

**EXH. SZ-3  
DOCKET U-180680  
WITNESS: STEVEN ZUCCHET**

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**IN THE MATTER OF THE JOINT  
APPLICATION OF PUGET SOUND  
ENERGY, ALBERTA INVESTMENT  
MANAGEMENT CORPORATION,  
BRITISH COLUMBIA INVESTMENT  
MANAGEMENT CORPORATION,  
OMERS ADMINISTRATION  
CORPORATION, AND PGGM  
VERMOGENSBEHEER B.V. FOR AN  
ORDER AUTHORIZING PROPOSED  
SALES OF INDIRECT INTERESTS  
IN PUGET SOUND ENERGY**

**Docket U-180680**

**SECOND EXHIBIT (NONCONFIDENTIAL) TO THE  
PREFILED DIRECT TESTIMONY OF**

**STEVEN ZUCCHET**

**ON BEHALF OF ONTARIO MUNICIPAL EMPLOYEES RETIREMENT  
SYSTEM ADMINISTRATION CORPORATION**

**SEPTEMBER 5, 2018**

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*Execution Version*

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**PURCHASE AND SALE AGREEMENT**

by and among

MIP PADUA HOLDINGS, L.P.,

as Seller,

MOBY CANADA LIMITED PARTNERSHIP,

as Buyer,

MACQUARIE INFRASTRUCTURE PARTNERS CANADA, L.P.,  
(solely with respect to Section 5.15 and, solely with respect to Section 5.15(f), Section 9.12),

MACQUARIE INFRASTRUCTURE PARTNERS INTERNATIONAL, L.P.,  
(solely with respect to Section 5.15 and, solely with respect to Section 5.15(f), Section 9.12),

MACQUARIE INFRASTRUCTURE PARTNERS A, L.P.,  
(solely with respect to Section 5.15 and, solely with respect to Section 5.15(f), Section 9.12),

and

MACQUARIE INFRASTRUCTURE PARTNERS II AIV, L.P.,  
(solely with respect to Section 5.15 and, solely with respect to Section 5.15(f), Section 9.12)

Dated as of August 8, 2018

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Buyer Disclosure Schedule

Seller Disclosure Schedule

EXHIBITS

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Exhibit B	Buyer Parent Guarantee
Exhibit C	Form of Assignment and Assumption Agreement
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## **PURCHASE AND SALE AGREEMENT**

This PURCHASE AND SALE AGREEMENT is entered into as of August 8, 2018, by and among (i) MIP Padua Holdings, L.P., a Delaware limited partnership (“Seller”), (ii) Moby Canada Limited Partnership, an Ontario limited partnership (“Buyer”), by its general partner Moby GP Canada Corporation (“Buyer GP”), and (iii) solely with respect to Section 5.15 and, solely with respect to Section 5.15(f), Section 9.12 and not for purposes of any other Article, Section or provision of this Agreement, Macquarie Infrastructure Partners Canada, L.P., an Ontario limited partnership, Macquarie Infrastructure Partners International, L.P., a Delaware limited partnership, Macquarie Infrastructure Partners A, L.P., a Delaware limited partnership and Macquarie Infrastructure Partners II AIV, L.P., a Delaware limited partnership (each, a “Seller Parent Guarantor” and, collectively, the “Seller Parent Guarantors”). Each of Seller and Buyer are individually referred to as a “Party” and collectively referred to as the “Parties”.

### **RECITALS**

WHEREAS, as of the date hereof, Seller owns 43.8882% of the issued and outstanding Company Interests of Puget Holdings LLC, a Delaware limited liability company (the “Company”);

WHEREAS, Seller is party to the Second Amended and Restated Senior Secured Loan Agreement, dated as of January 20, 2015, by and between Puget Intermediate Holdings Inc., as the borrower therein, and Seller, as the lender therein (the “Loan Agreement”);

WHEREAS, Seller intends to sell, grant, convey, assign, transfer and deliver to Buyer, and Buyer intends to purchase, acquire, assume and accept from Seller, (a) all of Seller’s right, title and interest in and to (i) 23.8872% of the issued and outstanding Company Interests (the “Purchased Interests”) and (ii) the Loan Agreement with respect to the Pro Rata Portion of the Loan (as defined in the Loan Agreement) owing at the Closing to Seller thereunder (the “Purchased Loan”) (clauses (i) and (ii), collectively, the “Purchased Assets”), and (b) all of the obligations, liabilities, covenants, duties and agreements arising out of, under or relating to, the Purchased Assets from and after the Closing, in each case, upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, Seller has entered into (i) a purchase and sale agreement with PIP2PX (PAD) Ltd., and PIP2GV (PAD) Ltd., each a corporation, dated as of the date hereof, providing for the sale by Seller of 6.0000% of the issued and outstanding Company Interests and a pro rata portion of the Loan (as defined in the Loan Agreement), (ii) a purchase and sale agreement with 6860141 Canada Inc., as Trustee for Padua Investment Trust, dated as of the date hereof, providing for the sale by Seller of 4.0000% of the issued and outstanding Company Interests and a pro rata portion of the Loan (as defined in the Loan Agreement), and (iii) a purchase and sale agreement with Mount Rainier Utility Holdings LLC, a Delaware limited liability company, dated as of the date hereof, providing for the sale by Seller of 10.0010% of the issued and outstanding Company Interests and a pro rata portion of the Loan (as defined in the Loan Agreement) (each such purchase agreement, together with all schedules, exhibits and annexes attached thereto, an “Other PSA” and, collectively, the “Other PSAs”); and

WHEREAS, concurrently with the execution of this Agreement, as a material inducement to Seller's willingness to enter into this Agreement and consummate the transactions contemplated hereby, OMERS Administration Corporation ("Buyer Parent") has executed and delivered (i) an equity commitment letter, attached hereto as Exhibit A (the "Buyer Parent Commitment Letter"), and (ii) a limited recourse guarantee, attached hereto as Exhibit B (the "Buyer Parent Guarantee").

WHEREAS, as a material inducement to Buyer's willingness to enter into this Agreement and consummate the transactions contemplated hereby, each Seller Parent Guarantor has provided Buyer with the guarantee set out in Section 5.15.

## AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises herein made, and in consideration of the representations and warranties herein contained, and for other good and valuable consideration the adequacy of which is hereby acknowledged, the Parties, intending to become legally bound, hereby agree as follows:

### ARTICLE I. DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms shall have the following meanings:

"Action" means any action, suit or proceeding by or before any court or other Governmental Authority.

"Additional Interests" has the meaning set forth in Section 5.11.

"Additional Loan Agreement" has the meaning set forth in Section 5.11.

"Additional Purchased Assets" has the meaning set forth in Section 5.11.

"Affiliate" means:

(a) with respect to any Person (other than Buyer) that is a Fund or holds equity securities for a Fund, any other Person or Fund or Subsidiary of a Fund that is advised by, or the business, operations or assets of which are managed (whether solely or primarily) by, or whose parent is managed by, the manager or advisor of the Fund (or a Person that, directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, that manager or advisor). For purposes of this definition:

(i) the term "advisor" with respect to any Fund shall mean an entity that provides such Fund with advice in relation to the management of investments of such Fund, which (other than in relation to actually making decisions to implement such advice) is substantially the same as the services that would be provided by a manager of such Fund and such advisor effectively forms part of the structure of such Fund;

(ii) the term “manager” with respect to any Fund shall mean any general partner, trustee, responsible entity, nominee, manager, advisor or other entity performing a similar function with respect to such Fund; and

(iii) a Fund shall not be considered to be an Affiliate of a Person in which it holds equity or debt securities unless such Fund Controls such Person; and

(b) with respect to (i) any Person that is not a Fund and does not hold equity securities for a Fund, and (ii) Buyer, any other Person that, directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person.

For purposes of this Agreement only, “Affiliates” of Buyer shall be determined by reference to only paragraph (b) above, *provided* that, for purposes of this Agreement, each of Buyer Parent and any Person in respect of which all of the economic interests are, directly or indirectly, owned by Buyer Parent shall be deemed to be an “Affiliate” of Buyer. For the avoidance of doubt, in no event shall Seller or any of its Affiliates be considered an Affiliate of any Company Entity.

“Affiliate Contract” means any Contract between Seller or any of its Affiliates (excluding any Company Entity), on the one hand, and any Company Entity, on the other hand.

“Agreement” means this Purchase and Sale Agreement, including all Exhibits and Schedules hereto (including the Disclosure Schedules).

“Alternative Proposal” means any transaction constituting, or any inquiry, proposal or offer from any Person or group of Persons (including any Affiliate of Seller and, for clarity, any Fund that is advised by, or the business operations or assets of which are managed (whether solely or primarily) by, or whose parent is managed by, an Affiliate of Seller, and the limited partners of any such Fund, but excluding Buyer and the buyer under any Other PSA and any Affiliates of Buyer or the buyer under any Other PSA) related to: (i) any Transfer by Seller of any Company Interests (other than pursuant to this Agreement or any Other PSA), (ii) a merger, consolidation, liquidation, recapitalization, share exchange or other business combination transaction involving the Company or any other Company Entity, (iii) the issuance or acquisition of Equity Interests of any of the Company or any other Company Entity, and/or (iv) the sale, lease, exchange or other disposition of all or a material portion of the business, assets or properties of the Company or any other Company Entity.

“Approved Business Plan” means the five-year business plan approved by the Business Planning and Compensation Committee and the Board as of March 1, 2018, in the form included in folder 3.17 of the Data Room.

“Assignment and Assumption Agreement” means the assignment and assumption agreement evidencing the transfer to Buyer or its designee of the Purchased Assets, substantially in the form attached hereto as Exhibit C.

“Base Purchase Price” means \$1,666,577,846.

“Benefit Plan” means each material employee benefit plan (within the meaning of Section 3(3) of ERISA) and each other material benefit plan, in each case, sponsored or maintained by any

Company Entity for the benefit of any Company Employees, excluding any such plan required by applicable Law or sponsored, in whole or in part, by any Governmental Authority.

“Board” means the Board of Managers of the Company.

“Business Day” means any day other than a Saturday or Sunday or any day on which banks in (i) the State of New York or (ii) Toronto, Ontario Canada are authorized or required to close.

“Buyer” has the meaning set forth in the preamble to this Agreement.

“Buyer Company Rights” means any management, voting, consent or similar rights (in each case, subject to any applicable duties under Law) available to Buyer (or a Manager appointed or nominated by Buyer) from and after the Closing under (and solely to the extent the exercise of such rights would not reasonably be expected to result in a breach of) any Governing Documents or other Contracts with respect to Buyer’s direct or indirect ownership interest in the Company Entities from and after the Closing. For the avoidance of doubt, Buyer exercising or not exercising its “Buyer Company Rights” in relation to a Manager appointed or nominated by Buyer means that Buyer shall use reasonable efforts to request or cause such Manager, subject to his or her fiduciary duties, to so exercise or not exercise such rights.

“Buyer Disclosure Schedule” means the disclosure schedule delivered by Buyer to Seller on the date hereof and attached hereto.

“Buyer GP” has the meaning set forth in the preamble to this Agreement.

“Buyer Indemnified Parties” means Buyer, each Affiliate thereof, and each Representative of Buyer and/or any Affiliate thereof.

“Buyer Parent” has the meaning set forth in the recitals to this Agreement.

“Buyer Parent Commitment Letter” has the meaning set forth in the recitals to this Agreement.

“Buyer Parent Guarantee” has the meaning set forth in the recitals to this Agreement.

“Buyer Termination Fee” has the meaning set forth in Section 8.3(a).

“Cap” has the meaning set forth in Section 5.15(a).

“CFIUS” means the Committee on Foreign Investment in the United States.

“CFIUS Approval” means that Seller and Buyer shall have received written notice from CFIUS stating that: (a) CFIUS has concluded that the transactions contemplated by this Agreement do not constitute a “covered transaction” and are not subject to review under Section 721 of the Defense Production Act of 1950 (50 U.S.C. § 4565), as amended, (“Section 721 of the DPA”); (b) the review or investigation of the transactions contemplated by this Agreement under Section 721 of the DPA has been concluded, and CFIUS has determined that there are no unresolved national security concerns with respect to the transactions contemplated by this Agreement; or

(c) CFIUS has sent a report to the President of the United States requesting the President's decision on the CFIUS notice submitted by Buyer and the Company and either (i) the fifteen (15)-day period under Section 721 of the DPA during which the President of the United States may announce his decision to take any action to suspend or prohibit or place any limitations on the transactions contemplated hereby has expired without any such action being threatened, announced or taken or (ii) the President of the United States has announced a decision not to take any action to suspend, prohibit or place any limitations on the transactions contemplated hereby.

“Claim Notice” means written notification pursuant to and in accordance with Section 7.3(a) of a Third-Party Claim for indemnity under Section 5.2(a) or Section 7.2 by an Indemnified Party, specifying in reasonable detail the nature of and basis for such Third-Party Claim and for the Indemnified Party's claim against the Indemnifying Party under Section 7.2, together with (a) the amount or, if not then reasonably determinable, the estimated amount, estimated in good faith, of the Damages arising from such Third-Party Claim and (b) reasonable supporting documentation (to the extent available) regarding the nature, basis and amount (or estimated amount) of such Third-Party Claim.

“Closing” has the meaning set forth in Section 2.3.

“Closing Certificate” means, with respect to Buyer, the certificate required to be delivered by Buyer pursuant to Section 2.4(b)(ii), and, with respect to Seller, the certificate required to be delivered by Seller pursuant to Section 2.4(a)(iv).

“Closing Date” means the date the Closing occurs pursuant to Section 2.3.

“Closing Date Schedule Supplement” has the meaning set forth in Section 9.5(b).

“Closing Distribution Amount” means the Pro Rata Portion of the aggregate amount paid in cash or property to Seller and/or any of its Affiliates (other than to Padua MGL with respect to the Additional Purchased Assets) as Distributions during the period from (but excluding) the date hereof to (and including) the earlier of (a) March 31, 2019 and (b) the Closing Date.

“Closing Press Release” has the meaning set forth in Section 5.5(c).

“Code” means the Internal Revenue Code of 1986.

“Company” has the meaning set forth in the recitals to this Agreement.

“Company Employee” means each current employee (including individuals who are full-time, part-time, temporary, on vacation or on a paid or unpaid leave of absence) of any of the Company Entities.

“Company Entities” means the Company and each Company Subsidiary.

“Company Interests” means the Class A Interests of the Company.

“Company Subsidiary” means each direct and indirect Subsidiary of the Company.

“Confidentiality Agreement” means the Non-Disclosure Agreement, effective October 27, 2017, by and among MIP Padua Holdings, GP, MIP II Washington Holdings, L.P., and Padua MG Holdings LLC and OMERS Infrastructure Management Inc.

“Consents” means consents, clearances, approvals, agreements, exemptions, waivers, authorizations, filings, registrations and notifications.

“Contract” means any written or oral agreement, contract, subcontract, lease, license, sublicense or other legally binding commitment or undertaking.

“Contracting Parties” has the meaning set forth in Section 9.11.

“Control” means, with respect to any Person, the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or ownership interests, by contract or otherwise.

“Damages” means all losses, claims, damages, payments, costs and expenses, amounts paid in connection with any assessments, judgments or settlements relating thereto, and reasonable out-of-pocket costs and expenses and attorneys’ fees and expenses reasonably incurred in connection with any Action or other dispute resolution proceeding relating thereto.

“Data Room” means the “Project Hamilton” electronic data room hosted through Venue Deal Solutions established by Seller or its Representatives in connection with the transactions contemplated hereby, as at June 15, 2018.

“Disclosure Schedules” means the Buyer Disclosure Schedule and the Seller Disclosure Schedule.

“Distribution Adjustment Amount” means (a) if the Closing Distribution Amount equals the Target Distribution Amount, then zero, (b) if the Target Distribution Amount exceeds the Closing Distribution Amount, then a positive amount equal to the amount by which the Target Distribution Amount exceeds the Closing Distribution Amount and (c) if the Closing Distribution Amount exceeds the Target Distribution Amount, then a negative amount equal to the amount by which the Closing Distribution Amount exceeds the Target Distribution Amount.

