accounts in the same TDSP service area for which twelve (12) months of usage history is received by Buyer, so long as twelve (12) above-zero (0) months of valid usage history is received by Buyer for at least ninety percent (90%) of the transferred accounts in that TDSP service area. If twelve (12) above-zero (0) months of valid usage history is not provided to Buyer for at least ninety percent (90%) of the accounts in a TDSP service area, then the individual monthly usage history provided by Seller's data processing vendor for such accounts submitted during the due diligence process shall be used to fill-in usage for the months for which usage is missing or otherwise deemed to be invalid. If there are any remaining missing or invalid data points for any accounts, then the "default" load profile published by the applicable TDSP or coordinating authority for such accounts shall be used to fill-in usage for the months for which usage is missing or otherwise deemed to be invalid.

(c) Of the Purchase Price, an amount equal to \$[*****] (the **Initial Purchase Price Payment**) shall be due and payable to Seller in full within three (3) Business Days after the Closing Date. The Initial Purchase Price Payment shall be paid by Buyer by wire transfer in immediately available funds to an account specified in writing by Seller.

(d) Of the Purchase Price, an amount equal to \$[*****] shall be due and payable to Seller in full within three (3) Business Days after the earliest Transfer Date for any purchased Customer Contract (the "**Second Purchase Price Payment**"). The Second Purchase Price Payment shall be paid by Buyer by wire transfer in immediately available funds to an account specified in writing by Seller.

(e) Buyer is assuming Seller's deposit liability for Customer Deposits held by Seller with respect to purchased Customer Contracts that go on-flow as served Customers of Buyer. Rather than transfer such Customer Deposit funds from Seller to Buyer, the Purchase Price shall be adjusted by reducing the Purchase Price by an amount equal to the aggregate amount of such assumed Customer Deposits (the "**Customer Deposit Adjustment**").

(f) Within forty-five (45) days of the date of the last Transfer Date for any purchased Customer Contract ("**Last Customer Transfer Date**"), or the next Business Day if such forty-fifth (45th) day is a weekend or holiday (such date the "**Final Settlement Date**"), Buyer shall deliver to Seller a list of Customer Contracts and associated ESIs that started service with Buyer at any time from the Closing Date through and including the Last Customer Transfer Date and who were served by Buyer for at least thirty (30) days between the Closing Date through and including the Last Customer Transfer Date ("**Buyer Served Customer Contract**") along with a calculation

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of: (i) the RCEs represented by such Buyer Served Customer Contracts; and (ii) the total Purchase Price (the “**Final Settlement Payment Statement**”); provided, however, that in the event a Customer Contract (or group of Customer Contracts) has not been transferred and such contract or contracts represent less than one percent (1%) of Seller’s total load (such contracts the “**Lagging Contracts**”), the Last Customer Transfer Date shall be determined without including the Lagging Contracts in such determination.

(g) Within ten (10) Business Days after delivery of the Final Settlement Payment Statement, Seller shall examine the list of Buyer Served Customer Contracts and Buyer’s calculations of the RCEs, and any determinations, computations, and decisions made in the preparation thereof. In furtherance of the foregoing and subject to the terms of the Confidentiality Agreement, during such ten (10) Business Day period, Buyer shall afford Seller access to the financial information and related records, working papers, schedules and calculations of Buyer used in the preparation of the list of Buyer Served Customer Contracts and the calculation of the RCEs, at Buyer’s office during normal business hours and at Seller’s sole cost and expense. If the Final Settlement Payment Statement and the information set forth therein is acceptable to Seller, Seller may notify Buyer in writing of such acceptance or let the ten (10) Business Day dispute period expire. However, in the event that Seller shall disagree with any of the determinations, computations or decisions relating to the preparation of the Final Settlement Payment Statement, Seller shall, within ten (10) Business Days after delivery of the Final Settlement Payment Statement, serve written notice of such disputed item or items (“**Dispute Notice**”) upon Buyer, and Buyer and Seller shall thereupon endeavor in good faith to reach agreement with respect thereto. Any failure by Seller to deliver such Dispute Notice within such period with respect to any item or items shall be deemed conclusive acceptance by Seller of such item or items. If such agreement with respect to any item identified in a Dispute Notice as aforesaid shall not be reached within ten (10) Business Days after the delivery of such Dispute Notice, such disputed item or items shall be submitted for determination to a firm of independent public accountants reasonably acceptable to Seller and Buyer (which shall not be any accounting firm retained on a regular basis (or at any time within the last two (2) years) by Buyer, or any Affiliate of a Buyer, or Seller, or any Affiliate of Seller) (the “**Arbitrator**”). Promptly, but no later than thirty (30) days after its acceptance of its appointment as Arbitrator, the Arbitrator shall determine, based solely on presentations by the Buyer and Seller and on the definitions herein, and not by independent review and shall render a written report as to the resolution of each dispute and the resulting calculation of the Final Settlement Payment Statement. For purposes of clarification, the Arbitrator may review and consider for resolution only those unresolved disputed item(s) set forth in the Dispute Notice. The Arbitrator shall have exclusive jurisdiction over, and resort to the Arbitrator as provided in this **Section 2.2(g)** shall be the sole recourse and remedy of the parties against one another or any other Person with respect to any disputes arising out of or relating to the Final Settlement Payment Statement. The determination of the Arbitrator with respect to any disputed item or items shall be conclusive and be binding upon the Parties and shall be enforceable in a court of law. The fees and expenses of the Arbitrator shall be allocated between the Seller and the Buyer based on the percentage of which the portion of the contested amount not awarded to each party bears to the amount actually contested by such party. The amount of the Final Settlement Payment shall be deemed to be finally determined upon the earliest of (i) Seller’s written acceptance of the Final Settlement Payment Statement; (ii) Seller’s failure to dispute the Final

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Settlement Payment Statement within the ten (10) Business Day period set forth above; (iii) the mutual written agreement of Buyer and Seller; or (iv) the Arbitrator's determination.

The "**Final Settlement Payment**" shall equal the result of: (i) [*****] per RCE for each Residential Customer in Texas served under a Buyer Served Customer Contract; minus (ii) the amount of the Initial Purchase Price Payment; minus (iii) the amount of the Second Purchase Price Payment; minus (iv) the amount of any Customer Deposit Adjustment. If the amount of the Final Settlement Payment is positive, such amount shall be paid by Buyer to Seller within three (3) Business Days after the determination of the Final Settlement Payment by wire transfer in immediately available funds to an account specified in writing by Seller. If the amount of the Final Settlement Payment is negative, such amount shall be paid by Seller to Buyer within three (3) Business Days after the determination of the Final Settlement Payment Statement by wire transfer in immediately available funds to an account specified in writing by Buyer. In the event that there are portions of the Final Settlement Payment that are in dispute and portions that are not in dispute, the portion of the Final Settlement Payment that is not in dispute, if any, shall be paid to Seller within three (3) Business Days after delivery by Seller of the Dispute Notice described in **Section 2.2(g)** of this Agreement.

2.3 ASSUMPTION OF LIABILITIES.

Notwithstanding the Closing and the Parties' mutual execution and delivery of the Bill of Sale and Assignment and Assumption Agreement on the Closing Date pursuant to **Sections 5.2(b)** and **5.3(b)**, Buyer shall assume and shall agree to pay, perform or discharge as and when they become due and payable or are required to be performed or discharged, the Included Liabilities pertaining to the Customer Contracts, effective as of the applicable Transfer Date.

Without limitation of the foregoing, in no event shall Buyer be required to assume the obligations to Customers under any Customer Contracts until the applicable Transfer Date.

2.4 ALLOCATION OF PURCHASE PRICE

Within thirty (30) days after the determination of the Final Settlement Payment in accordance with **Section 2.2** of this Agreement, Seller shall deliver to Buyer a schedule (the "**Allocation Schedule**") allocating the Purchase Price (together with the Included Liabilities and any other items treated as consideration for the Included Assets for Tax purposes) among the Included Assets. The Allocation Schedule shall be prepared in accordance with Section 1060 of the Code and the Treasury Regulations thereunder. Such allocation shall be deemed final unless Buyer shall have notified Seller in writing of any disagreement with the Allocation Schedule within thirty (30) days after submission thereof by Seller. In the event of such disagreement, Buyer and Seller shall use reasonable efforts to reach agreement on a reasonable allocation. In the event that Buyer and Seller do not reach an agreement within thirty (30) days (or such longer period to which Buyer and Seller shall mutually agree in writing) following notice of such disagreement, Buyer and Seller shall mutually select an independent, nationally recognized accounting firm to act as arbitrator and such arbitrator shall make a determination as to each disputed item, which determination shall be final and binding. Buyer and Seller agree to file their respective Internal Revenue Service Forms 8594, and all Returns, in accordance with the Allocation Schedule as

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finally determined under this **Section 2.4**. Buyer and Seller each agrees to provide the other promptly with any other information required to complete the Allocation Schedule and its Form 8594.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer that the statements contained in this **Article III** are true and correct as of the date hereof and on each Transfer Date. The Seller's disclosure schedules accompanying this Agreement (the "**Seller Disclosure Schedule**") shall be arranged in sections corresponding to the numbered sections contained in this **Article III**.