“Distributions” means, without duplication, (a) distributions by the Company to Seller, (b) interest payments, principal repayments (including repayments of PIK Increases (as defined in the Loan Agreement)) and any other payments by Puget Intermediate Holdings Inc. pursuant to the Loan Agreement (excluding, for the avoidance of doubt, any non-cash PIK Increases (as defined in the Loan Agreement)) and (c) any Leakage.

“Environmental Law” means any applicable Law existing on the date hereof related to pollution or protection of the environment; *provided, however*, that the term “Environmental Law” shall not include any Law relating to worker health or safety matters to the extent not related to human exposure to hazardous or toxic materials, wastes or substances.

“Equity Financing” has the meaning set forth in Section 4.5.

“Equity Interests” means shares, partnership interests, limited liability company interests or any other equity interest in any Person.

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

“EU Approval” means, to the extent that the transactions contemplated by this Agreement either constitute (or are deemed to constitute under Article 4(5)) a concentration falling within the scope of Council Regulation (EC) 139/2004 (as amended) (the “Regulation”) or are to be examined by the European Commission as a result of a decision under Article 22(3) of the Regulation:

(a) the European Commission taking a decision (or being deemed to have taken a decision) under Article 6(1)(b) or, if the European Commission has initiated proceedings pursuant to Article 6(1)(c), under Article 8(1) or 8(2) of the Regulation, declaring the transactions contemplated by this Agreement compatible with the common market, without including any conditions or obligations that would require a Prescribed Action from any of Buyer, any Affiliate of Buyer or any Company Entity; or

(b) the European Commission taking a decision (or being deemed to have taken a decision) to refer the whole or part of the transactions contemplated by this Agreement to the competent authorities of one or more Member States under Articles 4(4) or 9(3) of the Regulation; and

(i) each such authority taking a decision with equivalent effect to that referred to in paragraph (a) with respect to those parts of the transactions contemplated by this Agreement referred to it; and

(ii) the European Commission taking any of the decisions referred to in paragraph (a) with respect to any part of the transactions contemplated by this Agreement retained by it.

“FERC” means the Federal Energy Regulatory Commission.

“FERC Approval” means the final and non-appealable Consent of FERC under Section 203 of the Federal Power Act with respect to the transactions contemplated by this Agreement.

“Final Order” means any Governmental Order (a) that has not been reversed, stayed, enjoined, set aside, annulled or suspended and is in full force and effect, (b) is final and non-appealable and with respect to which, if applicable, any mandatory waiting period prescribed by Law before the transactions contemplated by this Agreement may be consummated has expired and (c) as to which all conditions to the consummation of the transactions contemplated hereby prescribed by Law have been satisfied.

“Fund” means any unit trust, investment trust, investment company, limited partnership, general partnership or other collective investment scheme, pension fund, insurance company or any body corporate or other entity, in each case, the principal business, operations or assets of which are managed professionally for investment purposes.

“Fundamental Representations” means the representations and warranties set forth in (a) the certificate delivered pursuant to Section 2.4(a)(v) and (b) Section 3.1, Section 3.2, Section 3.3, Section 3.4, Section 3.5, Section 3.6, Section 3.8, Section 3.9, Section 3.10, Section 4.1, Section 4.2, Section 4.3, Section 4.4, Section 4.8, Section 4.10 and Section 4.11.

“GAAP” means generally accepted accounting principles in the United States of America.

“Governing Documents” means, (a) with respect to any corporation, its articles or certificate of incorporation and bylaws, (b) with respect to any limited liability company, its articles or certificate of organization or formation and its operating agreement or limited liability company agreement or documents of similar substance, (c) with respect to any limited partnership, its certificate of limited partnership and partnership agreement or governing or organizational documents of similar substance and (d) with respect to any other entity, governing or organizational documents of similar substance to any of the foregoing, in the case of each of clauses (a) through (d), as may be in effect from time to time.

“Governmental Authority” means (a) any federal, state, provincial, county, municipal or other local government, any supranational or foreign government or any political subdivision thereof, (b) any court of competent jurisdiction, administrative agency or commission, tribunal or arbitral body, or (c) any other governmental or regulatory authority or instrumentality.

“Governmental Order” means any binding order, consent, writ, judgment, injunction, decree, stipulation, determination or award of any Governmental Authority.

“HHH” has the meaning set forth in Section 4.6(b).

“HIT” has the meaning set forth in Section 4.6(b).

“Indebtedness” means the following obligations: (a) any indebtedness for borrowed money, (b) any obligations evidenced by bonds, debentures, notes or other similar instruments, (c) any obligations for the deferred purchase price of property, goods or services (including earn-outs, conditional sale agreements or other title retention agreements), (d) any obligations evidenced by each swap, exchange, commodity option, hedging or similar Contracts, (e) any obligations, contingent or otherwise, under letters of credit, banker’s acceptances or similar facilities to the extent drawn upon, (f) any lessee obligations under capital leases that would be classified as balance sheet liabilities in accordance with GAAP, (g) any guaranty of any of the obligations described in clauses (a) through (f), and (h) any obligations in the nature of accrued fees, interest, premiums or penalties in respect of any of the foregoing.

“Indemnified Party” means a Buyer Indemnified Party or a Seller Indemnified Party.

“Indemnifying Party” means any Person from which indemnification is being sought pursuant to Article VII hereof.

“Indemnity Notice” means written notification pursuant to and in accordance with Section 7.3(b) of a claim for indemnity under Section 7.2 by an Indemnified Party, specifying in reasonable detail, the nature of and basis for such claim, together with (a) the amount or, if not then reasonably determinable, the estimated amount, estimated in good faith, of the Damages



arising from such claim and (b) reasonable supporting documentation (to the extent available) regarding the nature, basis and amount (or estimated amount) of such claim.

“Indemnity Reduction Amounts” has the meaning set forth in Section 7.2(e).

“Intentional Fraud” means, with respect to any Party, actual and intentional fraud by such Party in making any representation or warranty under Article III, Article IV or any of the Closing Certificates, as applicable; *provided*, that such actual and intentional fraud of such Party shall not be deemed to exist unless, in addition to the elements of actual and intentional fraud under the Laws of the State of Delaware, one or more of the Knowledge individuals of such Party (pursuant to the definition of “Knowledge”) had actual knowledge (as opposed to imputed or constructive knowledge) that such representation or warranty made by such Party under Article III, Article IV or any of the Closing Certificates, as applicable, was actually inaccurate in any material respect when made, with the express intention or actual awareness that the counterparty would rely thereon to such counterparty’s detriment.

“Interim Period” has the meaning set forth in Section 5.1(a).

“Knowledge” means, with respect to Seller, the actual knowledge of any individual set forth on Section 1.1(b) of the Seller Disclosure Schedule, and, with respect to Buyer, the actual knowledge of any individual set forth on Section 1.1(b) of the Buyer Disclosure Schedule.

“Laws” means all applicable laws, statutes, constitutions, rules, regulations, ordinances and rulings of any Governmental Authority and all applicable Governmental Orders.

“Leakage” means the following, without duplication, and in each case except as (x) expressly provided for in the Approved Business Plan or (y) included in clause (a) or (b) of the definition of “Distributions”: the amount (or, if non-cash, value) of: (i) any redemption or purchase of Equity Interests or capital stock held by Seller, or return of capital with respect thereto, by any Company Entity; (ii) any other payment to, on behalf of or for the benefit of, Seller or any of its Affiliates by any Company Entity; (iii) any transfer of, or future benefits granted in respect of, assets or properties of any Company Entity for the benefit of, Seller or any of its Affiliates; (iv) any forgiveness of debts owed by Seller or any of its Affiliates to any Company Entity; (v) any assumption or incurrence by any Company Entity of, or any offering of any guarantee or indemnity by any Company Entity with respect to, any Indebtedness or Liability of Seller or any of its Affiliates; (vi) any gifts made to, or on behalf of, Seller or any of its Affiliates; (vii) payment of any Transaction Expenses by any Company Entity, except to the extent reimbursed by Seller; (viii) any Tax payable by any Company Entity, less any Tax benefit to any Company Entity, as a result of any Leakage referred to in the foregoing clauses (i) through (vii); and (ix) any agreement to do anything set out in the foregoing clauses (i-viii): *provided, however*, that notwithstanding the foregoing, “Leakage” shall in no event include (x) any indemnification, reimbursement or advancement of expenses of any director, manager, committee member or officer of any Company Entity pursuant to the Governing Documents of any Company Entity or any Contract to which any Company Entity is a party that provides for such indemnification, reimbursement or advancement of expenses, (y) any payment under any Affiliate Contract set forth on Section 1.1(c) of the Seller Disclosure Schedule or any other Affiliate Contract entered into with any Company Entity in the

ordinary course of business and on arm's length terms, or (z) any payment to Padua MGL with respect to the Additional Purchased Assets.

“Liability” means any liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due).

“Lien” means any mortgage, pledge, lien, charge, security interest, option, right or other encumbrance of any kind.

“LLC Agreement” means the Second Amended and Restated Limited Liability Company Agreement of the Company, dated as of May 28, 2009, as amended by the First Amendment thereto, dated as of October 30, 2017.

“Loan Agreement” has the meaning set forth in the recitals to this Agreement.

“Loan Purchase Price” means, without duplication, the Pro Rata Portion of (a) the aggregate principal amount of the Loan (as defined in the Loan Agreement), including all PIK Increases (as defined in the Loan Agreement), and all accrued but unpaid interest thereon (including all unpaid interest accrued prior to the date hereof) outstanding as of the Closing, minus (b) any interest payments, payments of PIK Increases and principal repayments paid to Seller by Puget Intermediate Holdings Inc. in cash at the Closing.

“Macquarie Group” means Macquarie Group Limited and its Affiliates.

“Manager” means a member of the Board.

“Material Adverse Effect” means: (a) with respect to the Company Entities, any change, event, occurrence or development (collectively, a “change”) that has had, has or would reasonably be expected to have a material adverse effect on the business, operations, assets, or financial condition of the Company Entities, taken as a whole; *provided, however*, that none of the following shall constitute or be deemed to contribute to a Material Adverse Effect, or shall otherwise be taken into account in determining whether a Material Adverse Effect has occurred, occurs or would reasonably be expected to occur: (i) changes generally affecting the industries or markets (whether international, national, regional, state, provincial or local) in which any of the Company Entities operate (including the wholesale and retail electricity generation, transmission and distribution and natural gas transmission and distribution markets and industries, the wholesale and retail markets and industries for electric power and natural gas, the fuel supply and fuel transportation industries and markets, and the industries and markets for related products and services), including changes due to or arising out of actions by competitors and regulators, (ii) changes in general regulatory or political conditions, including any acts of war, whether or not declared, armed hostilities, sabotage and terrorism and any escalation or worsening thereof, (iii) changes in international, national, regional, state, provincial or local electric transmission or distribution systems, (iv) changes in the markets for or costs of commodities, raw materials or supplies used in the business of the Company Entities, including steel, aluminum, fuel oil, natural gas or other petroleum products, (v) changes in the markets for or costs of products or services provided by the business of the Company Entities, including electricity or natural gas, (vi) effects of weather, meteorological events or other natural occurrences, (vii) changes in Law or regulatory policy or the interpretation or enforcement

thereof after the date hereof, (viii) changes in general economic or business conditions, including changes or adverse conditions in the financial, securities or banking markets (including, in each case, disruptions thereof, changes to interest rates and exchange rates for currencies, the price of any security or market index, or the availability of financing generally), (ix) the announcement, negotiation, pendency, execution or delivery of this Agreement or the consummation of the transactions contemplated hereby, including the identity of, or the effect of any fact or circumstance relating to, Buyer or any of its Affiliates or any communication by Buyer or any of its Affiliates regarding plans, proposals or projections with respect to the Company Entities (including any impact on the relationship of the Company Entities, contractual or otherwise, with its customers, suppliers, distributors, service providers, contractors, lenders, agents, employees or partners), (x) changes in accounting requirements or principles, including any change in GAAP after date hereof, (xi) labor strikes, requests for representation, organizing campaigns, work stoppages, slowdowns or other labor disputes, (xii) actions or omissions expressly required to be taken or not taken by Seller, the Company Entities or their respective Affiliates in accordance with this Agreement or the other Transaction Documents or requested, or consented to, by Buyer or any of its Affiliates, (xiii) any breach, violation or non-performance of any provision of this Agreement by Buyer or any of its Affiliates or Representatives, (xiv) changes in or effects on the assets or properties of the Company Entities that are cured (including by the payment of money) by Seller or any Company Entity prior to the Closing, (xv) failure by Seller or any Company Entity to meet any published analyst estimates or expectations of revenue, earnings or other financial performance or results of operations of all or any portion of any Company Entity for any period occurring after the date hereof, or any failure to meet internal or published projections, budgets, plans or forecasts of revenues, earnings or other financial performance or results of operations of all or any portion of any Company Entity for any period after the date hereof (it being understood and agreed that the underlying facts, circumstances, changes, events, occurrences or developments giving rise to such failure may be taken into account in determining whether there has been a Material Adverse Effect if not otherwise excluded by another clause of this definition), or (xvi) any matter disclosed in the Seller Disclosure Schedule, except, in the case of clauses (i) through (viii), (x) and (xi), to the extent that such change, event, occurrence or development adversely affects the Company Entities, taken as a whole, in a substantially disproportionate manner relative to other participants in their industry and markets; (b) with respect to Buyer, any change, event, occurrence, or development that has had, has or would reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under, or consummate the transactions contemplated by, this Agreement by the Termination Date; and (c) with respect to Seller, any change, event, occurrence, or development that has had, has or would reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under, or consummate the transactions contemplated by, this Agreement by the Termination Date.

“Non-Party Affiliates” has the meaning set forth in Section 9.11.

“Other PSA” and “Other PSAs” have the meanings set forth in the recitals to this Agreement.

“Padua MGL” has the meaning set forth in Section 5.11.

“Parties” has the meaning set forth in the preamble to this Agreement.

“Person” means an individual, partnership, limited liability partnership, corporation, limited liability company, association, joint stock company, trust, estate, joint venture, unincorporated organization, or Governmental Authority.

“Post-Closing Tax Period” means any taxable period beginning after the Closing Date and the portion of any Straddle Tax Period occurring after the Closing Date.

“Pre-Closing Covenant” has the meaning set forth in Section 7.1.

“Preliminary Purchase Price” means (a) the Base Purchase Price, plus (b) the Distribution Adjustment Amount, if any, minus, (c) the aggregate amount of all Distributions during the period from (but excluding) March 31, 2019 to (and including) the Closing Date.

“Prescribed Actions” means:

(a) with respect to Buyer or any Company Entity, any action requested or proposed or required to be taken by such Person (whether through settlements, undertakings, consent decrees, hold separate orders, Governmental Orders, stipulations, other Contracts or commitments with a Governmental Authority or otherwise), for the purpose of or in connection with obtaining or seeking to obtain any Required Regulatory Approval from any Governmental Authority, that:

(i) restricts or limits Buyer’s governance or voting rights with respect to the Company; and/or

(ii) relates to any payment or offering or granting of any financial accommodation, concession or other benefit to (or accepting any deduction or setoff of amounts otherwise payable from) any other Person other than Regulatory Commitments in respect of which Seller has paid Buyer pursuant to Section 5.4(e); and

(b) with respect to any Affiliate of Buyer (other than any Company Entity), any of the following actions requested, proposed or required to be taken by such Affiliate of Buyer (whether through settlements, undertakings, consent decrees, hold separate orders, Governmental Orders, stipulations, other Contracts or commitments with a Governmental Authority or otherwise) for the purpose of or in connection with obtaining or seeking to obtain any Required Regulatory Approval from any Governmental Authority:

(i) the sale, divestiture, license, or other disposition or limitation on usage or ownership of, or any action that limits the ability of such Person to retain or own, any businesses, product or service lines, properties, licenses, rights, operations and/or assets of such Person;

(ii) any action that restricts the conduct or operation by such Person of, or limits the freedom of action of such Person with respect to, any businesses, product or service lines, properties, licenses, rights, operations and/or assets of such Person, including with respect to the governance and/or management of any of the foregoing and/or future operations and/or ownership of any of the foregoing;

(iii) any action that restricts business or commercial activity of such Person;

(iv) any action with respect to terminating, amending or assigning any existing contractual rights or obligations of such Person;

(v) taking or committing to take actions to maintain the credit rating of Puget Sound Energy at investment grade levels which actions require or impose any financial obligation or burden on such Person;

(vi) accepting operational restrictions including restrictions on the ability to change rates or charges or standards of service or the scope of the business of such Person;

(vii) any actions related to “ring fencing” at such Person; and/or

(viii) making any payment or offering or granting any financial accommodation, concession or other benefit to (or accepting any deduction or setoff of amounts otherwise payable from) any other Person;

*provided* that, in each case, in no event shall any action to comply with any regulatory commitment currently imposed on any Person, or which is substantially similar to any regulatory commitment currently imposed on any Person, constitute, or be deemed to constitute, a Prescribed Action with respect to such Person or be considered in determining whether any action constitutes a Prescribed Action with respect to such Person.

“Prime Rate” means a rate of interest per annum (calculated daily on the basis of a year of three hundred sixty-five (365) days and the actual number of days elapsed) equal to the prime rate as published in the Wall Street Journal, Eastern Edition.

“Pro Rata Portion” means (a) the number of Company Interests being acquired by Buyer from Seller under this Agreement divided by (b) the aggregate number of Company Interests held by Seller, as of the date hereof.

“Puget Sound Energy” means Puget Sound Energy, Inc., a Washington corporation.

“Purchase Price” has the meaning set forth in Section 2.2.

“Purchased Assets” has the meaning set forth in the recitals to this Agreement.

“Purchased Interests” has the meaning set forth in the recitals to this Agreement.

“Purchased Interests Purchase Price” means (a) the Purchase Price, minus (b) the Loan Purchase Price.

“Purchased Loan” has the meaning set forth in the recitals to this Agreement.

“Regulatory Commitments” means an amount equal to the aggregate (without any duplication) of the post-tax present value, as at the date of this Agreement and using a discount rate of eight percent (8.0%) per annum compounded daily, of (i) any adverse financial obligation or concession that is imposed by the WUTC on, and/or agreed with the WUTC by, Buyer or any of its Affiliates (other than any Company Entity) in connection with obtaining the WUTC

Approval and/or any WUTC Other PSA Approval plus (ii) 23.8872% (or 23.9416% if Buyer acquires the Additional Purchased Assets) of any adverse financial obligation or concession that is imposed by the WUTC on, and/or agreed with the WUTC by, any Company Entity in connection with obtaining the WUTC Approval and/or any WUTC Other PSA Approval other than, in case of clauses (i) and (ii), any direct adverse financial obligation or concession that is (x) currently imposed or substantively equivalent to those currently imposed upon Buyer, any of its Affiliates or any Company Entity (including the commitments set forth on Section 1.1(a) of the Seller Disclosure Schedule) or (y) expressly provided for in the Approved Business Plan. For clarity, the costs of any credit support, including letters of credit, shall be considered financial obligations for purposes of this definition of “Regulatory Commitments”.

“Releasee” has the meaning set forth in Section 7.4(b).

“Releasor” has the meaning set forth in Section 7.4(b).

“Remedies Exception” means the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other Laws relating to or affecting creditors’ rights generally and general equitable principles (whether considered in a proceeding in equity or at law).

“Representatives” means, with respect to any Person, such Person’s members, partners, trustees, directors, managers, committee members, officers, employees, attorneys, consultants, advisors, representatives and other agents acting on behalf of such Person.

“Required Consents” has the meaning set forth in Section 6.1(c).

“Required Regulatory Approvals” has the meaning set forth in Section 6.1(b).

“Right” means any option, warrant, convertible or exchangeable security or other right to subscribe for, purchase or otherwise acquire any Equity Interest or other security of any class, with or without payment of additional consideration in cash or property, either immediately or upon the occurrence of a specified date or a specified event or the satisfaction of any other condition.

“RWI and EOP” means the representation and warranty insurance policy and the equity ownership policy attached hereto as Schedule F.

“Scheduled Entities” means the entities listed on Schedule B.

“Section 721 of the DPA” has the meaning set forth in the definition of “CFIUS Approval”.

“Securities Act” means the Securities Act of 1933.

“Seller” has the meaning set forth in the preamble to this Agreement.

“Seller Company Rights” means any management, voting, consent or similar rights (in each case, subject to any applicable duties under Law) available to Seller (or a Manager appointed or nominated by Seller) under (and solely to the extent the exercise of such rights would not reasonably be expected to result in a breach of) any Governing Documents or other Contracts with respect to Seller’s direct or indirect ownership interest in the Company Entities. For the avoidance

of doubt, Seller exercising or not exercising its “Seller Company Rights” in relation to a Manager appointed or nominated by Seller means that Seller shall use reasonable efforts to request or cause such Manager, subject to his or her fiduciary duties, to so exercise or not exercise such rights.

“Seller Disclosure Schedule” means the disclosure schedule (together with all attachments and appendices thereto) delivered by Seller to Buyer on the date hereof and attached hereto, as may be supplemented in accordance with the terms hereof.

“Seller Guaranteed Obligations” has the meaning set forth in Section 5.15(a).

“Seller Indemnified Parties” means Seller, each Affiliate thereof, and each Representative of Seller and/or any Affiliate thereof.

“Seller Parent Guarantor” and “Seller Parent Guarantors” have the meanings set forth in the preamble to this Agreement.

“Seller Termination Fee” has the meaning set forth in Section 8.4(a).

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

“Subsidiary” means, with respect to any Person, any other Person of which more than fifty percent (50%) of the outstanding voting securities or ownership interests are owned or Controlled, directly or indirectly, by such first Person.

“Surviving Covenants” has the meaning set forth in Section 7.1.

“Target Distribution Amount” means the Pro Rata Portion of the aggregate amount reflected on Schedule A to be paid in cash to Seller as Distributions during the period from (but excluding) the date hereof to (and including) the earlier of (a) March 31, 2019 and (b) the Closing Date, including (in the case of clause (b) and only if such date is not on a scheduled distribution date as set forth in Schedule A) a pro rata portion of the amount to be paid at the next scheduled distribution date after such date as set forth on Schedule A, based on the proportion that (i) the period from (but excluding) the last scheduled distribution date prior to such date as set forth on Schedule A to (and including) the earlier of March 31, 2019 and such date bears to (ii) the period from (but excluding) such last scheduled distribution date to (and including) such next scheduled distribution date. For the avoidance of doubt, the pro rata apportionment mechanism described in this definition does not apply if the Closing Date occurs after March 31, 2019.

“Tax” means any federal, state, local, or foreign tax, charge, duty, fee, levy or other similar assessment, including income, net proceeds, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, imposed by any Governmental Authority, and including any interest, penalty, or addition thereto, whether disputed or not.

“Tax Return” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof, required to be filed with any Governmental Authority.

“Termination Date” means the date that is fourteen (14) months and fourteen (14) days after the date of this Agreement.

“Third-Party Claim” has the meaning set forth in Section 7.3(a).

“Transaction Documents” means this Agreement, the Assignment and Assumption Agreement, the Buyer Parent Commitment Letter, the Buyer Parent Guarantee and all other documents delivered or required to be delivered by any Party at or prior to the Closing pursuant to this Agreement.

“Transaction Expenses” means the amount, incurred at or prior to or upon the Closing, of all out-of-pocket fees and expenses incurred in connection with the preparation, negotiation, execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, including out-of-pocket attorneys’, accountants’ and other advisors’ and brokers’ fees and expenses.

“Transfer” has the meaning given in the LLC Agreement.

“Transfer Taxes” means any and all transfer, sales, use, value-added, excise, stock, stamp, documentary, filing, recording and other similar Taxes, filing fees and similar charges, including all applicable real property or leasehold interest transfer or gains Taxes, but excluding any net income Taxes.

“WUTC” means the Washington Utilities and Transportation Commission.

“WUTC Approval” means the approval by the WUTC, pursuant to RCW 80.12.020, of the transactions contemplated by this Agreement.

“WUTC Other PSA Approval” means the approval by the WUTC, pursuant to RCW 80.12.020, of the transactions contemplated by any Other PSA.

Section 1.2 Rules of Construction. Whenever the feminine, masculine, neuter, singular or plural shall be used in this Agreement, such construction shall be given to such words or phrases as shall impart to this Agreement a construction consistent with the interest of the Parties entering into this Agreement, and whenever any other word derived from a defined term shall be used in this Agreement, such derived word shall have the meaning correlative to such defined term (e.g., “Controlled” or “Controlling” shall have the meaning correlative to “Control”). As used herein, references to (a) “or” shall mean “and/or,” (b) “including” or “include” shall be deemed to be followed by the words “without limitation,” (c) “Article,” “Section,” “Schedule” or “Exhibit” shall refer to an Article or Section of, or Schedule or Exhibit to, this Agreement, (d) “paragraphs” or “clauses” shall refer to separate paragraphs or clauses of the section or subsection in which the reference occurs, (e) “this Agreement,” “herein,” “hereof,” “hereby,” “hereunder,” and words of similar import shall refer to this Agreement as a whole, including the Schedules and Exhibits attached hereto, and not to any particular subdivision hereof unless expressly so limited,



(f) “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if;” (g) any “Person” shall include references to such Person’s successors and permitted assigns, and, in the case of any “Governmental Authority,” to any Person succeeding to its functions and capacities, (h) any “Contract” (including this Agreement) or “Law” shall refer to such Contract or Law as amended, modified, supplemented or amended and restated from time to time (in accordance with its terms and the terms hereof, as applicable), and in effect at any given time (and, in the case of any Law, to any successor provisions), (i) “dollars,” or “\$” shall be deemed to refer to United States dollars, (j) any “Law” shall be deemed also to refer to all rules, regulations and exemptions promulgated thereunder and (k) the phrase “the ordinary course” shall mean “the ordinary course of business consistent with past practice”. The headings and captions herein are inserted for convenience of reference only and are not intended to govern, limit or aid in the construction of any term or provision hereof. It is the intention of the Parties that every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party (notwithstanding any rule of Law requiring an Agreement to be strictly construed against the drafting party), it being understood that the Parties are sophisticated and have had adequate opportunity and means to retain counsel to represent their interests with respect to this Agreement. Any reference in this Agreement to a “day” or a number of “days” (without explicit reference to “Business Days”) shall be interpreted as a reference to a calendar day or number of calendar days. If any action is to be taken or given on or by a particular calendar day, and such calendar day is not a Business Day, then such action may be deferred until the next Business Day. For the avoidance of doubt, references in this Agreement to “the transactions contemplated by this Agreement,” “the transactions contemplated by this Agreement and the other Transaction Documents” or phrases of similar import shall in no event refer to, or be deemed to be references to, the transactions contemplated by any Other PSA.

## ARTICLE II. PURCHASE AND SALE

Section 2.1 Purchase and Sale. Upon the terms and subject to the conditions of this Agreement, Seller shall sell, grant, convey, assign, transfer and deliver to Buyer, and Buyer hereby agrees to purchase, acquire, assume and accept from Seller, free and clear of any and all Liens (other than restrictions on Transfers arising under the LLC Agreement or the Loan Agreement, as the case may be, and restrictions on sales of securities under applicable securities Laws) (a) all of Seller’s right, title and interest in and to the Purchased Assets and (b) all of the Seller’s obligations, liabilities, covenants, duties and agreements arising out of, under or relating to, the Purchased Assets from and after the Closing for the consideration specified in, and determined in accordance with, Section 2.2. For the avoidance of doubt, Buyer is not assuming any of Seller’s obligations, Liabilities, covenants, duties or agreements arising out of, under or relating to (i) any action or omission of Seller at or prior to the Closing, (ii) the period prior to the Closing, or (iii) Section 7.04(f) of the LLC Agreement with respect to (A) any of the Required Regulatory Approvals in connection with the transactions contemplated hereby or (B) any Other PSA.

Section 2.2 Purchase Price. At the Closing, Buyer shall pay in immediately available funds by wire transfer the Preliminary Purchase Price to an account that has been designated in writing by Seller to Buyer at least five (5) Business Days prior to the anticipated Closing Date (the Preliminary Purchase Price, as adjusted in accordance with Section 5.7, the “Purchase Price”). At

least five (5) Business Days prior to the anticipated Closing Date, Seller shall deliver to Buyer a certificate setting forth the Distribution Adjustment Amount and the aggregate amount of all Distributions during the period from (but excluding) March 31, 2019 to (and including) the Closing Date, indicating the amount of any Leakage (together with reasonable supporting calculations and documentation used in the preparation thereof as may be reasonably required by the Buyer to verify the Distribution Adjustment Amount, such Distributions and the amount of any Leakage). The Parties intend that, for U.S. federal and applicable state and local income tax purposes, the allocation of the Purchase Price between the Purchased Interests and the Purchased Loan shall be determined as follows: (a) to the Purchased Loan in an amount equal to the Loan Purchase Price, and (b) to the Purchased Interests in an amount equal to the Purchased Interests Purchase Price. Buyer and Seller shall prepare and file all Tax Returns consistent with such allocation and shall take no position inconsistent with such allocation.

Section 2.3 Closing. Subject to the satisfaction or, if permissible, waiver of the conditions set forth in Article VI, the closing of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (or remotely via the electronic exchange of closing deliveries), commencing at 10:00 a.m. New York time (a) on the day that is five (5) Business Days after the date on which the last of the conditions set forth in Article VI (other than those conditions that by their terms are to be satisfied at the Closing) is satisfied or, if permissible, waived, or (b) on such other date and/or at such other time and/or place as the Parties may mutually agree upon in writing. The Closing shall be effective for all purposes at 12:01 a.m. Washington time on the Closing Date.

Section 2.4 Closing Deliveries.

- (a) At the Closing, Seller shall deliver, or cause to be delivered, to Buyer the following:
  - (i) a counterpart of the Assignment and Assumption Agreement duly executed by Seller;
  - (ii) evidence in writing of the resignations or removals, effective as of the Closing, of the individuals serving as directors, managers, committee members or officers of the Company Entities appointed or designated to such positions pursuant to Seller’s rights under the LLC Agreement, which individuals are listed on Section 2.4(a)(ii) of the Seller Disclosure Schedule;
  - (iii) a statement to Buyer validly executed by a duly authorized officer of Seller pursuant to Section 1445(b)(2) of the Code, substantially in the form attached hereto as Exhibit D, certifying that Seller is not a foreign Person; *provided, however*, that in the event Seller fails to deliver such certificate, Buyer shall be permitted to close and to withhold fifteen percent (15%) of the Purchased Interests Purchase Price pursuant to Section 1445 of the Code. Any amount so withheld pursuant to the preceding sentence and paid to the appropriate Governmental Authority shall be treated as having been paid to Seller;
  - (iv) a certificate from Seller signed by a duly authorized officer of Seller confirming the satisfaction of the conditions set forth in Section 6.3(a) and Section 6.3(b) as of the Closing Date;

(v) a certificate from Seller signed by a duly authorized officer of Seller setting forth a representation and warranty of Seller, made as of the Closing Date, that the written statement delivered by Seller to Buyer pursuant to and in accordance with Section 2.2 is true and correct in all respects; and

(vi) to the applicable insurers under the RWI and EOP, all remaining premiums payable for the RWI and EOP such that each such policy shall be paid in full as of the Closing Date.

(b) At the Closing, Buyer shall deliver, or cause to be delivered, to Seller the following:

(i) a counterpart of the Assignment and Assumption Agreement duly executed by Buyer; and

(ii) a certificate from Buyer signed by a duly authorized officer of Buyer confirming the satisfaction of the conditions set forth in Section 6.2(a) and Section 6.2(b) as of the Closing Date.