3.1 ORGANIZATION AND QUALIFICATION.

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas, and is duly qualified to conduct business as a limited liability company in the State of Texas. Seller has the full and requisite power to own and operate its assets (including the Included Assets) and to carry on its business (including the Business) as presently conducted.

(b) Set forth in **Section 3.1(b) of the Seller Disclosure Schedule** are all of the shareholders, managers, officers and members of Seller, and such shareholders' or members' respective ownership interest percentages in Seller.

3.2 POWER AND AUTHORITY; ENFORCEABILITY.

Seller has all requisite power and authority to enter into this Agreement and all other documents to be entered into by Seller in connection with the consummation of the Contemplated Transactions and to perform its obligations hereunder and thereunder. This Agreement and all other documents entered into by Seller in connection with the consummation of the Contemplated Transactions have been duly authorized, executed and delivered on behalf of Seller and, assuming due authorization, execution and delivery by Buyer, constitute the legal, valid and binding obligations of Seller enforceable in accordance with their respective terms, except that (a) such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally, and (b) the remedy of specific performance and injunction and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

3.3 NO CONFLICT.

Other than the notifications and approvals contemplated in **Article VII**, the execution, delivery, and performance of this Agreement by Seller and the consummation by it of the Contemplated Transactions do not and will not: (a) violate or breach the certificate of formation or the limited liability company operating agreement or other governing documents of Seller or any resolution adopted by the managers or members of Seller; (b) except as set forth in **Section 3.3 of the Seller Disclosure Schedule** or as is not reasonably expected to have a Material Adverse Effect, violate or breach any Applicable Law or Permit binding upon Seller; (c) result in any breach

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of, or constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to any other Person any rights of termination, amendment, acceleration of the maturity or performance of, or cancellation of, any Customer Contract, or acceleration of any obligation of Seller thereunder (except to the extent granted pursuant to one or more non-waivable customer protection rules promulgated under Applicable Law), or result in the creation of any Encumbrance on any of the Included Assets pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, Permit, franchise or other instrument relating to the Included Assets to which Seller is a party or by which any of the Included Assets is bound or affected; or (d) give any Governmental Entity the right to revoke, withdraw, suspend, cancel, terminate or modify any Permit that relates to the Included Assets or the Business.

3.4 CONSENTS, APPROVALS AND PERMITS.

No consent, approval, authorization, license, order or Permit of, or declaration, filing or registration with, or notification to (collectively, “**Authorizations and Filings**”), any Governmental Entity or any other Person is required to be made or obtained by Seller in connection with the execution, delivery and performance of this Agreement and the consummation of the Contemplated Transactions, except for the notifications and approvals contemplated in **Article VII** or as set forth in **Section 3.4 of the Seller Disclosure Schedule**. Seller holds all Permits listed in **Section 3.4 of the Seller Disclosure Schedule**, which are all Permits material to the conduct of the Business. All of such Permits are in full force and effect, and Seller is in compliance with each such Permit in all material respects to the conduct of the Business. Except as disclosed in **Section 3.4 of the Seller Disclosure Schedule**, no notice has been received by Seller and no Proceeding is pending or, to the Knowledge of Seller, threatened, with respect to any alleged failure by Seller to have any such Permit or not to be in compliance therewith. Except as set forth in **Section 3.4 of the Seller Disclosure Schedule**, to the Knowledge of Seller, no event has occurred and is continuing which requires, or after notice or lapse of time or both would require, any modification or termination of any such Permit held by Seller.

3.5 TITLE TO INCLUDED ASSETS.

All Included Assets are owned solely by Seller. Seller has good, marketable and transferable title to all of the Included Assets, free of any Encumbrances other than Permitted Encumbrances and except as set forth in **Section 3.5 of the Seller Disclosure Schedule**. Seller warrants to Buyer that, at the time of Closing, all Included Assets shall be free and clear of all Encumbrances.

3.6 COMPLIANCE WITH LAWS.

The Business and Seller’s operation thereof are in compliance with all Applicable Law, except as disclosed in **Section 3.6 of the Seller Disclosure Schedule** or is not reasonably expected to have a Material Adverse Effect. Without limitation of the foregoing:

(a) Seller and, to the Knowledge of Seller, all Persons acting on its behalf or from which it has taken assignment of Customer Contracts have complied in all material respects with all Applicable Law, regulations and third party rights under Applicable Law, applicable to the Business, including with respect to customer enrollment, consumer credit reporting, consumer

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protection (including providing all notices and obtaining all consents required under the Fair Credit Reporting Act and the Consumer Credit Protection Act), consumer debt collection, electronic signatures, telemarketing (including the “do-not-call” registries and associated regulations of the Federal Trade Commission and the Federal Communications Commission), and the use, disclosure or privacy of customer personally identifiable information and data, and specifically including, but not limited to, the provisions for the regulation of retail electric providers set forth in the Texas Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.017, and Chapter 25 of the PUCT Substantive Rules.

(b) Seller has obtained all Permits required to engage in the Business related to the Included Assets, including the recording and monitoring of consumer telephone conversations.

(c) None of Seller or, to the Knowledge of Seller, any Person acting on its behalf or from which it has taken assignment of Customer Contracts has made any representations, promises or other statements to any Customers regarding the use or disclosure of Customer Data or other information that would prohibit or restrict in any material respect Seller’s right to sell and transfer such Customer Data or other information to Buyer, or would prohibit or restrict Buyer’s right to use or disclose such Customer Data or other information after the consummation of the Contemplated Transactions, in either case in a manner inconsistent with Applicable Law or the provisions of the Customer Contracts.

3.7 LITIGATION, JUDGMENTS, ETC.

Except as set forth in **Section 3.7 of the Seller Disclosure Schedule**, there are no Proceedings pending or, to the Knowledge of Seller, threatened (excluding any rulemaking, investigation or similar Proceeding of general applicability and any appeal or petition for review relating thereto), to which Seller is a party that involves the Business or any of the Included Assets. Seller has not received any notice of default or violation and, to the Knowledge of Seller, Seller is not in default with respect to any judgment, order, writ, injunction, decree or award applicable to it of any Governmental Entity or arbitrator having jurisdiction over it.

3.8 CUSTOMER CONTRACTS.

(a) Schedule of Customer Contracts. **Section 3.8(a) of the Seller Disclosure Schedule** (which shall be provided in an electronic format reasonably acceptable to Buyer as part of the Pre-Closing Customer List) is a true, accurate and complete (in all material respects) list of each Customer Contract, including at least the following information, all of which is true, accurate and complete in all material respects:

- (i) Customer name (first and last);
- (ii) Service address(es);
- (iii) Billing address and contact (if different);
- (iv) ESI ID(s);

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- (v) Contract or service beginning date;
- (vi) Contract term end dates for term customers;
- (vii) the current price as of the date hereof, including whether the price is bundled or unbundled (i.e., inclusive or exclusive of TDSP delivery charges), the energy charge, TDSP charges and any monthly base charge or other charges or fees;
- (viii) whether the customer is on an average billing plan;
- (ix) whether the customer is enrolled in automatic payment;
- (x) the tax exemption status of the customer;
- (xi) whether there is a deposit posted with Seller with respect to such Customer's account, and, if there is, the amount and date of the deposit for each Customer Contract and the total amount of all customer deposits for all Customer Contracts (the "**Customer Deposits**");
- (xii) whether such Customer is an Enrolled Customer Contract or a Served Customer Contract, and the enrollment date and service beginning date (as applicable);
- (xiii) whether the Customer has elected to receive materials and information in Spanish or any other language other than English;
- (xiv) for each Customer, information that identifies the version or form of each document that comprises the Seller Customer Contract documents under which such Customer is being served (including, for all Customers, the TOS, EFL and YRAC); and
- (xv) whether a commission is payable under an Assumed Broker Agreement and, if so, the commission rate per kWh.

(b) **Section 3.8(b) of the Seller Disclosure Schedule** (which shall be provided in an electronic format reasonably acceptable to Buyer) includes complete and correct copies of each version or form of each document that comprises the Seller Customer Contract documents under which Customers are being served (including the applicable TOS, EFL and YRAC), which documents include coding or other identifiers that allow mapping of each Customer to the applicable contract documents for such Customer using the information described in **Section 3.8(a)(xiv)**.

(c) [Reserved].