Section 2.5 Additional Closing Deliverables. The Parties shall (and Seller shall exercise or not exercise its Seller Company Rights in a manner consistent with permitting the Company Entities to) execute and deliver all such additional documents, instruments, conveyances and assurances and take all further actions as may be required pursuant to (i) the LLC Agreement, including Section 5.02(d), Section 5.02(e) and Section 7.04(f) thereof, and (ii) the Loan Agreement, including Section 10.6(b) and Section 10.6(c) thereof.

Section 2.6 Satisfaction of Conditions. Upon the Closing, all conditions to the obligations of Seller and Buyer to proceed with the Closing under this Agreement shall be deemed to have been fully and completely satisfied or, if permissible, waived for all purposes.

Section 2.7 Transfer Taxes. Notwithstanding anything herein to the contrary, Buyer and Seller shall each pay fifty percent (50%) of any and all Transfer Taxes imposed as a result of the purchase and sale of the Purchased Assets contemplated by this Agreement. Buyer shall duly and timely file or cause to be filed all necessary documents (including all Tax Returns) with respect to all such amounts and, prior to filing any such documents or Tax Returns, shall provide a draft of such documents or Tax Returns to Seller for Seller's review and consent, such consent not to be unreasonably withheld or delayed. The Parties will cooperate and shall join in the execution of any such Tax Returns and other documentation as required by Law.

ARTICLE III.  
REPRESENTATIONS AND WARRANTIES  
REGARDING SELLER

Seller represents and warrants to Buyer, except as set forth in the Seller Disclosure Schedule, as of the date hereof and as of the Closing, and acknowledges that Buyer is relying upon the following representations and warranties in connection with the Buyer's purchase of the Purchased Assets and Buyer entering into this Agreement, as follows:

Section 3.1 Organization.

(a) Seller is duly organized, validly existing, and in good standing under the Laws of the jurisdiction of its organization, and Seller has all requisite power, authority and legal right to conduct its business as it is currently conducted and to own, lease and operate its properties where such properties are now owned, leased or operated, except where the failure to have such power, authority and legal right would not, individually or in the aggregate, have a Material Adverse Effect on Seller. Seller is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensure necessary, except where the failure to be so duly qualified or licensed or in good standing would not, individually or in the aggregate, have a Material Adverse Effect on Seller. Seller is not an entity disregarded from its owner for U.S. federal tax purposes and is not a “foreign person” within the meaning of Section 1445(f)(3) of the Code.

(b) Each Company Entity is duly organized, validly existing, and in good standing under the Laws of the jurisdiction of its organization, except where the failure to be so duly qualified or licensed or in good standing would not, individually or in the aggregate, have a Material Adverse Effect on the Company Entities. Each Company Entity has all requisite power, authority and legal right to conduct its business as it is currently conducted and to own, lease and operate its properties where such properties are now owned, leased or operated, except where the failure to have such power, authority and legal right would not, individually or in the aggregate, have a Material Adverse Effect on the Company Entities. The Company is treated as a corporation for U.S. federal income tax purposes and has elected to be treated as a corporation for U.S. federal income tax purposes from the date of its formation.

Section 3.2 Authorization. Seller has all requisite organizational power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is (or, at the Closing, will be) a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and such other Transaction Documents to which it is (or, at the Closing, will be) a party, the performance of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary organizational action on the part of Seller. This Agreement and the other Transaction Documents to which Seller is (or, at the Closing, will be) a party have been (or, at the Closing, will be) duly executed and delivered by Seller and constitute (or, at the Closing, will constitute) legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, subject to the Remedies Exception.

Section 3.3 Noncontravention. None of the execution and delivery by Seller of this Agreement or the other Transaction Documents to which it is (or, at the Closing, will be) a party, the performance by Seller of its obligations hereunder or thereunder, or the consummation by Seller of the transactions contemplated hereby or thereby (a) conflicts with any provision of the Governing Documents of Seller or the Company or, to Seller’s Knowledge, any other Company Entity, (b) assuming that the Consents specified in Section 3.4 and Section 4.4 have been obtained or made, violates any Law to which Seller or any Company Entity is subject or (c) results in a breach of, constitutes a default (or an event that, with the giving of notice or lapse of time or both,

would constitute a default) under, or results in the acceleration of any obligation or loss of any benefit under, any Contract to which Seller is a party, except, in the case of each of clauses (b) and (c), for such violations, breaches or defaults that would not, individually or in the aggregate, have a Material Adverse Effect on Seller and in the case of clause (b) only except for such violations that would not, individually or in the aggregate, have a Material Adverse Effect on the Company Entities.

Section 3.4 Governmental Consents. No Consent of, with or to any Governmental Authority is required to be obtained or made by or with respect to Seller or any of Seller's Affiliates or any Company Entity in connection with the execution or delivery by Seller of this Agreement and the other Transaction Documents to which it is (or, at the Closing, will be) a party, or the performance by Seller of its obligations hereunder or thereunder, except for (a) Consents set forth on Section 3.4 of the Seller Disclosure Schedule, (b) Consents that, if not obtained or made, would not, individually or in the aggregate, have a Material Adverse Effect on Seller or a Material Adverse Effect on the Company Entities, (c) Consents not required to be made or given until after the Closing, (d) Consents required to be obtained or made by or on behalf of Buyer as a result of the specific legal or regulatory status of Buyer or any of its Affiliates or as a result of any other facts that specifically relate to the business or activities in which Buyer or any of its Affiliates is or proposes to be engaged, other than the business of the Company Entities and (e) any Consents contemplated by Section 4.4.

Section 3.5 Title to Purchased Assets; Subsidiaries.

(a) Seller is the record and beneficial owner of 43.8882% of the Company Interests, free and clear of all Liens, other than Liens arising under this Agreement and the LLC Agreement and restrictions on sales of securities under applicable securities Laws. Except as set forth in the LLC Agreement, and other than Buyer's rights under this Agreement, there are no Rights to purchase or acquire from Seller all or any portion of the Purchased Interests. All of the Purchased Interests are validly issued, fully paid (to the extent required by the LLC Agreement) and non-assessable (except as such non-assessability may be affected by Sections 18-607 and 18-804 of the Delaware Limited Liability Company Act), and were not issued to or acquired by Seller in violation of any Law, Contract or the preemptive rights of any Person.

(b) Seller has made available to Buyer a true, complete and correct copy of the LLC Agreement. The LLC Agreement (a) constitutes a valid and legally binding obligation of Seller and, to Seller's Knowledge, of the other parties thereto, and (b) is enforceable in accordance with its terms against Seller and, to Seller's Knowledge, each of the other parties thereto, except, in each case, as such enforceability may be limited by the Remedies Exception. Neither Seller nor, to Seller's Knowledge, any of the other parties to the LLC Agreement is in material breach of, or material default under the LLC Agreement, and, to Seller's Knowledge, no event has occurred that, with the giving of notice or lapse of time or both, would constitute a material default under, or result in the acceleration of any material obligation or loss of any material benefit under, the LLC Agreement.

(c) Section 3.5(c) of the Seller Disclosure Schedule sets forth all Company Interests that are issued and outstanding and, to Seller's Knowledge, as of the date hereof, the owner of such Company Interests. Except as would not adversely and materially affect the value of the Purchased

Assets or the Buyer's entitlement to the Purchased Assets, all outstanding Company Interests have been validly issued and the Company has no other classes of limited liability interests that have been authorized or issued. Other than under, or as provided in, this Agreement, any Other PSA, the LLC Agreement and the Loan Agreement (i) there are no (A) outstanding options, warrants, convertible securities or other rights, agreements, or commitments of any character obligating Seller or the Company to issue or sell any Company Interests or any other security or interest in any Company Entity or (B) outstanding Contracts or other arrangements of Seller or any Company Entity to purchase, redeem or otherwise acquire any outstanding Company Interests or other security or interest of the Company Entities, or securities or obligations of any kind convertible into securities or interests of the Company Entities and (ii) there are no (x) outstanding or authorized equity appreciation, phantom equity, equity purchase or grant plans or similar rights with respect to any interests in any Company Entity; or (y) voting agreements or other agreements to which Seller or any of its Affiliates is a party, and to Seller's Knowledge, any other voting or other agreements, in each case in effect with respect to the voting or transfer of any of the Company Interests or any other security or interest in any Company Entity (other than this Agreement, any Other PSA and the LLC Agreement).

(d) Seller has good and valid title to the Purchased Loan, free and clear of all Liens other than Liens arising under this Agreement and the Loan Agreement. Except as set forth in the Loan Agreement, and other than Buyer's rights under this Agreement, there are no rights to purchase or acquire from Seller all or any portion of the Loan (as defined in the Loan Agreement).

(e) The Loan Agreement is in full force and effect and constitutes the legal, valid and binding obligation of Seller and, to Seller's Knowledge, each of the other parties thereto, enforceable against Seller and, to Seller's Knowledge, each of the other parties thereto, in accordance with its terms (except to the extent that its enforceability may be limited by the Remedies Exception). Neither Seller nor, to Seller's Knowledge, any of the other parties to the Loan Agreement is in material breach of, or material default under the Loan Agreement, and, to Seller's Knowledge, no event has occurred that, with the giving of notice or lapse of time or both, would constitute a material default under, or result in the acceleration of any material obligation or loss of any material benefit under, the Loan Agreement.

(f) Except as would not adversely and materially affect the value of the Purchased Assets or the Buyer's entitlement to the Purchased Assets: (i) Section 3.5(f) of the Seller Disclosure Schedule sets forth, as of the date hereof, all Subsidiaries of the Company; (ii) the Company is the record and beneficial owner of all of the outstanding equity and voting interests of each of the Subsidiaries set forth on Section 3.5(f) of the Seller Disclosure Schedule, (iii) all of the outstanding equity and voting interests of each of the Subsidiaries of the Company are, validly issued, fully paid and non-assessable, and (iv) were not issued or acquired in violation of any Law, agreement or the preemptive rights of any Person. Except as set forth in Section 3.5(f) of the Seller Disclosure Schedule, as of the date hereof, neither the Company nor any Subsidiary owns any equity or debt securities of any other Person.

Section 3.6 Brokers' Fees. Neither Seller nor any of its Affiliates has entered into any Contract with any Person that would entitle any broker, finder or other intermediary to any broker's, finder's or similar fee or commission as a result of the execution and delivery of this Agreement or the Transaction Documents to which Seller is (or, at the Closing, will be) a party or

the consummation of the transactions contemplated hereby or thereby, in each case, for which Buyer or any Company Entity is or would become liable (other than any such fees or commissions for which Buyer or such Company Entity shall have been reimbursed in full by Seller).

Section 3.7 Litigation. In each case, as of the date hereof, (a) there are no Actions pending, or to Seller's Knowledge threatened, against Seller or any of its Affiliates and (b) neither Seller nor any of its Affiliates is subject to any Governmental Order, that would, in the case of each of clauses (a) and (b), individually or in the aggregate, have a Material Adverse Effect on Seller.

Section 3.8 Affiliate Contracts.

(a) Except as disclosed on Section 3.8(a) of the Seller Disclosure Schedule, and except for the Loan Agreement and any Affiliate Contract entered into by any Company Entity in the ordinary course and on arm's length terms (which, for the avoidance of doubt, shall not include any voting agreements or other agreements with respect to the voting or Transfer of any of the Company Interests or other securities or interests of the Company Entities or with respect to the governance of any of the Company Entities), there are no Affiliate Contracts.

(b) Set forth on Section 3.8(b) of the Seller Disclosure Schedule is the aggregate amount of any payments that will be made by any Company Entity during the Interim Period, whether in cash, cash equivalents or other assets or properties, to Seller or any of its Affiliates or Representatives (in each case, excluding any Company Entity) with respect to the Affiliate Contracts disclosed on Section 3.8(a) of the Seller Disclosure Schedule.

Section 3.9 Anti-Money Laundering; Anti-Bribery and Sanctions. Seller's and its Affiliates' (to the extent acting on Seller's behalf) conduct of the transactions contemplated by this Agreement, and its and such Affiliates' (to the extent acting on Seller's behalf) use of the proceeds realized from the transactions contemplated hereby, do not and will not violate any applicable Laws relating to (i) anti-terrorist financing, (ii) money laundering, (iii) bribery or corruption or (iv) any sanctions regime or list of sanctioned persons administered by the United States (including the Office of Foreign Assets Control of the U.S. Department of the Treasury (OFAC)), the United Nations Security Council, the European Union, or any other relevant sanctions authority or Governmental Authority with jurisdiction over Seller or such of its Affiliates.

Section 3.10 Purchase Price; Buyer Termination Fee.

(a) Minimum Purchase Price.

(i) The only components of the purchase price (excluding transaction expense sharing provisions and deemed adjustments to the purchase price to reflect indemnification payments) to be paid pursuant to any Other PSA in respect of the Company Interests thereunder are: (1) a base purchase price, (2) a ticking fee which accrues solely in favor of the Seller to increase the purchase price, and (3) a purchase price adjustment based on the amount of distributions paid to Seller prior to the Closing of the transactions contemplated by such Other PSA.

(ii) The calculation of the purchase price for the pro rata portion of the Loan Agreement under each Other PSA is identical to the methodology used under this Agreement to calculate the Loan Purchase Price hereunder.

(iii) The base purchase price for the Purchased Assets to be acquired by the buyer pursuant to any Other PSA is not less, on a per Company Interest basis, than the Base Purchase Price, on a per Company Interest basis, under this Agreement.

(iv) The purchase price adjustment based on the amount of distributions paid to Seller prior to the closing of the transactions contemplated by any Other PSA does not give credit to the buyer under such Other PSA for distributions on a more favorable basis than that provided in respect of the calculations of Distribution Adjustment Amount and Preliminary Purchase Price.

(b) Minimum Buyer Termination Fee. Except in an Other PSA with an existing holder of Company Interests, to the extent the buyer termination fees payable under any Other PSA contemplate the buyer under such Other PSA being obligated to pay a termination fee only in the event such Other PSA is terminated by Seller based on a failure by such buyer under such Other PSA to perform its covenants or agreements relating to the receipt of the “Required Regulatory Approvals” (as defined in such Other PSA), such buyer termination fees are not less, on a per Company Interest basis, than the Buyer Termination Fee, on a per Company Interest basis.

Section 3.11 No Reliance. Seller agrees that the detailed representations and warranties set forth in this Agreement have been negotiated at arm’s length among sophisticated Persons. Except for the representations and warranties expressly set forth in Article IV or in any certificate or agreement delivered by Buyer in connection with this Agreement, Sellers acknowledge that none of Buyer, the Buyer Parent or any of their respective Affiliates or Representatives makes or has made any other express or any implied representation or warranty to Seller as to the accuracy or completeness of any information regarding Buyer or any other matter. For the avoidance of doubt, nothing in this Section 3.11 shall be construed to limit any of Seller’s rights in the event of Intentional Fraud.

#### ARTICLE IV. REPRESENTATIONS AND WARRANTIES REGARDING BUYER

Buyer represents and warrants to Seller, except as set forth in the Buyer Disclosure Schedule, as of the date hereof and as of the Closing, and acknowledges that Seller is relying upon the following representations and warranties in connection with the Seller entering into this Agreement, as follows:

Section 4.1 Organization. Buyer is a limited partnership and Buyer GP is a corporation, in each case duly organized, validly existing, and in good standing under the Laws of Ontario, and each of Buyer and Buyer GP has all requisite power, authority and legal right to conduct its business as it is currently conducted and to own, lease and operate its properties where such properties are now owned, leased or operated, except where the failure to have such power, authority and legal right would not, individually or in the aggregate, have a Material Adverse Effect on Buyer. Each of Buyer and Buyer GP is duly qualified or licensed to do business and is



in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensure necessary, except where the failure to be so duly qualified or licensed or in good standing would not, individually or in the aggregate, have a Material Adverse Effect on Buyer.

Section 4.2 Authorization. Buyer has all requisite authority to execute and deliver this Agreement and the other Transaction Documents to which Buyer is (or, at the Closing, will be) a party, to perform Buyer's obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and such other Transaction Documents to which Buyer is (or, at the Closing, will be) a party, the performance of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of each of Buyer and Buyer GP. This Agreement and the other Transaction Documents to which Buyer is (or, at the Closing, will be) a party have been (or, at the Closing, will be) duly executed and delivered by Buyer, and constitute (or, at the Closing, will constitute) legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, subject to the Remedies Exception.

Section 4.3 Noncontravention. None of the execution and delivery by Buyer of this Agreement or the other Transaction Documents to which it is (or, at the Closing, will be) a party, the performance by Buyer of its obligations hereunder or thereunder, or the consummation by Buyer of the transactions contemplated hereby or thereby (a) conflicts with any provision of the Governing Documents of Buyer, (b) results in a breach of, constitutes a default (or an event that, with the giving of notice or lapse of time or both, would constitute a default) under, or results in the acceleration of any obligation or loss of any benefit under, any Contract to which it is a party or (c) assuming that the Consents specified in Section 3.4 and Section 4.4 are obtained or made, violates any Law to which Buyer is subject, except, in the case of each of clauses (b) and (c), for such violations, breaches or defaults that would not, individually or in the aggregate, have a Material Adverse Effect on Buyer.

Section 4.4 Governmental Consents. No Consent of, with or to any Governmental Authority is required to be obtained or made by or with respect to Buyer or any of its Affiliates in connection with the execution and delivery by Buyer of this Agreement and the other Transaction Documents to which it is (or, at the Closing, will be) a party, or the performance by Buyer of its obligations hereunder or thereunder, except for (a) WUTC Approval, FERC Approval, CFIUS Approval and EU Approval, (b) Consents that, if not obtained or made, would not, individually or in the aggregate, have a Material Adverse Effect on Buyer, (c) Consents not required to be made or given until after the Closing and (d) any Consents contemplated by Section 3.4 or set forth on Section 4.4 of the Buyer Disclosure Schedule.

Section 4.5 Financial Capacity. Buyer has delivered to Seller (a) a true, correct and complete copy of the Buyer Parent Commitment Letter, pursuant to which Buyer Parent has committed, subject to the terms thereof, to fund the cash amounts set forth therein for the Purchase Price and all costs, fees and expenses required to be paid by Buyer and its Affiliates in connection with the transactions contemplated by this Agreement and the other Transaction Documents (the "Equity Financing") and (b) a true, correct and complete copy of the Buyer Parent Guarantee, with respect to the due and punctual payment, observance, performance and discharge of all payment

obligations of Buyer with respect to (i) Buyer's obligations under Section 8.3, if, as and when such payment obligations become payable hereunder and (ii) any reimbursement and/or indemnification obligations that may arise prior to the Closing (subject to the cap on liability specified therein). Neither the Buyer Parent Commitment Letter nor the Buyer Parent Guarantee has been amended, restated, supplemented or otherwise modified, no such amendment, restatement, supplement or other modification is pending or contemplated, and the Buyer Parent Commitment Letter (and the respective commitments contained therein) have not been withdrawn, terminated or rescinded in any respect. Each of the Buyer Parent Commitment Letter and the Buyer Parent Guarantee, in the form so delivered, is in full force and effect and is a legal, valid and binding obligation of the parties thereto. As of the date hereof, there has been no event which, with or without notice, lapse of time or both, would (i) constitute a default or breach on the part of any party thereto under the Buyer Parent Commitment Letter or the Buyer Parent Guarantee, (ii) cause any condition contained in the Buyer Parent Commitment Letter or the Buyer Parent Guarantee not to be satisfied, or (iii) be reasonably be expected to result in any portion of the financing contemplated by the Buyer Parent Commitment Letter to be unavailable on the Closing Date. As of the date hereof, there are no conditions precedent or other contingencies related to the Equity Financing other than as expressly set forth in the Buyer Parent Commitment Letter. Other than the Buyer Parent Commitment Letter, neither Buyer nor any of its Affiliates has entered into any agreement, side letter or other contractual arrangement governing the Equity Financing. The Equity Financing, when funded in accordance with the terms and conditions of the Buyer Parent Commitment Letter, will provide Buyer with financing immediately before the Closing sufficient for Buyer to consummate the transactions contemplated by this Agreement and the other Transaction Documents to which it is (or at the Closing, will be) a party, and perform its obligations hereunder and thereunder (including its obligation to pay the Preliminary Purchase Price). For the avoidance of doubt, none of the rights and obligations of any Party, nor the transactions contemplated hereby, are subject to any term or condition providing that Buyer first obtain financing of any sort. As of the date hereof and assuming the accuracy of the representations and warranties of Seller contained in this Agreement, Buyer has no reason to believe (x) that any of the conditions to the Equity Financing contained in the Buyer Parent Commitment Letter to be satisfied by it or any of its Affiliates will not be satisfied or (y) that any portion of the Equity Financing will not be available to Buyer at the Closing. Buyer acknowledges that receipt or availability of funds or financing by Buyer or any of its Affiliates shall not be a condition to Buyer's obligations hereunder or under the other Transaction Documents to which it is (or at the Closing, will be) a party. No funds to be paid to Seller have derived from or will have been derived from, or constitute, either directly or indirectly, the proceeds of any criminal activity or any activity in breach of applicable anti-corruption, anti-money laundering, anti-terrorism, sanctions, export controls or similar Laws.

Section 4.6 Ownership.

(a) Other than as consented to or waived in writing by Seller, Buyer Parent directly or indirectly owns all of the economic interests in Buyer and Buyer GP.

(b) Buyer GP is owned 100% by its direct parent, Hamilton Infrastructure Holdings, Inc., a Canadian corporation ("HIHI"). The voting shares of HIHI are owned 30% by Buyer Parent and 70% by Hamilton Infrastructure Trust, a trust established under the laws of Ontario ("HIT")

with a trustee that is unrelated to the limited partner of Buyer. Buyer Parent has call rights over the voting shares of HIII owned by HIT.

(c) No understanding or arrangement has been entered into since the formation of Buyer that would result in Buyer Parent or HIT ceasing to have such ownership and control of Buyer and HIII as is described in this Section 4.6 at any time after the formation of Buyer (including, for the avoidance of doubt, following the Closing).

(d) As of the Closing Date, Buyer will, directly or indirectly, own and solely control one-hundred percent (100%) of the Purchased Interests (including all economic and voting interest therein), and no understanding or arrangement has been entered into since the formation of Buyer that would result in Buyer ceasing to have such ownership and control at any time after the Closing.

Section 4.7 No Competitive Overlap. As of the date of this Agreement:

(a) Neither Buyer nor any of its Affiliates owns, directly or indirectly, any equity securities in any Scheduled Entity excluding (i) ownership of less than 10% of any class of securities of any Scheduled Entity and (ii) any interest in a non-discretionary independent fund investment holding, directly or indirectly, any equity securities in a Scheduled Entity.

(b) Neither Buyer nor any of its Affiliates owns, directly or indirectly, any equity securities in any entity that does not have publicly-traded securities and which is engaged in the generation, transmission or distribution of electricity or the transportation or distribution of natural gas in the State of Washington, provided that and notwithstanding the foregoing, none of Buyer nor any of its Affiliates shall be considered to own or hold equity securities in any such entity as a result of Buyer or any of its Affiliates owning or holding any publicly-traded securities or securities traded over-the-counter. For purposes of this Section 4.7, no Person shall be deemed to be engaged in the generation, transmission or distribution of electricity or the transportation or distribution of natural gas as a result of the ownership of either (i) an interest of less than 10% in the equity securities of any company active in such business, whether voting or non-voting; (ii) any interest in a “qualifying facility” within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended, that is located outside of the Puget Sound Energy balancing authority area or any first-tier balancing authority area; or (iii) a passive interest of less than 10% of the voting or non-voting securities of any company that owns or controls a “qualifying facility” within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended, that is located in the Puget Sound Energy balancing authority area or any first-tier balancing authority area.

Section 4.8 Investment. Buyer is aware that the Purchased Interests being acquired by Buyer pursuant to the transactions contemplated hereby have not been registered under the Securities Act or under any state securities Laws. Buyer is not an underwriter, as such term is defined under the Securities Act, and Buyer is purchasing the Purchased Interests for its own account solely for investment and not with a view toward, or for sale in connection with, any distribution thereof within the meaning of the Securities Act, nor with any intention of distributing or selling any of the Purchased Interests in violation of applicable securities Laws. Buyer, on behalf of itself and its Affiliates, acknowledges that none of them may sell or otherwise dispose of the Purchased Interests except in compliance with the registration requirements or exemption provisions under the Securities Act and the rules and regulations promulgated thereunder, or any

other applicable securities Laws. Buyer is an “accredited investor” as defined under Rule 501 promulgated under the Securities Act.

Section 4.9 Litigation. (a) There are no Actions pending, or to Buyer’s Knowledge threatened, against Buyer or any of its Affiliates and (b) neither Buyer nor any of its Affiliates is subject to any Governmental Order that would, in the case of each of clauses (a) and (b), individually or in the aggregate, have a Material Adverse Effect on Buyer.

Section 4.10 Anti-Money Laundering, Anti-Bribery and Sanctions. Buyer’s and its Affiliates’ (to the extent acting on Buyer’s behalf) conduct of the transactions contemplated by this Agreement, and its and such Affiliates’ (to the extent acting on Buyer’s behalf) source of the funds utilized in the transactions contemplated hereby, do not and will not violate any applicable Laws relating to (i) anti-terrorist financing, (ii) money laundering, (iii) bribery or corruption or (iv) any sanctions regime or list of sanctioned persons administered by the United States (including the Office of Foreign Assets Control of the U.S. Department of the Treasury (OFAC)), the United Nations Security Council, the European Union or any other relevant sanctions authority or Governmental Authority with jurisdiction over Buyer or such of its Affiliates.

Section 4.11 Brokers’ Fees. Buyer and its Affiliates have not entered into any Contract that would entitle any broker, finder or other intermediary to any broker’s, finder’s or similar fee or commission as a result of the execution and delivery of this Agreement or the Transaction Documents to which Buyer is (or, at the Closing, will be) a party or the consummation of the transactions contemplated hereby or thereby for which Seller, any Company Entity or any Affiliate of Seller or any Company Entity is or would become liable (other than any such fees or commissions for which Seller or such Company Entity shall have been reimbursed in full by Buyer).

Section 4.12 Investigation; No Reliance.

(a) Seller and the Company Entities have provided Buyer with such access to information, properties, books, records and personnel of the Company Entities as Buyer has deemed necessary and appropriate in order for Buyer to investigate the businesses and properties of the Company Entities sufficiently to make an informed investment decision to purchase the Purchased Assets and to enter into this Agreement. Buyer (either alone or together with its advisors) has such knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its purchase of the Purchased Assets and is capable of bearing the economic risks of such purchase. Buyer’s acceptance of the Purchased Assets at the Closing shall be based upon its own investigation, examination and determination with respect thereto as to all matters and without reliance upon any express or implied representations or warranties of any nature made by or on behalf of or imputed to Seller, except as expressly set forth in this Agreement (including in Article III).

(b) Buyer has relied solely on Buyer’s own legal, tax, financial, regulatory and other advisors and the representations and warranties made by Seller as expressly set forth in this Agreement (including in Article III) for its evaluation of its investment decision to purchase the Purchased Assets and to enter into this Agreement and not on the advice of Seller, any Company Entity or any Affiliate or Representative of any of the foregoing. Buyer acknowledges that any

financial projections that may have been provided to it are based on assumptions about future operating results, which are based on assumptions about certain events, many of which are beyond the control of Seller. Buyer further acknowledges and agrees that, except as expressly set forth in this Agreement (including in Article III), no representation or warranty has been made, and Buyer has not relied on any representation or warranty, regarding Seller, the Purchased Assets, any Company Entity or any other matter, including any representation or warranty regarding any projections, forecasts, estimates, budgets, revenues, profits, results of operations, cash flows, or the condition (financial or otherwise) of the Purchased Assets or any Company Entity or the businesses, assets or liabilities thereof, or any other information, data or materials provided or not provided by or on behalf of Seller, any Company Entity or any Affiliate or Representative of any of the foregoing in connection with the transactions contemplated hereby, including information, data or materials in any memorandum or management presentation, in the Data Room, in any oral, written or electronic response to any information request or any other information, data or materials of any kind or nature whatsoever provided to Buyer, its Affiliates or its or their respective Representatives. For the avoidance of doubt, nothing in this Section 4.12 shall be construed to limit any of Buyer's rights in the event of Intentional Fraud.

ARTICLE V.  
COVENANTS

Section 5.1 Conduct of the Company Entities.

(a) During the period from and after the date hereof and to the Closing (the "Interim Period"), except as otherwise contemplated by this Agreement or any of the other Transaction Documents, and except as otherwise approved in writing by Buyer (which approval shall not be unreasonably withheld, conditioned or delayed), Seller will exercise or not exercise its Seller Company Rights in a manner consistent with permitting the Company Entities to:

- (i) conduct their respective businesses in the ordinary course; and
- (ii) use reasonable best efforts to preserve, maintain and protect the assets and properties of the Company Entities except for ordinary wear and tear (*provided* that such efforts shall not include any requirement or obligation to make any payment or assume any Liability not otherwise required to be paid or assumed by the terms of an existing Contract or offer or grant any financial accommodation or other benefit not otherwise required to be made by the terms of an existing Contract).

(b) Without limiting the generality of the foregoing, during the Interim Period, except as otherwise contemplated by this Agreement or any of the other Transaction Documents, and except as otherwise approved in writing by Buyer (which approval shall not be unreasonably withheld, conditioned or delayed), Seller shall not (with respect to the Company Entities), and shall exercise or not exercise its Seller Company Rights in a manner consistent with prohibiting the Company Entities from:

- (i) amending the Governing Documents of any Company Entity;
- (ii) authorizing for issuance, issuing, granting, selling, transferring, disposing of, pledging or otherwise encumbering any Equity Interests of any Company Entity, or

issuing any Rights to subscribe for, purchase or acquire any Equity Interests of any Company Entity, in each case, other than (A) as required under any Benefit Plan or (B) without limiting Section 5.3(d), the sale, transfer, disposition, pledge or encumbrance of any Equity Interests in the Company (other than the Purchased Interests) by any Person (other than the Company or the Seller or any of its Affiliates);

(iii) except as required by GAAP, changing any accounting methods or principles or auditing practices in a manner that would adversely affect the Company Entities;

(iv) selling, transferring or otherwise disposing of any of the assets of the Company Entities that are material to the Company Entities, taken as a whole, to any Person (other than dispositions to any other Company Entity and dispositions of obsolete assets) or pledging or otherwise encumbering any such assets, in each case, other than in the ordinary course;

(v) except in the ordinary course and except for any PIK Increases (as defined in the Loan Agreement and in each Authorized Loan (as defined in the Loan Agreement)), (A) creating, incurring or assuming any Indebtedness, (B) assuming, guaranteeing, endorsing or otherwise becoming liable or responsible (whether directly or indirectly) for any material obligations of any Person or (C) making any loans, advances or capital contributions to or investments in any Person (other than, in the case of each of clauses (A) through (C) for such Indebtedness, obligations, loans, advances, capital contributions or investments, as the case may be, among Company Entities);

(vi) acquiring any assets that would be material, individually or in the aggregate, to the Company Entities, taken as a whole, except in the ordinary course or in accordance with the Approved Business Plan (or any subsequent business plan approved by the Business Planning and Compensation Committee of the Board) for the Company Entities;

(vii) entering into or amending any Affiliate Contract;

(viii) except as required by Law, making or changing any material Tax election, or settling any material dispute or Action with respect to Taxes, in each case, if such action is reasonably expected to materially adversely affect (i) Buyer or any of its Affiliates with respect to a Post-Closing Tax Period or (ii) any Company Entity with respect to any period;

(ix) directly or indirectly purchasing, redeeming, or otherwise acquiring or retiring any of its capital stock or other Equity Interests or any warrants, options, or similar instruments to acquire the same; or

(x) agreeing or committing, whether in writing or otherwise, to do any of the foregoing.