(d) The documents forming each Customer Contract consist solely of the forms and other documents described in this **Section 3.8**, and to Seller's Knowledge Seller has not made any contractual commitments to Customers other than through such documents. Seller does not have

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in effect any rebate, concession or similar promotion, program, plan or policy in which any Customer participates that would require the payment or award in the future of any benefit to any such Customer in respect of service in a prior period. Each such Customer Contract complies with all Applicable Law and is enforceable and will continue to be enforceable on identical terms following the consummation of the Contemplated Transactions, except in each case where enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally. Neither Seller nor, to the Knowledge of Seller, any of the counter-parties to any such Customer Contract is or has been in (and no event has occurred that, with or without notice or lapse of time, would create or constitute a) breach or violation of, or default under, any of the provisions of such Customer Contracts, except to the extent that such breach or violation relates to or arises out of a failure by Customer to make payment to Seller and Customers is subject to Seller's ordinary course disconnection procedures. Each of the Customer Contracts is assignable by Seller without any other Person's consent (including the consent of the applicable Customer or Governmental Entity).

(e) The Customer Contracts constitute contracts for retail electric service with residential customers in Texas (i) that are being served by Seller as of the Closing Date ("**Served Customer Contracts**"), or (ii) that have enrolled with Seller and for which a switch to Seller has been submitted to ERCOT as of the Closing Date (but are not being served by Seller as of such time) ("**Enrolled Customer Contracts**").

(f) No Pending Switches. As of the Closing Date, Seller has received no notice from any TDSP, ERCOT, any other REP or any Customer under any Customer Contract that has not been disclosed to Buyer that such Customer will be terminating electricity service from Seller.

(g) Customer Deposits. Except as disclosed in **Section 3.8(a) of the Seller Disclosure Schedule**, no Customers have been required to remit, nor have any Customers made any, deposits, security or other pre-payments to Seller in connection with Seller's provision of services, and as of the date hereof, there is no liability to any Customer under any Customer Contract for the repayment of any deposit or pre-payment.

(h) No Index or Prepay. **Section 3.8(a) of the Seller Disclosure Schedule** does not include any prepaid or index price customer contracts. Buyer and Seller do not intend to transfer any prepaid or index price customer contracts pursuant to this Agreement and all such contracts are Excluded Assets.

3.9 ACCURATE AND COMPLETE RECORDS.

(a) Seller is in possession of all Customer Data and all books, ledgers and other data of the Business required to be maintained by Seller pursuant to Applicable Law. All such Customer Data, books, ledgers and other data have been made available to Buyer and have been maintained in the ordinary course and in accordance with the historical business practices of Seller. All such books and ledgers are prepared and maintained in accordance with generally accepted accounting practices in the retail electricity industry and reflect actual, bona fide transactions of the Business.

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(b) All information regarding pricing, historical usage and terms of the Customer Contracts has been made available to Buyer and represents the actual, true, correct and complete, in all material respects, pricing, historical usage and terms of the Customer Contracts.

3.10 BROKERAGE ARRANGEMENTS.

(a) Except as set forth in **Section 3.10(a) of the Seller Disclosure Schedule**, Seller has not entered (directly or indirectly) into any agreement with any Person that would obligate Seller to pay any commission, brokerage or “finder’s fee” in connection with services performed under the Customer Contracts, with the sale of the Included Assets to Buyer hereunder, or otherwise in connection with the Contemplated Transactions.

(b) Except as set forth in **Section 1.1(a) of the Seller Disclosure Schedule**, Seller has not entered (directly or indirectly) into any agreement with any Person that would obligate Seller or Buyer to pay any commissions, referral fees or other consideration with respect to Customer Contracts entered into by Seller pursuant to such agreements. **Section 1.1(a) of the Seller Disclosure Schedule** includes a true, accurate and complete list of the Assumed Broker Agreements. Seller has provided to Buyer a true, accurate and complete copy of each Assumed Broker Agreement. Seller has paid or performed the obligations required to be paid or performed by it to date under each Assumed Broker Agreement. Seller has not received any written claim or notice of, and to Seller’s Knowledge, there has been no threatened claim or notice of, any material breach, violation or default by Seller under any Assumed Broker Agreement. To Seller’s Knowledge, there has been no material breach, violation or default of any obligation to be performed by any other to an Assumed Broker Agreement. Without limiting the forgoing, Seller has timely paid all upfront commissions or acquisition fees under any Assumed Broker Agreement.

3.11 TAXES.

Except as set forth on **Section 3.11 of the Seller Disclosure Schedule**:

(a) All Returns required to be filed by or on behalf of Seller with respect to the Included Assets and its conduct of the Business have been filed on a timely basis (including permissible extensions);

(b) Such Returns are true, complete and correct in all material respects;

(c) All Taxes which were shown to be due on such Returns or on subsequent assessments with respect thereto have been or will be paid in full on a timely basis;

(d) No other Taxes are due and payable by Seller with respect to periods covered by such Returns (whether or not shown on or reportable on such Returns);

(e) No deficiencies as to Tax liability have been asserted in writing against Seller that relate to or may affect the Included Assets;

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(f) Seller has no disputes or claims (in writing) regarding any Tax liability of Seller with respect to or that may affect the Included Assets;

(g) There are no outstanding agreements or waivers extending the applicable statutory periods of limitation for Taxes associated with the Included Assets;

(h) Seller has all Customer tax exemption certificates necessary or appropriate under Applicable Law for Seller's conduct of the Business with respect to any Customers that Seller has treated as exempt from Taxes and such certificates have been made available to Buyer; and

(i) Seller is not a foreign person within the meaning of Section 1445 of the Code.

3.12 NO MISLEADING STATEMENTS.

The representations and warranties of Seller contained in this Agreement (as amended or supplemented by the Seller Disclosure Schedule) and all other certificates and documents delivered at the Closing to Buyer and its representatives pursuant to this Agreement do not and will not, to Seller's Knowledge, include any untrue statement of a material fact and do not and will not, to Seller's Knowledge, omit to state any material fact necessary to make the statements made not misleading.

3.13 NO OTHER REPRESENTATIONS AND WARRANTIES

Except for the representations and warranties of Seller contained in Article III of this Agreement (as amended or supplemented by the Seller Disclosure Schedule) and all other certificates and documents delivered at the Closing to Buyer and its representatives pursuant to this Agreement, neither Seller nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller, including any representation or warranty as to the accuracy or completeness of any information regarding the included Assets and the Business furnished or made available to Buyer and its Representatives as to the future revenue, profitability or success of the Included Assets or the Business.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the statements contained in this **Article IV** are true and correct as of the date hereof and on each Transfer Date.

4.1 ORGANIZATION.

Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to conduct business as a limited liability company in the State of Texas. Buyer has the full and requisite power to own and operate its assets and to carry on its business as presently conducted.

Portions of this Exhibit have been omitted or redacted for confidentiality purposes.

4.2 POWER AND AUTHORITY; ENFORCEABILITY.

Buyer has all requisite limited liability company power and authority to enter into this Agreement and all other documents to be entered into by Buyer in connection with the consummation of the Contemplated Transactions and to perform its obligations hereunder and thereunder. This Agreement and all other documents entered into by Buyer in connection with the consummation of the Contemplated Transactions have been duly authorized, executed and delivered on behalf of Buyer and, assuming due authorization, execution and delivery by Seller, constitute the legal, valid and binding obligations of Buyer enforceable in accordance with their respective terms, except that (a) such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally, and (b) the remedy of specific performance and injunction and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

4.3 NO CONFLICT.

The execution, delivery and performance of this Agreement by Buyer and the consummation by it of the Contemplated Transactions do not and will not (a) violate or breach the certificate of formation or limited liability company operating agreement or other governing documents of Buyer or any resolution adopted by the managers or members of Buyer, (b) violate or breach any Applicable Law binding upon Buyer, or (c) result in any breach of, or constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, any contract to which Buyer is a party.

4.4 CONSENTS, APPROVALS AND PERMITS.

No consent, approval, authorization, license, order, or permit of, or declaration, filing, or registration with, or notification to, any Governmental Entity, or any other Person, is required to be made or obtained by Buyer in connection with the execution, delivery, and performance of this Agreement and the consummation of the Contemplated Transactions.

4.5 FINANCING.

Buyer has available sufficient funds, or access thereto from its corporate parents, to consummate the Contemplated Transactions, including each of the payments to be made by it under **Article II**.

4.6 LITIGATION, JUDGMENTS, ETC.

There are no Proceedings pending or, to the knowledge of Buyer, threatened (excluding any rulemaking, investigation or similar Proceeding of general applicability and any appeal or petition for review relating thereto), to which Buyer is a party or that involves Buyer, that can reasonably be expected to have a Material Adverse Effect on Buyer's ability to purchase the Included Assets hereunder. Buyer has not received any notice of default or violation and, to the knowledge of Buyer, Buyer is not in default with respect to any judgment, order, writ, injunction, decree or award applicable to it of any Governmental Entity or arbitrator having jurisdiction over

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it, that can reasonably be expected to have a Material Adverse Effect on Buyer's ability to purchase the Included Assets hereunder. Buyer and the operation of Buyer's business are in compliance in all material respects with all Applicable Law the violation of which can reasonably be expected to have a Material Adverse Effect on Buyer's ability to purchase the Included Assets hereunder.

4.7 PERMITS AND LICENSES.

Buyer has all Permits necessary to provide retail electricity service to end-use residential and commercial customers in the State of Texas.

4.8 INDEPENDENT INVESTIGATION

Buyer has conducted its own independent investigation, review and analysis of the Included Assets and the Business and acknowledges that it has been provided adequate access to the personnel, assets, premises, books and records, and other documents and data of Seller for such purpose. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the Contemplated Transactions, Buyer has relied solely upon its own investigation and the express representations and warranties of Seller set forth in **Article III** of this Agreement (as amended or supplemented by the Seller Disclosure Schedule) and all other certificates and documents delivered at the Closing; and (b) neither Seller nor any other Person has made any representation or warranty as to Seller, the Included Assets, the Business or this Agreement, except as expressly set forth in **Article III** of this Agreement (as amended or supplemented by the Seller Disclosure Schedule) and all other certificates and documents delivered at the Closing to Buyer.

ARTICLE V
CLOSING

5.1 CLOSING.

The closing and consummation of the Contemplated Transactions (the "**Closing**") shall occur simultaneously with the execution and delivery of this Agreement and the other documents to be executed and/or delivered by the Parties hereunder pursuant to **Sections 5.2 and 5.3** on the date hereof (the "**Closing Date**").

5.2 DELIVERIES BY SELLER AT CLOSING.

At the Closing (or such later date as specified below), Seller shall deliver to Buyer the following documents pertaining to Seller, each in form and substance reasonably satisfactory to Buyer:

- (a) This Agreement, duly executed by Seller.
- (b) The Bill of Sale, Assignment and Assumption Agreement, dated the Closing Date and duly executed by Seller.

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(c) A certificate of the manager or other officer of Seller, dated the Closing Date and duly executed by such manager or other officer: (i) certifying and attaching all requisite company resolutions or actions of Seller approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions; and (ii) certifying to the incumbency and signatures of the officers of Seller executing this Agreement and any other document relating to the Contemplated Transactions on behalf of Seller.

(d) Written consent to the consummation of the Contemplated Transactions executed by authorized representatives of Seller and (i) Engie Energy Marketing NA, Inc., (ii) Digital Lending Services US Corp., and (iii) EDF Trading North America, LLC (each, a “**Supplier**”), respectively, in the forms of the agreement among Buyer, Seller, and each Supplier attached hereto as Exhibits B-1, B-2, and B-3, respectively (the “**Supplier Release Agreements**”).

(e) Such other certificates, instruments of conveyance, and documents as may have been reasonably requested by Buyer prior to the Closing Date to carry out the intent and purposes of this Agreement.

(f) A copy, in electronic form readable to Buyer, of all Customer Data as of the Closing Date.

5.3 DELIVERIES BY BUYER AT CLOSING.

At the Closing, Buyer shall pay Seller the portion of the Purchase Price due on the Closing Date pursuant to **Section 2.2** and shall deliver the following to Seller, each in form and substance reasonably satisfactory to Seller:

(a) This Agreement, duly executed by Buyer.

(b) The Bill of Sale, Assignment and Assumption Agreement, dated the Closing Date and duly executed by Buyer.

(c) The Supplier Release Agreements, duly executed by Buyer.

(d) Such other certificates, instruments, and documents as may have been reasonably requested by Seller prior to the Closing Date to carry out the intent and purposes of this Agreement, including documents related to the assumption of the Included Liabilities being assumed.

ARTICLE VI

ACTIONS OF SELLER PENDING TRANSFER OF CUSTOMER CONTRACTS

6.1 CONDUCT AND PRESERVATION OF BUSINESS BY SELLER.

(a) During the period from the date hereof through each applicable Transfer Date, Seller shall: (i) conduct its operations with respect to the Included Assets and the Included Liabilities according to its ordinary course of business consistent with past practice (including the

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full performance of Seller's obligations under the Customer Contracts) and in material compliance with its Permits and Applicable Law; (ii) keep and maintain in full force and effect all Permits held by Buyer necessary to fulfill all obligations and liabilities related to Included Assets and Included Liabilities; (iii) reasonably provide to Buyer, its counsel, accountants, and other representatives, full access to the books and records of Seller relating to the Included Assets, including capacity obligations and transmission and historical information from applicable TDSP's that Seller can obtain using commercially reasonable efforts, as Buyer may reasonably request from time to time relating to the Included Assets; (iv) maintain the books and records of the Business in the usual, regular, and ordinary manner, and on a basis consistent with prior periods; (v) take commercially reasonable actions necessary to preserve, maintain, and protect its assets, rights, and properties constituting the Included Assets (except as otherwise provided in **Section 6.2(b)**) and the Included Liabilities; and (vi) promptly make any security, credit support or collateral postings related to the Included Assets or Included Liabilities with respect to any Customer Contracts not transferred to Buyer, including those to ERCOT or other third parties.

(b) During the period from the date hereof through each applicable Transfer Date, the Parties shall cooperate as commercially reasonable and as permitted by Applicable Law in handling customer relations and other operating matters to maintain the continuity of the Customer Contracts.

6.2 RESTRICTIONS ON CERTAIN ACTIONS.

Without limiting the generality of **Section 6.1**, prior to the applicable Transfer Date, Seller shall not, without the prior written (which may be by email) consent of Buyer, which consent (as such consent applies to **Section 6.2(b)** and **Section 6.2(c)**) shall not be unreasonably withheld, conditioned or delayed:

(a) purport to sell, lease, transfer, or otherwise dispose of, directly or indirectly, any of the Customer Contracts;

(b) terminate or amend, modify, or change in any material respect or waive any material right under any Customer Contract, other than terminating contracts with Customers for failure to pay amounts to Seller when due in accordance with Applicable Law and the terms of the applicable Customer Contracts;

(c) settle or resolve any pending or threatened Proceeding relating to the Business or the Included Assets or dispute with any Customer, unless such settlement or resolution creates no current or future potential obligation, liability or Encumbrance with respect to the Included Assets or would otherwise violate the restrictions in **Section 6.2(b)**;

(d) grant any Encumbrances on the Included Assets; or

(e) agree to any of the foregoing.

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ARTICLE VII
ADDITIONAL AGREEMENTS

7.1 NOTIFICATION OF PUCT AND CUSTOMERS.

(a) As soon as reasonably practicable after the Closing Date, Buyer shall, with the assistance of Seller, take such actions as may be necessary or appropriate to initiate the process to transfer electric service for the Customers covered by the Customer Contracts from Seller to Buyer, including, without limitation, (i) notifying the PUCT in accordance with **Section 7.1(b)(i)**; (ii) sending notice of the transfer to the Customers in accordance with **Section 7.1(c)**; and (iii) as necessary or appropriate, communicating and coordinating with the applicable TDSP's. Neither Party shall send any PUCT, TDSP or customer notice regarding the transfer of Customers pursuant to this Agreement (including the PUCT Notification or Customer Notifications) without the other Party's prior written (which may be by email) approval of such notice, which approval shall not be unreasonably withheld, conditioned or delayed.

(b) Regulatory Notifications to the PUCT. (i) Within three (3) Business Days after the Closing Date, Buyer and Seller shall jointly notify the PUCT, in form and substance acceptable to Buyer and Seller in their reasonable discretion and utilizing the most confidential means of providing such notice, of the transfer of the Customer Contracts from Seller to Buyer hereunder (the "**PUCT Notification**"). Buyer and Seller shall coordinate with one another and ensure that both Parties are copied on or provided with copies of any further correspondence to or from the PUCT pertaining to the Contemplated Transactions.

(c) Customer Notifications. As soon as reasonably practicable on or after the Closing Date, Buyer shall send written notification(s) to each Customer, in form and substance acceptable to Buyer and Seller in their reasonable discretion, notifying such Customers of the transfer of their Customer Contracts from Seller to Buyer hereunder on the applicable Transfer Date (the "**Customer Notification(s)**"). Upon mutual agreement of the Parties, the Customer Notification(s) may be structured as a joint notice from both Buyer and Seller or as a single mailing that includes separate notices from Buyer and Seller, which, in either case, will be mailed by Buyer. The cost and expense of the Customer Notifications shall be borne by Buyer. Seller shall cooperate with and assist Buyer in the preparation of the Customer Notification mailing, including by providing suitable mail merge file(s). Buyer reserves the right to supplement the Customer Notifications with its own customer welcome materials, at its sole cost and expense. Seller shall cooperate with and assist Buyer in handling any Customer Notification returned mail, investigation and resolution of address issues, enrollment rejects and other issues related to the transition and transfer of Customer Contracts to Buyer.