(c) Notwithstanding the foregoing or anything in this Agreement to the contrary, Seller and the Company Entities may take (or not take, as the case may be) any of the actions described in this Section 5.1 if reasonably necessary to prevent the occurrence of or mitigate the effects of

damage to property or injury to persons under emergency circumstances or as required pursuant to applicable Law.

Section 5.2 Access to Information.

(a) During the Interim Period, Buyer may make or cause to be made such review of the Company Entities and their respective properties, books, Contracts and other records (including, for clarity, any business plan approved by the Business Planning and Compensation Committee of the Board) as Buyer deems reasonably necessary or advisable for the exercise of its rights and obligations hereunder or the consummation of the transactions contemplated hereby. Seller shall exercise or not exercise its Seller Company Rights in a manner consistent with permitting the Company Entities to afford Buyer and its Representatives reasonable access to the properties, Managers, directors, officers, senior employees, books, Contracts and other records of the Company Entities during normal business hours to review information and documentation relating to the Company Entities and the properties, books, Contracts and other records of the Company Entities; *provided*, that such access shall only be upon reasonable advance notice and shall not disrupt personnel and operations of the Company Entities and shall be at Buyer's sole cost and expense; *provided, further*, that none of Buyer, its Affiliates or its or their respective Representatives shall conduct any environmental site assessment, compliance evaluation or investigation with respect to any property of Seller or any Company Entity without the prior written consent of Seller (it being understood and agreed that Seller may have no such authority, whether contractual or otherwise, to consent to such undertakings with respect to such Managers, directors, officers, senior employees, properties, books, Contracts or other records) and without ongoing consultation with Seller with respect to any such activity (it being understood and agreed that in no event shall any subsurface investigation or testing of any environmental media be conducted); *provided, further*, that, for the avoidance of doubt, none of Buyer, its Affiliates or its or their respective Representatives shall have any right to access or review any Tax Return of Seller or any of its Affiliates or any of its or their respective direct or indirect equity holders. All requests for access to the properties, Managers, directors, officers, senior employees, books, Contracts and other records of the Company Entities shall be made to such Representatives of Seller as Seller shall designate, who shall be solely responsible for coordinating all such requests and all access permitted hereunder. Buyer shall indemnify the Seller Indemnified Parties and the Company Entities in respect of and hold each of them harmless from and against any and all Damages suffered, incurred or sustained by any of them resulting from, arising out of or relating to the activities of Buyer, its Affiliates and their respective Representatives under this Section 5.2 (it being understood that the discovery of any pre-existing matter by Buyer and any consequences of such discovery shall not be deemed to be arising out of or relating to Buyer's activities). The foregoing indemnification obligation shall survive the Closing or termination of this Agreement.

(b) None of Buyer, its Affiliates or its or their respective Representatives shall, prior to the Closing, contact or communicate with (i) any customers, suppliers, distributors, service providers, contractors, lenders, agents, employees, or partners that have business relationships with the Company Entities (other than the other members of the Company and the buyer(s) under any Other PSA), (ii) any Governmental Authority or (iii) any of the Representatives of any Person described in clause (i) or clause (ii), in each case in connection with the transactions contemplated hereby, whether in person or by telephone, mail or other means of communication, without the prior written consent of Seller, other than, in the case of any Governmental Authority and any

Representatives thereof, in connection with obtaining or making any of the Consents pursuant to and in accordance with Section 5.4.

(c) Any access to the properties, Managers, directors, officers, senior employees, books, Contracts and other records of the Company Entities shall be subject to the following additional limitations: (i) Buyer, its Affiliates, and its and their respective Representatives, as applicable, shall give Seller notice of at least two (2) Business Days' prior to accessing such properties, Managers, directors, officers, senior employees, books, Contracts and other records, and a Representative of Seller shall have the right to be present when Buyer, its Affiliates or its or their respective Representatives conducts any of its or their on-site investigations of such properties, books, Contracts and other records; (ii) none of Buyer, its Affiliates or its or their respective Representatives shall damage the property of the Company Entities or any portion thereof; (iii) Buyer, its Affiliates, and its and their respective Representatives, as applicable, shall use reasonable best efforts to perform all on-site investigations and all communications with any personnel of the Company Entities in an expeditious and efficient manner and (iv) providing reasonable access to Managers, directors, officers and senior employees shall mean using commercially reasonable efforts to permit, subject to the terms of this Section 5.2, access to such individuals to be provided by the Company Entities.

(d) Notwithstanding anything herein to the contrary, Seller shall not be required to provide Buyer, its Affiliates or any of its or their respective Representatives any access to any information, whether during the Interim Period or from and after the Closing, that (i) relates to bids or offers received by Seller, any Company Entity, or any Affiliate or Representative of any of the foregoing in connection with the sale process resulting in the execution and delivery of this Agreement (including any analyses conducted in connection with such sale process), (ii) Seller, any Company Entity, or any Affiliate of any of the foregoing are prohibited from providing to Buyer, its Affiliates or its or their respective Representatives by reason of applicable Law or Permit, (iii) is protected by attorney-client privilege or work product protection, (iv) is pertinent to any litigation in which Seller, any Company Entity, or any Affiliate of any of the foregoing on the one hand, and Buyer or any of its Affiliates, on the other hand, are adverse parties (without limiting any rights of any party to such litigation to discovery in connection therewith), or (v) Seller, any Company Entity, or any Affiliate of any of the foregoing are required to keep confidential or prevent access to by reason of any Contract with a third party or any fiduciary duty.

(e) During the Interim Period, each Party agrees to keep the other Party reasonably apprised of the status of any matters relating to the completion of any of the transactions contemplated hereby, any matter specified in Section 5.1, or material developments concerning the Company Entities or the processes for obtaining Required Regulatory Approvals, and to reasonably seek the views of and consult with the other Party regarding the foregoing, in each case, except to the extent (i) prohibited by reason of applicable Law, (ii) protected by attorney-client privilege or work product protection, (iii) pertinent to any litigation in which Seller, any Company Entity, or any Affiliate of any of the foregoing on the one hand, and Buyer or any of its Affiliates, on the other hand, are adverse parties (without limiting any rights of any party to such litigation to discovery in connection therewith), or (iv) required to be kept confidential by reason of any Contract with a third party or any fiduciary duty.



Section 5.3 Efforts to Close; Further Assurances.

(a) Subject to the terms and conditions of this Agreement and applicable Law, the Parties shall (and shall cause their respective Controlled Affiliates to, and with respect to Seller, shall exercise or not exercise its Seller Company Rights in a manner consistent with permitting the Company Entities to) cooperate and use their respective reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable Laws and otherwise to consummate and make effective the transactions contemplated by this Agreement and the other Transaction Documents as soon as practicable (but no later than the Termination Date) and to take such actions or do such things as any other Party may reasonably request in order to cause any of the conditions to such other Party's obligations to consummate such transactions specified in Article VI to be fully satisfied.

(b) Each Party acknowledges that its obligation to use (and to cause any other Person to use) its "reasonable best efforts" for purposes of this Section 5.3 shall be deemed to require compliance with the express terms of Section 5.4 with respect to making or obtaining Consents, regardless of whether such terms provide for a standard of performance equivalent to or other than a "reasonable best efforts" standard, and regardless of whether such terms provide for an obligation to cause Persons equivalent to or other than its Controlled Affiliates to take the actions specified therein.

(c) From time to time after the Closing Date, the Parties shall (and shall cause their respective Controlled Affiliates to) execute and deliver such further instruments, and take (or cause their respective Controlled Affiliates to take) such other action, as may be reasonably necessary to carry out the purposes and intents of this Agreement and the other Transaction Documents.

(d) Seller agrees not to waive any Seller Company Rights with respect to any Transfer of Company Interests by another member of the Company.

Section 5.4 Consents.

(a) (i) Seller shall (and shall cause its Controlled Affiliates to) use reasonable best efforts to obtain or make all Consents of or with any Person (other than any Governmental Authority) under any Contract to which Seller or any Company Entity is a party, which Consents are necessary or advisable in order to allow the Parties to consummate, as promptly as practicable (but no later than the Termination Date), the transactions contemplated by this Agreement and the other Transaction Documents, including, for clarity, the Required Consents and (ii) Buyer shall (and shall cause its Controlled Affiliates to) use reasonable best efforts to obtain or make all Consents of or with any Person (other than any Governmental Authority) under any Contract to which Buyer is a party, which Consents are necessary or advisable in order to allow the Parties to consummate, as promptly as practicable (but no later than the Termination Date), the transactions contemplated by this Agreement and the other Transaction Documents.

(b) Subject to the terms and conditions of this Agreement, including Section 5.4(c), Section 5.4(d) and Section 5.4(e), each Party shall (and Buyer shall cause its Affiliates to, and Seller shall exercise or not exercise its Seller Company Rights in a manner consistent with permitting the Company Entities to), use reasonable best efforts to take or cause to be taken all

actions, make any and all undertakings necessary and do or cause to be done all things, in order to (i) submit (and with respect to the CFIUS Approval, pre-file) all applications, registrations, petitions, filings and notices to all Governmental Authorities, (ii) obtain or make all Consents of or with, and other permissions and actions of or by, all Governmental Authorities and (iii) make any subsequent or amended or supplemental submissions to, and respond promptly and completely to requests for information and documents and other inquiries from, all Governmental Authorities and other Persons, in the case of each of clauses (i) through (iii), necessary or advisable in order to allow the Parties to consummate, as promptly as practicable (but no later than the Termination Date), the transactions contemplated by this Agreement and the other Transaction Documents; provided, however, that such efforts shall not include any requirement or obligation (x) on or by Buyer or any of its Affiliates or any of the Company Entities to take or agree to any Prescribed Actions or (y) on or by Seller to (or to cause any of its Affiliates (excluding the Company Entities) to) make any payment or offer or grant any financial accommodation or other benefit to (or accept any deduction or setoff of amounts otherwise payable from) any Person other than as specifically required of Seller by the terms of this Agreement (including Section 5.4(e)) or of Seller (or any such Affiliate) by any Contract to which Seller (or any such Affiliate) is a party.

(c)

(i) In furtherance of the obligations set forth in Section 5.4(b), each Party shall (and Buyer shall cause its Affiliates to, and Seller shall exercise or not exercise its Seller Company Rights in a manner consistent with permitting the Company Entities to) (i) prepare and pre-file as promptly as possible a draft joint voluntary notice with CFIUS pursuant to Section 721 of the DPA, with respect to the transactions contemplated by this Agreement and the other Transaction Documents, in each case, as soon as practicable following the date of this Agreement and in no event later than thirty (30) days thereafter and a final joint voluntary notice to CFIUS pursuant to Section 721 of the DPA, as promptly as practicable after CFIUS advises that it has no further comments or questions with respect to the draft joint voluntary notice.

(ii) In the event that (A) CFIUS recommends or indicates an intent to recommend that the President block the transactions contemplated by this Agreement, or condition his approval of such joint filing on any Prescribed Action of Buyer, a Company Entity and/or any Affiliate of Buyer, due to the identity of a buyer under any Other PSA and (B) provided that at that time, no other Required Regulatory Approval has been denied, then, upon written notice delivered by Buyer or Seller to the other Party, Buyer shall, and shall cause its Affiliates to, prepare and refile as promptly as possible a joint voluntary notice with CFIUS pursuant to Section 721 of the DPA, with respect to the transactions contemplated by this Agreement and the other Transaction Documents (and excluding, for the avoidance of doubt, the transactions contemplated by any Other PSA), in each case, as soon as practicable following such request and in no event later than thirty (30) days after such request, and a final voluntary notice to CFIUS pursuant to Section 721 of the DPA, as promptly as practicable after CFIUS advises that it has no further comments or questions with respect to the joint voluntary notice.

(iii) If, pursuant to Section 5.4(c)(ii), Seller requests that Buyer refile the draft notice with CFIUS, Seller shall be deemed to have irrevocably waived the condition set forth in Section 6.2(d).

(iv) The Parties shall provide CFIUS with any additional or supplemental information requested by CFIUS or its member agencies during the CFIUS review (and, if applicable, investigation) process within three (3) Business Days of receiving such request, or within such longer period as permitted by CFIUS.

(v) Notwithstanding the foregoing and Section 5.4(b), none of Buyer, any Affiliate of Buyer nor any Company Entity shall be required to take or agree to any Prescribed Actions with respect to obtaining CFIUS Approval.

(d) In furtherance of the obligations set forth in Section 5.4(b), each Party shall (and Buyer shall cause its Affiliates to) cooperate and use reasonable best efforts to prepare and file, or cause to be filed, as soon as practicable following the date of this Agreement and in no event later than thirty (30) days thereafter, the appropriate filings with FERC. The Parties shall (and Buyer shall cause its Affiliates to) provide FERC with any additional or supplemental information requested by FERC within ten (10) Business Days of receiving such request, or within such longer period as permitted by FERC. Notwithstanding the foregoing and Section 5.4(b), none of Buyer, any Affiliate of Buyer nor any Company Entity shall be required to take or agree to any Prescribed Actions with respect to obtaining FERC Approval.

(e) In furtherance of the obligations set forth in Section 5.4(b), each Party shall (and Buyer shall cause its Affiliates to, and Seller shall exercise or not exercise its Seller Company Rights in a manner consistent with requiring or permitting the Company Entities to) make the appropriate filings with the WUTC in respect of the WUTC Approval and the transactions contemplated by this Agreement and the other Transaction Documents, in each case, as soon as practicable following the date of this Agreement. If, in order to secure the requisite Consent from the WUTC with respect to the transactions contemplated by this Agreement and the other Transaction Documents and/or transactions contemplated by any Other PSA, Buyer, any of its Affiliates and/or any Company Entity, after giving effect to the transactions contemplated hereby and under any Other PSA are required to incur or assume or agree to any Regulatory Commitment or any Regulatory Commitment is imposed on any of them, Seller shall either (A) at the Closing pay (or cause an Affiliate of Seller to at the Closing pay) Buyer and its relevant Affiliates the amount of such Regulatory Commitments or (B) if the amount of the Regulatory Commitments exceeds \$ [REDACTED], terminate this Agreement in accordance with Section 8.1(f). Notwithstanding the foregoing and Section 5.4(b), none of Buyer, any Affiliate of Buyer, nor any Company Entity shall be required to take or agree to any Prescribed Actions with respect to obtaining the WUTC Approval and/or any WUTC Other PSA Approval.

(f) The Parties agree (i) that the applications and notifications submitted to FERC, CFIUS, the WUTC and in respect of the EU Approval and any additional antitrust/competition approvals of or from any Governmental Authority with respect to the transactions contemplated hereby and by the other Transaction Documents shall include the information concerning the transactions contemplated hereby and thereby, the Company Entities, and Buyer and its Affiliates as required by applicable Laws of the United States, the State of Washington, the European Union,

such jurisdiction in which such additional antitrust/competition approval is to be obtained and such other jurisdictions as may be mutually determined by Seller on behalf of the Company, on the one hand, and Buyer, on the other hand, (ii) that, subject to compliance by each Party with its obligations under Section 5.4(b), Section 5.4(c), Section 5.4(d), and Section 5.4(e) and the limitations set out therein, as applicable, such applications and any amendments or supplements thereto shall include such agreements or commitments as may be advisable to obtain prompt approval of such applications, and (iii) that, subject to compliance by each Party with its obligations under Section 5.4(b), Section 5.4(c), Section 5.4(d), and Section 5.4(e) and the limitations set out therein, as applicable, (A) Seller shall not agree to, nor accept, any agreements, commitments or conditions in connection with the transactions contemplated hereby pursuant to any settlement or otherwise with FERC, the WUTC or any other Governmental Authority, in the case of any agreement, commitment or condition to which any Company Entity is a party or otherwise adversely affecting Buyer or any of its Affiliates or any Company Entity, without the prior written consent of Buyer, and (B) Buyer shall not agree to, nor accept, any agreements, commitments or conditions in connection with the transactions contemplated hereby pursuant to any settlement or otherwise with FERC, the WUTC or any other Governmental Authority, in the case of any agreement, commitment or condition to which Buyer is a party and adversely affecting any Seller or any of its Affiliates, or, prior to the Closing, any Company Entity, without the prior written consent of Seller.