7.2 TRANSITION OPERATIONS.

(a) Instructions to ERCOT for Switching of Customers. In accordance with the requirements of Applicable Law (including the requirements of the PUCT) and the standard procedures of ERCOT and the applicable TDSP's, Buyer shall submit switch transactions to transfer the Customers in their respective service areas from Seller to Buyer as soon as reasonably practicable following the expiration of any required notice periods under Applicable Law and

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applicable ERCOT and TDSP procedures following the Closing Date. At Buyer's discretion such switch transactions may be batched and/or may be submitted as regular switches or with specific self-selected switch dates; provided, however, notwithstanding the foregoing, Buyer will be responsible for any TDSP fees associated with any self-selected switches, and provided that the method of switch does not delay the flow date as contemplated in this Section 7.2. The date that each switch is completed such that Buyer has become the REP of record for the ESIs served under a Customer Contract is the "**Transfer Date**" for such Customer Contract ESIs. Buyer shall not be required to purchase or take any Customer Contract that relates to any breach by Seller of its covenants in **Article VI** hereof.

(b) Provision of Electricity Services under Customer Contracts. Seller shall continue to supply electricity services to Customers under the Customer Contracts (subject to the provisions of **Section 7.2(i)**), and bill Customers for such services, through their respective Transfer Dates in accordance with its ordinary business practices, its Permits (which Seller shall maintain at least through the end of the Last Customer Transfer Date), and Applicable Law (including all requirements of the PUCT). Seller shall be entitled to collect from Customers all Accounts Receivable in connection with the electricity supplied to such Customers by Seller through each applicable Transfer Date, and Seller shall timely remit to appropriate Governmental Entities all Taxes collected by Seller in connection therewith.

(c) Buyer agrees that it shall take no action to impair Seller's collection of such Accounts Receivable. If Buyer receives Accounts Receivable payments from a Customer, that are payment for quantities delivered to the Customer prior to the date on which such Customer is Transferred to Buyer, Buyer agrees to hold such amounts in trust for Seller and to remit such amounts to Seller. If Seller receives payments from a Transferred Customer with respect to charges for electric service provided by Buyer, Seller agrees to hold such amounts in trust for Buyer and to remit such amounts to Buyer.

(d) Transition Obligations. Each of Seller and Buyer covenant and agree to work cooperatively together in good faith to transition the Customer Contracts from Seller to Buyer in accordance with the terms of this Agreement and otherwise in a manner that minimizes disruption to Buyer, Seller and Customers. Without limiting the generality of the foregoing, Seller agrees that beginning as of the Closing Date and continuing until the applicable Transfer Date for each Customer transferred to Buyer hereunder, Seller shall (i) provide updates to Buyer at least weekly (and daily for each of the last five (5) days preceding the date(s) upon which any switch transactions are to be submitted) of any Customer drops or Customers that otherwise have become ineligible for transfer to Buyer hereunder; (ii) as requested by Buyer, provide access to and authorization for Buyer to have access to, extracts/reports from ERCOT MIS (including but not limited to Potential Load Loss Extract) and provide access to their DUNs on TDSP CR Portals; and (iii) use its best efforts to review and validate its customer information, systems, contracts and processes to ensure that Seller does not transfer to Buyer any customers for which Seller is not the REP of record at the time of such transfer or otherwise does not have the right to transfer such customer to Buyer.

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(e) Additional Customer Data. By the last day of the week following each Transfer Date, Seller shall deliver to Buyer updates, if any, to the Customer Data of the relevant Customers.

(f) Seller's Retention of Customer Data after Transfer Date. Seller may retain Customer Data for as long after the Transfer Dates as reasonably necessary to carry out the following exclusive purposes: (i) the adjustment, collection, or settlement of any amount over- or under-billed to any Customers while in Seller's service; (ii) compliance with audit requests, reviews, investigations or other regulatory requirements or Proceedings of the PUCT, the IRS, or any other Governmental Entity authorized by Applicable Law; (iii) compliance with any other Applicable Law; and (iv) compliance with Seller's internal archival and/or backup policies and procedures. Following the foregoing period, Seller shall permanently delete and destroy all Customer Data remaining in its possession. Such Customer Data as is retained by Seller for the foregoing purposes shall be deemed the exclusive confidential and commercially valuable information of Buyer, and Seller shall treat it accordingly (subject to the additional usage and disclosure rights and obligations set forth above) and shall not cause or permit the Customer Data to be disclosed to or accessed by any third party except as reasonably necessary for the purposes set forth above. Seller shall notify Buyer of any unauthorized disclosure, breach, loss or theft of Customer Data as soon as Seller learns of such event.

(g) Compliance with PUCT Requirements and other Applicable Law. At all times from the date hereof through the applicable Transfer Date and for all periods after the Closing in which Seller remains subject to their jurisdiction with respect to its operation of the Business during periods prior to the applicable Transfer Date, Seller shall fully and timely comply with the requirements of: (i) Seller's Permits from the PUCT, including requirements related to customer complaint handling; (ii) all annual reporting requirements of the PUCT, including any commitments of Seller under any settlement agreement with the PUCT; and (iii) all other Applicable Law.

(h) Notification of Proceedings and Complaints. Following the applicable Transfer Date, Seller shall promptly notify Buyer of any Proceedings relating to the Customer Contracts and any unresolved PUCT complaints against Seller relating to the Customer Contracts with respect to periods prior to the applicable Transfer Date.

(i) Preservation of Included Assets. Seller shall use reasonable efforts prior to the completion of the transfer of each Customer from Seller to Buyer hereunder to conduct its operations with regard to the Included Assets in the ordinary course of business consistent with past practice, to preserve its goodwill, and to preserve for the benefit of Buyer the present relationships between Seller and the Customers. Without limiting the generality of the foregoing, Seller agrees that beginning as of the Closing Date and continuing until the applicable Transfer Date for each Customer transferred to Buyer hereunder, notwithstanding any contractual right of Seller under the applicable Customer Contracts to change the prices charged to Customers under such Customer Contracts, Seller shall not change such prices charged to any Customer under any Customer Contract that is assigned to Buyer hereunder from the price that is being charged as of the Closing Date as set forth in **Section 3.8(a) of the Seller Disclosure Schedule**. This **Section 7.2(h)** shall not apply to the renewals of expired contracts, which shall be governed by **Section**

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7.2(j), or any adjustments occurring as part of a variable price provided for in a Customer Contract. Seller shall be solely responsible for any costs incurred by Seller in maintaining its prices during the foregoing period.

(j) After the Closing Date, Seller will not agree to or accept any new Customer Contract enrollment applications and will not agree to any renewals, amendments or price or product changes without the prior written (which may be by email) approval of Buyer with respect to the pricing methodology and other material terms of such renewals, amendments or product changes.

7.3 PUBLIC ANNOUNCEMENTS.

Buyer and Seller agree that, except as mutually agreed and approved by each of Buyer and Seller, there shall be no public announcements or public statements with respect to this Agreement or the Contemplated Transactions, except for the PUCT Notification, the Customer Notifications, any UCC filings evidencing the release of Encumbrances on the Included Assets, or as otherwise may be necessary under Applicable Law. In the event that either Party determines in its reasonable discretion that any other public announcement or statement is required under Applicable Law, such Party shall so notify the other Party and shall provide the other Party with a reasonable opportunity to review and comment on the proposed announcement or statement, which shall be limited to the extent required by Applicable Law. Except as may be necessary under Applicable Law, any such announcement shall not include the Purchase Price.

7.4 FEES AND EXPENSES.

Except as otherwise expressly provided in this Agreement, all fees and expenses, including fees and expenses of counsel, financial advisors and accountants, incurred in connection with this Agreement and the Contemplated Transactions shall be paid by the Party incurring such fee or expense, whether or not the Closing shall have occurred.

7.5 PAYMENT OF EXCLUDED LIABILITIES.

Subject to Buyer's obligations under this Agreement, including, without limitation, Buyer's obligations with regard to the Included Liabilities, Seller shall pay or otherwise satisfy in the ordinary course of business all of its liabilities and obligations related in any manner to the Business, including, without limitation, payment and satisfaction of all Excluded Liabilities.

7.6 NON-COMPETITION AND NON-SOLICITATION.

(a) For a period of commencing on the Closing Date and ending [*****] after the Closing Date, Seller shall not, and shall not cause or permit any of its Affiliates that it controls to, directly or indirectly, using the Seller's PUCT Permits or otherwise, (i) engage in the Restricted Business in the Territory; (ii) have an interest in any Person that engages directly or indirectly in the Restricted Business in the Territory in any capacity, including as a partner, shareholder, member, employee, principal, agent, or trustee; or (iii) cause, induce or encourage any material actual or prospective client, customer, supplier or licensor of the Business (including any existing or former client or customer of Seller and any Person that becomes a client or

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customer of the Business after the Closing), or any other Person who has a material business relationship with the Business, to terminate or modify any such actual or prospective relationship. Seller covenants and agrees that Seller shall not, directly or indirectly, solicit, market to, or act in concert with any other Person to solicit, market to or enroll for electric service, any Customer under a Customer Contract that is assigned to Buyer hereunder, for a period of [*****] following the Closing Date. Without limitation of the foregoing, Seller shall (i) suppress from Seller's electricity marketing or solicitation lists and other targeted enrollment activities all Customers under Customer Contracts that are assigned to Buyer hereunder; and (ii) not accept any referral or enrollment application from any Customer under a Customer Contract that is assigned to Buyer hereunder from or through any Broker under an Assumed Broker Agreement, in each case for a period of [*****] following the Closing Date. Notwithstanding the foregoing, Seller may own, directly or indirectly, solely as an investment, securities of any Person traded on any national securities exchange if Seller is not a controlling Person of, or a member of a group which controls, such Person and does not, directly or indirectly, own 5% or more of any class of securities of such Person.

(b) Seller acknowledges and agrees that the covenants in **Section 7.6(a)** contain limitations as to time, geographical area and/or scope of activity to be restrained that are reasonable and necessary to protect Buyer's business interests in the Included Assets and the benefit of its bargain with respect to the Contemplated Transactions. If the provisions of **Section 7.6(a)** will nevertheless for any reason be held to be excessively broad or impermissible under Applicable Law as to time, duration, geographical scope, activity or subject, such provisions shall nevertheless be enforceable to the extent compatible with Applicable Law. Seller hereby further acknowledges that money damages will be impossible to calculate and may not adequately compensate Buyer in connection with an actual or threatened breach by Seller of the provisions of **Section 7.6(a)**. Accordingly, Seller hereby expressly waives all rights to raise the adequacy of Buyer's remedies at law as a defense if Buyer seeks to enforce by injunction and/or other equitable relief the due and proper performance and observance of the provisions of **Section 7.6(a)**. In addition to the foregoing injunction and/or other equitable relief, Buyer also shall be entitled to pursue any other available remedies at law or equity, including the recovery of money damages, in respect of the actual or threatened breach of the provisions of **Section 7.6(a)**.

7.7 BROKER AGREEMENTS.

It is the intent of the Parties that Seller will assign and Buyer will assume the rights and obligations of Seller under the Broker Agreements, but only to the extent of commission prepayments and commission obligations with respect to usage and periods after the applicable Transfer Date of Customer Contracts covered by such Broker Agreement with Customers that become served Customers of Buyer (each, an "**Assumed Broker Agreement**"). Seller shall retain all rights and obligations under the Broker Agreements with respect to any Customer Contract with any Customer that does not become a served Customer of Buyer pursuant to this Agreement. Buyer is not assuming any obligations under any Broker Agreements that require Buyer to continue to accept new referred customers from the Brokers on the terms provided for in the Broker Agreements.

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7.8 FURTHER ASSURANCES.

Each of Buyer and Seller covenants and agrees to cooperate reasonably with the other Party in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall: (a) furnish upon request to each other such further information, (b) execute and deliver to each other such other documents, and (c) do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the Contemplated Transactions.

ARTICLE VIII
INDEMNITY AND SURVIVAL

8.1 BUYER'S INDEMNITY.

From and after the Closing, Buyer shall indemnify and hold harmless Seller, its Affiliates, and its and its Affiliates' members, managers, officers, directors, employees, representatives, agents, successors and permitted assigns (collectively, "**Seller Indemnified Parties**") from and against any claim, liability, loss, loss of value, deficiency, penalty, interest, fine, assessment, damage, obligation, cost or expense (including court costs and reasonable attorneys' and experts' fees and expenses) (a "**Claim**") arising out of, resulting from, or incurred in connection with any of the following, except to the extent such Claim arises out of Seller's negligence or willful misconduct:

(a) the breach of, or the failure to perform or satisfy any of, the representations, warranties and covenants made by Buyer in this Agreement, or any agreement, instrument, certificate, notice or other document delivered by Buyer pursuant to this Agreement;

(b) the Included Assets and Included Liabilities from and after their transfer to, and assumption by, Buyer as of the applicable Transfer Date for each Customer Contract in accordance with the terms of this Agreement;

(c) any act, omission, occurrence, event, condition or circumstance (including any Proceeding, violation of any Permit of Buyer, or violation of Applicable Law, including Applicable Law pertaining to pricing of electricity) involving, related to or arising from Buyer's performance under the assumed Customer Contracts on or after the applicable Transfer Date, or the Included Assets or the Included Liabilities from and after their transfer to, and assumption by, Buyer as of the applicable Transfer Date for each Customer Contract in accordance with the terms of this Agreement (except to the extent such act, omission, occurrence, event, condition or circumstance relates to, or arises from, Seller's ownership or operation of the Included Assets on or prior to the applicable Transfer Date or Seller's acts or omissions in connection with the Business or the Included Assets on or prior to the applicable Transfer Date, as applicable);

(d) any breach or non-performance of Buyer's Tax obligations under **Section 9.2(b)**; or

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(e) any brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made, or alleged to have been made, by any Person with Buyer or its Affiliates in connection with the Contemplated Transactions.

8.2 SELLER'S INDEMNITY.

From and after the Closing, Seller shall indemnify and hold harmless Buyer, its Affiliates, and its and its Affiliates' members, managers, officers, employees, representatives, agents, successors and permitted assigns (collectively, "**Buyer Indemnified Parties**") from and against any Claim arising out of, resulting from, or incurred in connection with any of the following, except to the extent such Claim arises out of Buyer's negligence or willful misconduct:

(a) the breach of, or the failure to perform or satisfy any of, the representations, warranties and covenants made by Seller in this Agreement, or any agreement, instrument, certificate, notice or other document delivered by Seller pursuant to this Agreement;

(b) any of the Excluded Liabilities;

(c) the Included Assets and Included Liabilities prior to and until their transfer to, and assumption by, Buyer as of the applicable Transfer Date for each Customer Contract in accordance with the terms of this Agreement;

(d) any act, omission, occurrence, event, condition or circumstance (including any Proceeding, violation of any Permit of Seller, or violation of Applicable Law, including Applicable Law pertaining to pricing of electricity) involving, related to or arising from Seller's performance under the assumed Customer Contracts on or prior to the applicable Transfer Date, or the Included Assets or the Included Liabilities prior to and until their transfer to, and assumption by, Buyer as of the applicable Transfer Date for each Customer Contract in accordance with the terms of this Agreement (except to the extent such act, omission, occurrence, event, condition or circumstance relates to, or arises from, Buyer's ownership and operation of the Included Assets on or after the applicable Transfer Date or Buyer's acts or omissions in connection with the Business or the Included Assets on or prior to the applicable Transfer Date, as applicable);

(e) any breach or non-performance of Seller's Tax obligations under **Section 9.2(a)**;

(f) any brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made, or alleged to have been made, by any Person with Seller in connection with the Contemplated Transactions (whether or not disclosed in **Section 3.10 of the Seller Disclosure Schedule**);

(g) all matters disclosed in **Section 3.7 of the Seller Disclosure Schedule**;

(h) any failure by Seller to comply with its Permits (including its PUCT Permits) or with Applicable Law; or

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(i) any transfer by Seller to Buyer of any Customers for which Seller is not the REP of record at the time of such transfer or otherwise does not have the right to transfer such customer to Buyer; or

(j) any untruthfulness, inaccuracy or incompleteness in or of any Customer Data delivered (or failed to be delivered) by Seller hereunder, but only to the extent that such untruthfulness, inaccuracy or incompleteness was intentional or within Seller's Knowledge on the date such Customer Data was delivered.

8.3 CLAIM NOTICE.

(a) Indemnified Parties. As used in this **Article VIII**, the term "**Indemnified Party**" shall mean any Seller Indemnified Party or any Buyer Indemnified Party, as the case may be, which is asserting a claim for indemnity hereunder. Any Party against which a claim for indemnification is asserted by an Indemnified Party pursuant to this **Article VIII** is referred to herein as an "**Indemnifying Party**." In the event that any Claim (a "**Third Party Claim**") is asserted against or sought to be collected from an Indemnified Party by a Person who is not a Buyer Indemnified Party or a Seller Indemnified Party (a "**Third Party**"), in respect of which indemnity may be sought by such Indemnified Party under this **Article VIII**, Indemnified Party shall give prompt written notice to the Indemnifying Party of such event ("**Claim Notice**"). A Claim Notice shall specify, to the extent known by the Indemnified Party, the nature of and specific basis for any Third Party Claims or the nature of and specific basis of any suit, action, investigation or proceeding set forth therein and the amount or the good faith estimated amount thereof to the extent then practicable.