(g) Unless prohibited by applicable Law or by the applicable Governmental Authority, Buyer, on the one hand, and Seller (and each Company Entity), on the other hand, (i) shall not participate in or attend any meeting, or engage in any substantive telephone or in-person conversation with any Governmental Authority (including any member or Representative of any Governmental Authority's staff) in respect of the transactions contemplated by this Agreement (including with respect to any of the actions referred to in Section 5.4(b) or Section 5.4(e)) without consulting with the other Party in advance, considering in good faith the views of the other Party, and giving the other Party the opportunity to attend and participate with reasonable prior notice, (ii) shall permit the other Party to review in advance any proposed substantive written communication, filing, amendment or supplemental submission to any Governmental Authority or any Representative thereof and consider, in good faith, the other Party's comments on any proposed written communication, filing, amendment or submission, (iii) shall cooperate in the filing of any substantive memoranda, white papers, filings, correspondence or other written communications to be provided to any Governmental Authority with respect to obtaining Consents in respect of the transactions contemplated by this Agreement addressing, explaining, advocating for or defending the transactions contemplated by this Agreement, including articulating any regulatory or competitive argument or responding to requests for information or documents or objections made by any Governmental Authority, (iv) shall furnish the other Party with copies of all correspondence, filings and communications (and, with respect to oral communications, memoranda or other documentation setting forth the substance thereof) between it and its Affiliates (and, with respect to Seller, the Company Entities) and its and their respective Representatives, on the one hand, and any Governmental Authority (including any member or Representative of any Governmental Authority's staff), on the other hand, with respect to the transactions contemplated by this Agreement and (v) shall furnish the other Party with such necessary information and reasonable assistance as such other Party and its Affiliates (and, with respect to Seller, the Company Entities) may reasonably request in connection with their preparation of necessary applications, filings, registrations, or submissions of information to any Governmental Authority

in connection with the transactions contemplated by this Agreement. Notwithstanding the foregoing, a Party may redact any highly confidential or proprietary information contained in any non-public filing, submission or other document prior to providing a copy thereof to the other Party.

(h) Buyer hereby acknowledges and agrees that Puget Sound Energy is subject to the plenary jurisdiction and regulatory authority of the WUTC and also is subject to the jurisdiction and regulatory authority of FERC and that Puget Sound Energy's business operations that are subject to the jurisdictions of the WUTC and FERC are ongoing and are contemplated to continue to be ongoing before and after Closing and regardless of whether or not the transactions contemplated hereby or by the other Transaction Documents are consummated. Notwithstanding anything to the contrary in this Section 5.4, nothing in this Section 5.4 is intended to, has the meaning and purpose of, or shall be understood to, prevent or limit in any way or degree any of the Company Entities' normal and ordinary practices and abilities to meet with or have conversations with the WUTC and FERC concerning any of the Company Entities' ongoing operations that are subject to the WUTC's or FERC's jurisdictions, respectively. Buyer hereby acknowledges and agrees that the Company Entities, in the normal and ordinary course and scope of their meetings and conversations with the WUTC and FERC concerning any of the Company Entities' ongoing operations, may find it also appropriate to discuss the transactions contemplated by this Agreement and the other Transaction Documents (including responding to inquiries as to the potential effects of the transactions contemplated hereby on the ongoing operations under discussion), without Buyer being present and participating in such discussions. In the event of such discussions by any of the Company Entities with the WUTC or FERC, without Buyer participating in such discussions, Seller shall reasonably apprise Buyer promptly thereafter of such discussions and the material contents thereof.

(i) Buyer shall be solely responsible for, and shall pay, all out-of-pocket third party costs and filing fees payable to Governmental Authorities or their Representatives in connection with obtaining the Required Regulatory Approvals necessary for the transactions contemplated by this Agreement.

(j) During the Interim Period, neither Buyer nor any of its Affiliates shall, directly or indirectly, acquire or agree to acquire any equity securities in any Scheduled Entity, excluding (i) ownership of less than 10% of any class of securities of any Scheduled Entity and (ii) any interest in a non-discretionary independent fund investment holding, directly or indirectly, any equity securities in a Scheduled Entity. During the Interim Period, neither Buyer nor any of its Affiliates shall acquire or agree to acquire, directly or indirectly, any equity securities in any entity that does not have publicly-traded securities and which is engaged in the generation, transmission or distribution of electricity or the transportation or distribution of natural gas in the State of Washington, that could reasonably be expected to make more difficult, delay or prevent the satisfaction of the conditions contained in Article VI or the consummation of the transactions contemplated hereby. Notwithstanding the foregoing, the second sentence of this Section 5.4(j) shall not apply to acquisitions by Buyer or any of its Affiliates of, or agreements by Buyer or any of its Affiliates to acquire, any publicly-traded securities or securities traded over-the-counter. For purposes of this Section 5.4(j), no Person shall be deemed to be engaged in the generation, transmission or distribution of electricity or the transportation or distribution of natural gas as a result of the ownership of either (i) an interest of less than 10% in the equity securities of any

company active in such business, whether voting or non-voting; (ii) any interest in a “qualifying facility” within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended, that is located outside of the Puget Sound Energy balancing authority area or any first-tier balancing authority area; or (iii) a passive interest of less than 10% of the voting or non-voting securities of any company that owns or controls a “qualifying facility” within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended, that is located in the Puget Sound Energy balancing authority area or any first-tier balancing authority area.

(k) Except as consented to or waived in writing by Seller, during the Interim Period, no change to the direct or indirect ownership structure of Buyer or Buyer GP shall be made which would cause any representation and warranty given in Section 4.6 to be inaccurate.

(l) For the avoidance of doubt and notwithstanding any other provision in this Agreement to the contrary, the Buyer shall not be required to: (i) make any filing or application for a Required Regulatory Approval (other than with respect to the Consent of the WUTC) jointly with the buyer(s) under any Other PSA or (ii) initiate or commence any litigation, suit or similar adversarial proceeding against any Governmental Authority in order to obtain a Required Regulatory Approval.

#### Section 5.5 Confidentiality; Public Announcements.

(a) Buyer, its Affiliates and its and their Representatives shall hold in confidence all Confidential Information (as defined in the Confidentiality Agreement) obtained by them from Seller, the Company Entities, and Affiliates and Representatives of any of the foregoing, whether or not relating to Purchased Assets or the Company Entities, in accordance with the provisions of the Confidentiality Agreement, which, notwithstanding anything set forth herein, shall remain in full force and effect following the execution of this Agreement and shall survive any termination of this Agreement in accordance with its terms; *provided, however*, that, subject to Section 5.5(c), Buyer, its Affiliates and its and their respective Representatives (i) shall not have any obligation hereunder or thereunder to maintain the confidentiality of any information with respect to the Purchased Assets or the Company Entities from and after the Closing, and (ii) shall be permitted to disclose such Confidential Information (I) as required (x) by any Governmental Authority to be disclosed by any such Person or its Affiliates under applicable Law or any applicable listing agreement with, or rules and regulations of, an applicable securities exchange or (y) for purposes of compliance with such Person’s or its Affiliates’ respective financial reporting obligations, (II) in connection with the exercise of any remedies of such Person or its Affiliates or any Buyer Indemnified Parties or other third-party beneficiaries hereof provided in this Agreement or any Transaction Document or any proceeding related to this Agreement or any Transaction Document or the enforcement of rights of such Person or its Affiliates or any Buyer Indemnified Parties or other third-party beneficiaries hereof hereunder or thereunder, (III) to such Person’s and its Affiliates’ respective Representatives as necessary in connection with the performance of such Representatives’ services in the ordinary course of business on behalf of such Person or its Affiliates, (IV) in connection with fundraising, marketing, informational or reporting activities by such Person or its Affiliates, or (V) as contemplated by and in accordance with Section 5.4. For purposes of this Section 5.5(a), Confidential Information shall not include information that (A) is or becomes generally available to the public prior to the date of disclosure by any receiving Person other than as a result disclosure by such receiving Person in violation hereof, (B) is independently

developed by or on behalf of the receiving Person or any of its Affiliates without reference to any Confidential Information or (C) is approved in advance in writing by Seller for disclosure.

(b) Seller shall, and shall cause its Controlled Affiliates and Representatives to, keep confidential all, and not use or disclose to any other Person any, confidential information of (1) Buyer or any of its Affiliates and (2) from and after the Closing, the Company Entities or otherwise relating to the Purchased Assets; *provided* that Seller and its Controlled Affiliates and their respective Representatives may use and disclose such confidential information (i) as required (x) by any Governmental Authority to be disclosed by any such Person or its Affiliates under applicable Law or any applicable listing agreement with, or rules and regulations of, an applicable securities exchange or (y) for purposes of compliance with such Person's or its Affiliates' respective financial reporting obligations, (ii) by or to such Person's and its Affiliates' respective Representatives as necessary in connection with the performance of such Representatives' services in the ordinary course of business on behalf of such Person or its Affiliates, (iii) as contemplated by and in accordance with Section 5.4, or (iv) in connection with fundraising due diligence or informational activities by such Person or its Affiliates (provided that no reference shall be made in such fundraising due diligence or informational activities to Buyer or its Affiliates or to the specific terms and conditions of this Agreement including the purchase price hereunder except (x) as required by applicable Law or (y) that the purchase price may be disclosed as part of regular fund update reporting practices or informational activities if the recipients thereof are existing limited partners of Seller or its Affiliates as of the date hereof and are subject to confidentiality obligations under the applicable limited partnership agreements thereof, but provided further that Seller and its Affiliates may disclose the transactions contemplated hereby and customary information regarding the nature of its financial returns on its investment in the Company, as part of fundraising due diligence to bona fide prospective fund investors undertaking due diligence activities who are subject to a customary (in relation to such activities) confidentiality obligation to Seller or any of its Affiliates). Notwithstanding the foregoing, (1) for the avoidance of doubt, Seller and its Controlled Affiliates and their respective Representatives may, at any time, whether before, at or after the Closing, use and disclose such confidential information in connection with the exercise of any remedies of such Person or its Affiliates or any Seller Indemnified Parties or other third-party beneficiaries hereof provided in this Agreement or any Transaction Document or any proceeding related to this Agreement or any Transaction Document or the enforcement of rights of such Person or its Affiliates or any Seller Indemnified Parties or other third-party beneficiaries hereof hereunder or thereunder, and (2) such confidential information for purposes of this Section 5.5(b) shall expressly exclude such information that (A) is or becomes generally available to the public prior to the date of disclosure by any receiving Person other than as a result disclosure by such receiving Person in violation hereof, (B) is independently developed by or on behalf of the receiving Person or any of its Affiliates or (C) is approved in advance in writing by Buyer for disclosure. Buyer acknowledges and agrees that certain directors, managers, committee members, and officers of Seller, and certain employees and/or other personnel of Seller or of the general partner, manager or Controlled portfolio companies of any Controlling Affiliate of Seller that is a Fund, may manage or advise, or serve as directors, managers, committee members, officers, employees and/or other personnel of other Persons and that, notwithstanding anything to the contrary contained herein, such other Persons will not be deemed to have received confidential information of the Company Entities or otherwise relating to the Purchased Assets or otherwise be bound or restricted in any way (directly or indirectly) by this Section 5.5(b), whether due to such management or advice to, or service with, such other Persons or otherwise, including through the

disclosure or use of the general knowledge and understanding of the Company Entities' respective industry acquired through or enhanced by such confidential information.

(c) Except as otherwise required herein, each of the Parties shall use its reasonable best efforts to (i) develop a joint communication plan with respect to this Agreement and the transactions contemplated hereby, (ii) ensure that (x) all press releases and other public statements during the Interim Period and (y) any press release or other public statement issued upon or immediately following the Closing (such press release or other public statement referred to in this clause (y), the "Closing Press Release") with respect to this Agreement and the other Transaction Documents (including the terms hereof and thereof, and the transactions contemplated hereby and thereby) shall be consistent with such joint communication plan or otherwise consented to by the other Parties, and (iii) consult with each other Party prior to issuing any press release or otherwise making any public statement or other public disclosure with respect to this Agreement and the other Transaction Documents, provide to each other Party for review a copy of any such press release, statement or disclosure, and not issue any such press release or make any such public statement or disclosure that is not consistent with such joint communication plan without the other Party's consent, unless such Party determines in good faith that such press release, statement or disclosure is required by any Governmental Authority or under applicable Law or any applicable listing agreement with, or rules and regulations of, an applicable securities exchange, in which case, such Party shall, prior to issuing any such press release or making any such public statement or disclosure, use its reasonable best efforts to afford the other Party a reasonable opportunity to review and comment thereon. Notwithstanding the foregoing, following the issuance of the Closing Press Release, each of the Parties may issue any press release or other public statement with respect to this Agreement and the other Transaction Documents (including the terms hereof and thereof, and the transactions contemplated hereby and thereby) which is consistent with and limited to the information contained in prior press releases or other public statements issued and approved by the Parties in accordance with this Section 5.5(c).

Section 5.6 Post-Closing Access; Preservation of Records.

(a) From and after the Closing, Buyer shall exercise or not exercise its Buyer Company Rights in a manner consistent with permitting the Company Entities to make, or cause to be made, available to Seller and its Affiliates all books, records, Tax Returns and documents of the Company Entities (and the assistance of employees responsible for such books, records and documents) during regular business hours as may be reasonably necessary for (i) investigating, settling, preparing for the defense or prosecution of, defending or prosecuting any Action, (ii) preparing reports to equity holders and Governmental Authorities or (iii) such other reasonable business purposes for which access to such documents by Seller is reasonably necessary, including preparing and delivering any accounting or other statement provided for under this Agreement or otherwise, preparing Tax Returns, pursuing Tax refunds or responding to or disputing any Tax audit, or the determination of any matter relating to the rights and obligations of Seller, the Company Entities or any of their respective Affiliates under any Transaction Documents; *provided, however*, that access to such books, records, documents and employees shall not interfere with the normal operations of Buyer or any of its Affiliates, or any of the Company Entities, and the reasonable and documented out-of-pocket expenses of Buyer, its Affiliates and the Company Entities incurred in connection therewith shall be paid by Seller; *provided, further*, that, for the avoidance of doubt, none of Seller, its Affiliates or its or their respective Representatives shall



have any right to access or review any Tax Return of Buyer or any of its Affiliates or any of its or their respective direct or indirect equity holders. All requests for access to the properties, Contracts books and other records of the Company Entities shall be made to such Representatives of Buyer as Buyer shall designate, who shall be solely responsible for coordinating all such requests and all access permitted hereunder. Buyer shall exercise or not exercise its Buyer Company Rights in a manner consistent with permitting the Company Entities to maintain and preserve all such Tax Returns, books, records and other documents for the greater of (A) ten (10) years after the Closing Date and (B) any applicable statutory or regulatory retention period, as the same may be extended and, in each case, shall offer to transfer such records to Seller at the end of any such period.

(b) Any access to the properties, books, Contracts and other records of the Company Entities shall be subject to the following additional limitations: (i) Seller, its Affiliates, and its and their respective Representatives, as applicable, shall give Buyer notice of at least two (2) Business Days' prior to accessing such properties, books, Contracts and other records, and a Representative of Buyer shall have the right to be present when Seller, its Affiliates or its or their respective Representatives conducts any of its or their on-site investigations of such properties, books, Contracts and other records; (ii) none of Seller, its Affiliates or its or their respective Representatives shall damage the property of the Company Entities or any portion thereof; and (iii) Seller, its Affiliates, and its and their respective Representatives, as applicable, shall use reasonable best efforts to perform all on-site investigations and all communications with any personnel of the Company Entities in an expeditious and efficient manner.