(b) Notice Required. The Indemnifying Party shall be entitled to participate in the defense of any Third Party Claim and, subject to the limitations set forth in this **Section 8.3**, shall be entitled to control such defense, in each case at its expense; **provided, however**, that the Indemnifying Party must notify the Indemnified Party in writing of its intent to assume such control within fifteen (15) days after the delivery or receipt of a Claim Notice ("**Notice Period**"). The Indemnified Party is hereby authorized prior to receipt of such notice from the Indemnifying Party to file any motion, answer or other pleading that shall be necessary or appropriate to protect its interest or those of the Indemnifying Party. In the event that the Indemnifying Party assumes the defense of a Third Party Claim, the Indemnifying Party shall have the right and obligation, at its sole cost and expense, to defend with counsel approved by the Indemnified Party all proceedings relating to such Third Party Claim, which proceedings shall be properly and diligently settled or prosecuted to a final non-appealable order of a court of competent jurisdiction; **provided, however**, that the Indemnified Party shall at all times have the right, at its sole option and expense, to employ separate counsel, to participate in the defense of such Third Party Claim.

(c) Cooperation. The Parties agree reasonably to cooperate with one another and their respective counsel in contesting and defending any Claim by a Third Party (including granting reasonable access to the pertinent books, records and personnel (to the extent such personnel are available) in their possession or control) or, if appropriate and related to the Claim in question, in making (i) any counterclaim against the Third Party asserting the Claims, or (ii) any cross-complaint against any Person.

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(d) No Settlement. Notwithstanding any provision in this **Section 8.3** to the contrary, the Indemnifying Party shall not, without the written consent of the Indemnified Party (not to be unreasonably withheld), (i) settle or compromise any Claim or consent to the entry of any judgment with respect to such Claim that does not include as an unconditional term thereof the delivery by the claimant or plaintiff to the Indemnified Party of a written release from all liability in respect to such Claim, (ii) settle or compromise any Claim in any manner that would reasonably be expected to materially and adversely affect the Indemnified Party, or (iii) settle or compromise any Claim in a manner that will require the Indemnified Party to pay any money.

(e) Rights of Indemnified Party to Defend. If the Indemnifying Party does not elect to assume the defense of a Third Party Claim within the Notice Period pursuant to **Section 8.3(b)**, or subsequently fails to diligently and promptly prosecute, defend or settle such Third Party Claim, then the Indemnified Party shall have the right to defend, or compromise and settle at the sole cost and expense of the Indemnifying Party, such Claim by a Third Party by all appropriate proceedings, which proceedings may be prosecuted by the Indemnified Party to a final non-appealable order of a court of competent jurisdiction or settlement; **provided, however**, that in no event will the Indemnified Party consent to the entry of any judgment on or enter into any settlement with respect to the Third Party Claim without the prior written (which may be by email) consent of the Indemnified Party (not to be unreasonably withheld).

(f) Direct Claims. In the event any Indemnified Party should have a Claim against any Indemnifying Party hereunder that does not involve damages being asserted against or sought to be collected from it by a Third Party, the Indemnified Party shall send a Claim Notice containing the same type of information required by **Section 8.3(a)** with respect to such Claim to the Indemnifying Party.

(g) Tax Claims. Third Party Claims with respect to Taxes shall be governed by **Section 9.3** and not this **Section 8.3**.

8.4 SURVIVAL.

All representations and warranties, covenants, obligations and agreements of the Parties set forth in this Agreement, including those obligations set forth in this **Article VIII**, shall survive the Closing as set forth in this **Section 8.4** for a period of [*****] from the Closing Date, with the exception of any tax representations or obligations, which shall survive until the expiration of the statute of limitations period. Claims asserted by any Buyer Indemnified Party pursuant to **Sections 8.2** may be brought in accordance with this **Section 8.4**; and Claims asserted by any Seller Indemnified Party pursuant to **Sections 8.1** may be brought in accordance with this **Section 8.4**.

8.5 LIMITATION ON CERTAIN INDEMNITIES

(a) Notwithstanding any other provision of this Agreement to the contrary or otherwise, Seller shall not be liable to Buyer in respect of any indemnification under **Section 8.2(a)** until the amount of Claims of Buyer Indemnified Parties under this Agreement (other than Claims

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asserted pursuant to **Sections 3.1, 3.2, 3.3(a), 3.6(b), 3.9, 3.10 and 3.11** for which the Buyer's Threshold, as defined below, shall not apply), individually or in the aggregate, exceeds Ten Thousand Dollars (\$10,000) (the "**Buyer's Threshold**"), so that at such time as the aggregate amount of such Claims exceeds the Buyer's Threshold, Seller shall be liable for all Claims of Buyer Indemnified Parties under **Section 8.2(a)** with no deductible. Buyer agrees to use commercially reasonable efforts to mitigate any Claim.

(b) Notwithstanding any other provision of this Agreement to the contrary or otherwise, Buyer shall not be liable to Seller in respect of any indemnification under **Section 8.1(a)** until the amount of Claims of Seller Indemnified Parties under this Agreement (other than Claims asserted pursuant to **Sections 4.1, 4.2, 4.3(a) and 4.7**), individually or in the aggregate, exceeds Ten Thousand Dollars (\$10,000) (the "**Seller's Threshold**"), so that at such time as the aggregate amount of such Claims exceeds the Seller's Threshold, Buyer shall be liable for all Claims of Seller Indemnified Parties under **Section 8.1(a)** with no deductible. Seller agrees to use commercially reasonable efforts to mitigate any Claim.

(c) The liability of an Indemnifying Party for all Claims under this **Article VIII** shall be limited to an amount equal to the Purchase Price (as adjusted pursuant to **Section 2.2**); **provided, however**, that the foregoing limitation shall not apply to any Claims brought under **Sections 8.1(b)-(e), Sections 8.2(b)-(j)**, or Claims based on fraud or willful misconduct, and such Claims shall not be counted toward such limit. The indemnification rights under this **Article VIII** shall be the sole and exclusive remedies of the Seller Indemnified Parties and the Buyer Indemnified Parties subsequent to the Closing Date with respect to any matter in any way relating to this Agreement or arising in connection herewith; **provided, however**, that notwithstanding anything to the contrary herein, the existence of this **Article VIII** and of the rights and restrictions set forth herein do not limit (i) Buyer's payment obligations to Seller under Article II, (ii) Buyer's legal remedies set forth in **Section 7.6(b)** with regard to breaches of Seller's obligations under **Section 7.6(a)**, (iii) any legal remedy against the Parties with regard to claims based on fraud or willful misconduct, or (iv) the right of either Party to obtain specific performance of the other Party's obligations under this Agreement. Buyer may set off any liabilities of Seller pursuant to **Article VIII** against any amounts owed by Buyer pursuant to **Article II**.

(d) Notwithstanding anything in this Agreement to the contrary, if and to the extent that a representation or warranty made by a party under this Agreement is qualified in any way by a standard of materiality, such materiality qualification will not be taken into account in determining the magnitude of the damages occasioned by the breach for purposes of calculating whether the Buyer's Threshold or the Seller's Threshold, as the case may be, has been met.

(e) Each Indemnified Party shall take, and shall cause its Affiliates that it controls, directly or indirectly, to take, all reasonable steps to mitigate the amount of any Claim upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to the Claim.

(f) Seller shall not be liable under this Article VIII for any Claim based upon or arising out of any inaccuracy in or breach of any of the representations, warranties and covenants

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of Seller contained in this Agreement, any Seller Disclosure Schedule, or any agreement, instrument, certificate, notice or other document delivered by Seller pursuant to this Agreement if Buyer had knowledge of such inaccuracy or breach prior to the Closing.

ARTICLE IX **TAX MATTERS**

9.1 TRANSFER TAXES.

The Parties agree and acknowledge that they intend for the Contemplated Transactions to be treated as an exempt “occasional sale” for purposes of the Texas Tax Code. Any and all sales, use, transfer, filing, recordation, registration and similar Taxes and fees arising from or associated with the Contemplated Transactions (“**Transfer Taxes**”) that are levied on a Party shall be borne solely by such Party, and such Party shall file all necessary documentation with respect to, and make all payments of, such Taxes and fees on a timely basis. To the extent the Contemplated Transactions do not qualify as an exempt “occasional sale” under the Texas Tax Code, all Transfer Taxes shall be borne by Buyer.

9.2 LIABILITY FOR OTHER TAXES.

(a) Seller’s Liability. Seller shall be solely liable for any Taxes attributable to the Included Assets with respect to any taxable periods or portions thereof ending on or before the applicable Transfer Date (whether or not such taxes are due and payable by Seller prior to, on or after the applicable Transfer Date); **provided, however**, that Seller shall be solely liable at all times for all Taxes that fall within the definition of Excluded Liabilities, regardless of when incurred.

(b) Buyer’s Liability. Other than as provided in **Section 9.1**, Buyer shall be solely liable for any Taxes attributable to the Included Assets with respect to any taxable periods or portions thereof beginning after the applicable Transfer Date; **provided, however**, that Buyer shall have no liability at any time for any Taxes that fall within the definition of Excluded Liabilities, regardless of when incurred.

(c) Cooperation on Tax Matters. Each Party shall cooperate fully, as and to the extent reasonably requested by the other Party, in connection with the filing of Returns pursuant to this **Article IX** and any Proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other Party’s request) the provision of records and information which are reasonably relevant to any such audit, litigation or other Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The Parties agree to retain all books and records with respect to Tax matters pertinent to the Included Assets relating to any Tax period beginning before the applicable Transfer Date until the expiration of the statute of limitations (and, to the extent notified by Buyer or Seller, any extensions thereof) of the respective Tax periods, and to abide by all record retention agreements entered into with any Tax authority.

(d) Buyer and Seller further agree, upon request, to use their best efforts to obtain any certificate or other document from any Tax authority or any other Person as may be

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necessary to mitigate, reduce or eliminate any Tax that could be imposed (including with respect to the Contemplated Transactions); **provided, however**, that no action shall be taken by Seller or required of Buyer if such action would reasonably be expected to have a Material Adverse Effect on either such Party or its Affiliates.

9.3 AUDITS OR ASSESSMENTS.

Buyer shall promptly notify Seller in writing upon receipt by Buyer of notice of any pending or threatened Tax audits, assessments or other Proceedings that could reasonably affect the Tax liabilities for which Seller would be liable under **Section 9.2(a)**. In the case of any such audit, assessment or other Proceeding, Seller shall control and Buyer shall be entitled, at Buyer's expense, to participate in the conduct of such Proceeding and give comments which Seller shall reasonably consider.

ARTICLE X
MISCELLANEOUS

10.1 NOTICE.

Any notice, request, instruction, correspondence or other document required to be given hereunder by either Party to the other Party ("**Notice**") shall be in writing and delivered in person or by courier service requiring acknowledgment of delivery or mailed by certified mail, postage prepaid and return receipt requested, or by email, as follows:

If to Buyer, addressed to:

US Retailers LLC
[*****]
[*****]
Attention: [*****]
Email: [*****]

With copies to:

[*****]
[*****]
[*****]
Attention: [*****]
Email: [*****]

If to Seller, addressed to:

Summer Energy, LLC
5847 San Felipe Street
Suite 3700

Portions of this Exhibit have been omitted or redacted for confidentiality purposes.

Houston, TX 77057
Attn: Neil Leibman
Email: [*****]

With a copy to:

Holland & Hart LLP
222 South Main Street, Suite 2200
Salt Lake City, UT 84101
Attn: S. Chase Dowden
Email: [*****]

Notice given by personal delivery or courier service shall be effective upon actual receipt. Notice given by mail shall be effective five (5) days after deposit with the United States Postal Service. Notice given by email shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if received before the recipient's normal business hours. Either Party may change any address to which Notice is to be given to it by giving Notice as provided above of such change of address.

10.2 GOVERNING LAW; VENUE FOR DISPUTES.

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas, without regard to its conflict of laws rules or principles. Any court Proceeding arising out of or relating to this Agreement or any of the Contemplated Transactions may be brought in the state or federal courts located in Houston, Harris County, Texas, and each of the Parties irrevocably submits to the exclusive jurisdiction of each such court in any such court Proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any Proceeding arising out of or relating to this Agreement or the Contemplated Transactions in any other court. The Parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement between the Parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the second sentence of this **Section 10.2** may be served on either Party anywhere in the world.

10.3 ENTIRE AGREEMENT; AMENDMENTS AND WAIVERS.

This Agreement, together with all Exhibits and Schedules, constitutes the entire understanding and agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties and their respective Affiliates; **provided, however**, that notwithstanding the foregoing, that certain Confidentiality and Non-Disclosure Agreement between NRG Energy, Inc. and Summer Energy Holdings, Inc., dated as of August 1, 2023, shall not be superseded hereby but shall be and remain in full force and effect with respect to information exchanged prior to the

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date hereof. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (regardless of whether similar), nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

10.4 SEVERABILITY.

If any of the provisions contained in this Agreement or in any other document delivered pursuant hereto shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement or any other such document, and such provision shall be reformed so that it would be valid, legal and enforceable to the maximum extent permitted by Applicable Law.

10.5 SUCCESSORS BOUND; THIRD PARTIES.

This Agreement may not be assigned by either Party without the consent of the other Party; **provided, however**, that Buyer may assign its rights under this Agreement to any Affiliate of Buyer or any Person to which it conveys substantially all of the Customer Contracts, provided that any such Affiliate assignee possesses equivalent or better creditworthiness than Buyer, as determined by Seller in its reasonable discretion. Any attempted assignment in contravention of the foregoing shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any Person other than the Parties and their respective successors and permitted assigns any liabilities, duties, rights, remedies, benefits or obligations hereunder, except as specifically provided herein with respect to Buyer Indemnified Parties and Seller Indemnified Parties. Without limitation of the foregoing, nothing in this Agreement, express or implied, including the provisions of **Section 7.2(i)**, is intended to confer upon any Customer any third party beneficiary rights, remedies or benefits hereunder.

10.6 MULTIPLE COUNTERPARTS.

This Agreement may be executed in one or more counterparts via emailed PDF signatures, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.7 MUTUAL DRAFTING.

This Agreement is the joint product of Buyer and Seller, and each provision hereof has been subject to the mutual consultation, negotiation and agreement of Buyer and Seller and shall not be construed for or against any Party.

10.8 FURTHER ASSURANCES.

From time to time following the Closing, at the request of either Party and without further consideration (except as expressly provided herein), the other Party shall execute and deliver to

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such requesting Party such instruments and documents and shall take such other action (but without incurring any material financial obligation) as such requesting Party may reasonably request to consummate more fully and effectively the Contemplated Transactions.

10.9 BULK SALES LAWS.

Each Party hereby waives compliance by the Parties with the provisions of the “bulk sales,” “bulk transfer” and similar Laws in effect in the State of Texas, including the Texas Uniform Fraudulent Transfer Act, and all other similar Laws of any Governmental Entity other than bulk transfer tax notice provisions.

10.10 LIMITATION OF LIABILITY

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

* * * * *

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple counterparts, all as of the date first set forth above.

BUYER:

US RETAILERS LLC

By: /s/ Elizabeth R. Killinger
Elizabeth R. Killinger, President

SELLER:

SUMMER ENERGY, LLC

By: /s/ Neil Leibman
Neil Leibman, Manager

FIRST AMENDMENT TO BORROWING BASE FACILITY AGREEMENT

This First Amendment to the Borrowing Base Facility Agreement (this “Amendment”) dated as of February 22, 2024, is by and among Summer Energy, LLC, a Texas limited liability company (“SE”), Summer Energy Midwest, LLC, an Ohio limited liability company (“SEM”) and Engie Energy Marketing NA, Inc., a Delaware corporation (“EEMNA”). SE, SEM, and EEMNA may be referred to individually as a “Party” or collectively as the “Parties.” Capitalized terms used herein but not otherwise defined in this Amendment shall have the respective meanings assigned to such terms in the BBFA (as defined below).

WHEREAS, SE, SEM and EEMNA previously entered into that certain Borrowing Base Facility Agreement dated as of June 7, 2023 (the “BBFA”); and

WHEREAS, the Parties desire to amend certain provisions of the BBFA;

NOW THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Amendment to Section 7.6 of the BBFA. Section 7.6 of the BBFA is amended as follows:
 - a. deleting “and” following clause (d);
 - b. adding “and” after the semicolon in clause (e);
 - c. adding a new clause (f) as follows:

“(f) any sale or disposition of assets by a Transaction Party that has been consented to by EEMNA in EEMNA’s sole discretion;”;
 - d. replacing the phrase “clause (a) through (e)” with the phrase “clause (a) through (f)”.
2. Amendments. No amendment, modification or waiver in respect of this Amendment will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the Parties.
3. Counterparts. This Amendment (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission or by a copy delivered by e-mail), each of which will be deemed an original.
4. Headings. The headings used in this Amendment are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Amendment.
5. Governing Law. THIS AMENDMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE).
6. Severability. Any provision of this Amendment that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Amendment to be effective as of the first date set forth above.

SUMMER ENERGY, LLC

By: /s/ Neil Leibman
Name: Neil Leibman
Title: Manager

ENGIE ENERGY MARKETING NA, INC.

By: /s/ John Funk
Name: John Funk
Title: CFO/CRO

SUMMER ENERGY MIDWEST, LLC

By: /s/ Neil Leibman
Name: Neil Leibman
Title: Manager