(c) Notwithstanding anything herein to the contrary, Buyer shall not be required to (or to exercise its Buyer Company Rights in a manner consistent with permitting the Company Entities to) provide Seller, its Affiliates or any of its or their respective Representatives, any access to any information, that (i) Buyer, any Company Entity, or any Affiliate of any of the foregoing are prohibited from providing to Seller, its Affiliates or its or their respective Representatives by reason of applicable Law or Permit, (ii) is protected by attorney-client privilege or work product protection, (iii) is pertinent to any litigation in which Seller, any Company Entity, or any Affiliate of any of the foregoing on the one hand, and Buyer or any of its Affiliates, on the other hand, are adverse parties (without limiting any rights of any party to such litigation to discovery in connection therewith) or (iv) Buyer, any Company Entity, or any Affiliate of any of the foregoing are required to keep confidential or prevent access to by reason of any preexisting Contract with a third party or any fiduciary duty.

(d) It is understood and agreed that Buyer may have no such authority, whether contractual or otherwise, to consent to such undertakings with respect to such properties, books, Contracts or other records as provided in this Section 5.6.

Section 5.7 Tax Matters. Except as otherwise required by Law, the Parties agree to treat for all Tax purposes all indemnification payments under Article VII as adjustments to the Purchase Price.

Section 5.8 D&O Indemnification, Exculpation and Insurance.

(a) Buyer acknowledges and agrees that all rights to exculpation, indemnification and advancement of expenses for acts or omissions of directors, managers, committee members and

officers of the Company Entities occurring at or prior to the Closing, whether asserted or claimed prior to, at or after the Closing, as provided in the Company Entities' respective Governing Documents and in any indemnification or other similar Contracts of the Company Entities as in effect as of immediately prior to the Closing, shall survive the transactions contemplated by this Agreement and shall continue in full force and effect to the full extent provided in such Governing Documents and Contracts. For a period of six (6) years following the Closing, Buyer shall, and shall exercise or not exercise its Buyer Company Rights in a manner consistent with permitting the Company Entities to, maintain in effect any and all such exculpation, indemnification and advancement of expenses provisions and shall not amend, repeal or otherwise modify any such provisions in any manner that would adversely affect the rights thereunder of any individual who at any time before the Closing was a director, manager, committee member or officer of any of the Company Entities and who was a Representative of Seller or any Affiliate of Seller; *provided, however*, that all rights to exculpation, indemnification and advancement of expenses in respect of any Action pending or asserted or any claim made within such period shall continue until the disposition of such Action or resolution of such claim. From and after Closing, Buyer shall exercise or not exercise its Buyer Company Rights in a manner consistent with permitting the Company Entities to maintain in effect (at their sole cost and expense, including all premiums and deductibles) the directors' and officers' liability insurance policy or policies provided for directors, managers, committee members and officers of the Company Entities as of the date hereof and who were Representatives of Seller or any Affiliate of Seller.

(b) In the event Buyer (i) consolidates with or merges into any other Person and shall not be the continuing or surviving company or entity of such consolidation or merger or converts into any other Person or (ii) transfers all or substantially all of its properties and assets to any Person, then Buyer shall use commercially reasonable efforts to procure that such successor and assign assume the obligations set forth in this Section 5.8.

(c) In the event that any of the Company Entities or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving company or entity of such consolidation or merger or converts into any other Person or (ii) transfers all or substantially all of its properties and assets to any Person, then Buyer shall exercise or not exercise its Buyer Company Rights in a manner consistent with requiring such successors or assigns to maintain in effect any and all such exculpation, indemnification and advancement of expenses provisions and to not amend, repeal or otherwise modify any such provisions in any manner that would adversely affect the rights thereunder of any individual who at any time before the Closing was a director, manager, committee member or officer of any of the Company Entities and who was a Representative of Seller or any Affiliate of Seller.

(d) The provisions of this Section 5.8 are (i) intended to be for the benefit of, and will be enforceable by, each individual who at any time before the Closing was a director, manager, committee member or officer of any of the Company Entities, and his or her heirs and legal representatives and (ii) in addition to, and not in substitution for or limitation of, any other rights of exculpation, indemnification and advancement of expenses or rights to directors' and officers' liability insurance that any such individual may have by Contract or otherwise.

Section 5.9 Termination of Affiliate Contracts. Except as set forth on Section 5.9 of the Seller Disclosure Schedule or as otherwise consented to in writing by Buyer, at or prior to the

Closing, each Affiliate Contract that is terminable at the convenience of Seller or its Affiliates shall be terminated without any further force or effect, such that the Company Entities, on the one hand, and Seller and its Affiliates (excluding the Company Entities), on the other hand, do not have any further Liability to one another in respect thereof from and after the Closing.

Section 5.10 No Alternative Proposals.

(a) From the date hereof until the earlier of the termination of this Agreement and the Closing, Seller shall, and shall cause its Affiliates and each of its and its Affiliates' Representatives to:

(i) not directly or indirectly negotiate, agree to or enter into any direct or indirect Alternative Proposal or any Contract providing for a direct or indirect Alternative Proposal;

(ii) immediately cease and terminate any solicitations, discussions and/or negotiations with any Person or group of Persons (including any Affiliate of Seller and, for clarity, any Fund that is advised by, or the business, operations or assets of which are managed (whether solely or primarily) by, or whose parent is managed by, an Affiliate of Seller, and the limited partners of any such Fund) with respect to any Alternative Proposal;

(iii) not solicit, initiate, knowingly encourage or otherwise knowingly facilitate (including by way of furnishing or providing copies of, access to, or disclosure of, any confidential or non-public information, properties, facilities, books or records concerning any of the Company Entities or their respective businesses) any inquiry, proposal or offer that constitutes or may reasonably be expected to constitute or lead to an Alternative Proposal;

(iv) not enter into or otherwise engage or participate in any discussions or negotiations with any Person or group of Persons (including any Affiliate of Seller and, for clarity, any Fund that is advised by, or the business, operations or assets of which are managed (whether solely or primarily) by, or whose parent is managed by, an Affiliate of Seller, and the limited partners of any such Fund) regarding any inquiry, proposal or offer that constitutes or may reasonably be expected to constitute or lead to an Alternative Proposal;

(v) immediately discontinue access to and disclosure of any confidential or non-public information, properties, facilities, books or records concerning the Company Entities or their respective businesses, which access and/or disclosure is being or has been provided in connection with (A) any inquiry, proposal or offer that constitutes or may reasonably be expected to constitute or lead to an Alternative Proposal, or (B) any discussions or negotiations in connection therewith; and

(vi) exercise or not exercise its Seller Company Rights in a manner consistent with the foregoing.

(b) Seller represents and warrants that neither it nor any of its Affiliates or its or its Affiliates' Representatives has, in connection with any inquiry, proposal or offer that constitutes

or may reasonably be expected to constitute or lead to an Alternative Proposal, waived any standstill or similar agreement or restriction in effect as of the date of this Agreement to which Seller or any such Affiliate is a party.

(c) Seller further covenants and agrees that (i) it shall (and shall cause its Affiliates and its and its Affiliates' Representatives to) take all commercially reasonable actions to enforce each confidentiality, standstill, non-disclosure, non-solicitation, use, business purpose or similar agreement or covenant with respect to the Company Interests owned by Seller and/or the Company Entities to which Seller or any such Affiliate or Representative is a party, and (ii) it shall not release, and shall cause its Affiliates and its and its Affiliates' Representatives not to release, in connection with any inquiry, proposal or offer that constitutes or may reasonably be expected to constitute or lead to an Alternative Proposal, any Person from, or waive, amend, suspend or otherwise modify any provision of, or grant permission under or fail to enforce, any confidentiality, standstill, non-disclosure, non-solicitation, use, business purpose or similar agreement or covenant with respect to the Company Interests owned by Seller and/or the Company Entities to which Seller or any such Affiliate or Representative is a party that remains in effect as of the date of this Agreement (it being acknowledged by Buyer that the automatic termination or release of any standstill restrictions in any such agreements in accordance with the terms of any such agreement shall not be a violation of this Section 5.10(c)).

Section 5.11 Additional Purchased Assets. In the event that (a) the 0.1000% of the issued and outstanding Class A Interests of the Company (the "Additional Interests") held by Padua MG Holdings LLC, a Delaware limited liability company ("Padua MGL"), and (b) Padua MGL's right, title and interest in and to the Second Amended and Restated Senior Secured Loan Agreement, dated as of January 20, 2015, by and between Puget Intermediate Holdings Inc., as the borrower therein, and Padua MGL, as the lender therein (the "Additional Loan Agreement"), are or become available for purchase by Buyer at least five (5) Business Days prior to the Closing, Buyer hereby agrees to, at such time, enter into a joinder to this Agreement, substantially in the form attached hereto as Exhibit E (the "Joinder Agreement"), with Padua MGL providing for the purchase and acquisition, by Buyer of (i) all of Padua MGL's right, title and interest in and to (A) the Pro Rata Portion of the Additional Interests and (B) the Additional Loan Agreement with respect to the Pro Rata Portion of the Loan (as defined in the Additional Loan Agreement) owing at the Closing to Padua MGL thereunder (clauses (A) and (B), collectively, the "Additional Purchased Assets"), and assumption and acceptance by Buyer of (ii) all of Padua MGL's obligations, liabilities, covenants, duties and agreements arising out of, under or relating to, the Additional Purchased Assets from and after the Closing, in each case, on the terms and conditions set forth in this Agreement, applied *mutatis mutandis* to Padua MGL and the Additional Purchased Assets, subject to the Joinder Agreement. For the avoidance of doubt, Buyer is not assuming any of Padua MGL's obligations, Liabilities, covenants, duties or agreements arising out of, under or relating to (i) any act or omission of Padua MGL on or prior to the Closing, (ii) the period prior to the Closing or (iii) Section 7.04(f) of the LLC Agreement with respect to (A) any of the Required Regulatory Approvals in connection with the transactions contemplated hereby or (B) any Other PSA.

Section 5.12 Obligations Upon Termination of any Other PSA. In the event that any Other PSA is terminated in accordance with its terms, Seller shall promptly (and in any event within five (5) Business Days thereof), provide written notice to Buyer of such termination, and

upon such termination of any Other PSA, the condition set forth in Section 6.2(d) shall be deemed irrevocably waived by Seller.

Section 5.13 Financing.

(a) Buyer shall give Seller prompt written notice (i) of any breach or default (or any event or circumstance that, with or without notice, lapse of time or both, would reasonably be expected to give rise to any breach or default) by any party to the Buyer Parent Commitment Letter or the Buyer Parent Guarantee, (ii) if and when Buyer becomes aware that any portion of the Equity Financing may not be available to consummate the transactions contemplated by this Agreement, including the receipt of any written notice or other written communication from any Person with respect to any (A) actual or potential breach, default, termination or repudiation by any party to the Buyer Parent Commitment Letter or (B) material dispute or disagreement between or among the parties to the Buyer Parent Commitment Letter and (iii) of any termination of the Buyer Parent Commitment Letter.

(b) In the event that all conditions in Article VI have been satisfied other than those that by their nature are to be satisfied as part of the Closing, Buyer shall use its reasonable best efforts to cause the parties to the Buyer Parent Commitment Letter to fund at the Closing the Equity Financing required to consummate the transactions contemplated by this Agreement, including by enforcing its rights under the Buyer Parent Commitment Letter to cause the Equity Financing to be funded at the Closing. Buyer acknowledges and agrees that the Closing is not conditioned on the availability of the Equity Financing or any alternative financing arrangement. Accordingly, Buyer acknowledges and agrees that a failure by Buyer to consummate the Closing and the transactions contemplated hereby when otherwise required pursuant to Section 2.3 that results from a failure to consummate the Equity Financing shall constitute a material breach of Buyer's obligations under this Agreement and Seller shall be entitled to specific performance of Buyer's obligations under this Section 5.13(b), including Buyer's obligation to enforce its rights under the Buyer Parent Commitment Letter to cause the Equity Financing to be funded at the Closing, in each case, pursuant to and in accordance with Section 9.12.

Section 5.14 Buyer Authority with respect to the Company Entities. It is understood and agreed that Buyer does not, and prior to the Closing will not, and following the Closing may not, have any authority, whether contractual or otherwise, to consent to or approve any matter on behalf of the Company Entities or the buyer(s) under any Other PSA, whether referred to in Section 5.4, Section 5.5, Section 5.6 or Section 5.8 or otherwise in this Agreement and Buyer shall not be deemed to be in breach of this Agreement with respect to any matter outside of its authority involving any Company Entity.

Section 5.15 Seller Parent Guaranty.

(a) Subject to Section 5.15(d), each Seller Parent Guarantor guarantees irrevocably, absolutely and unconditionally, and as a primary obligation, Seller's due, punctual and complete payment and discharge of Seller's obligations under Article VII (the "Seller Guaranteed Obligations"); *provided* that, notwithstanding anything to the contrary set forth in this Agreement or any Transaction Document, (i) in no event shall any Seller Parent Guarantor's aggregate liability for the Seller Guaranteed Obligations exceed its allocable share (as set forth on

Schedule C) of an amount equal to \$100,000,000 (the limitation on the aggregate liability the Seller Parent Guarantors may have for the Seller Guaranteed Obligations as set forth in this proviso being herein referred to as, the “Cap”), (ii) in no event shall any Seller Parent Guarantor be required to pay more than its allocable share of the Cap under, in connection with, based on, arising from or related to this Agreement or any Transaction Document, (iii) in respect of any Seller Guaranteed Obligation which is covered by the RWI and EOP, Buyer and any other Buyer Indemnified Party shall first seek to recover the full amount of its Damages under the RWI and EOP, and no Seller Parent Guarantor shall have any liability for any Seller Guaranteed Obligation unless and until Buyer or such other Buyer Indemnified Party shall have sought such recovery under the RWI and EOP and shall have been denied recovery of the full amount of its Damages, and (iv) other than pursuant to, and subject to the terms and conditions of, this Section 5.15, none of the Seller Parent Guarantors shall have any Liability to any Person under, in connection with, based on, arising from or related to this Agreement or any Transaction Document or any transaction contemplated by this Agreement or any Transaction Document.

(b) Each Seller Parent Guarantor’s liability hereunder is absolute, unconditional, irrevocable and continuing irrespective of any modification, amendment or waiver of or any consent to departure from this Agreement or any Transaction Document that may be agreed to by Seller (with each Seller Parent Guarantor’s prior written consent). Without limiting the foregoing, the Buyer shall not be obligated to file any claim relating to the Seller Guaranteed Obligations in the event that Seller becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of the Buyer to so file shall not affect the Seller Parent Guarantors’ obligations hereunder. In the event that any payment to the Buyer in respect of the Seller Guaranteed Obligations is rescinded or must otherwise be returned for any reason whatsoever, each Seller Parent Guarantor shall remain liable hereunder with respect to the Seller Guaranteed Obligations as if such payment had not been made. This guaranty is an unconditional guarantee of payment and not of collectability.

(c) Each Seller Parent Guarantor agrees that the Buyer may, in its sole discretion, at any time and from time to time, without notice to or further consent of any Seller Parent Guarantor, extend the time of payment of the Seller Guaranteed Obligations, and may also make any agreement with Seller or with any other Person now or hereafter interested in the transactions contemplated by this Agreement, for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, or for any modification of the terms thereof or of any agreement between Seller and Buyer or any such other Person without in any way impairing or affecting any obligations of each Seller Parent Guarantor under, or affecting the validity or enforceability of, this Section 5.15. Each Seller Parent Guarantor agrees that its obligations hereunder shall not be released or discharged, in whole or in part, or otherwise affected by: (a) subject to Section 5.15(a)(iii), the failure or delay of the Buyer to assert any claim or demand or to enforce any right or remedy against Seller or any other Person now or hereafter interested in the transactions contemplated by the Purchase Agreement or the Transaction Documents; (b) any change in the time, place or manner of payment of, performance of, renewal or alteration of, any of the Seller Guaranteed Obligations, any escrow arrangement or other security therefor, any liability incurred directly or indirectly in respect thereof, or any agreement entered into by the Seller on the one hand, and the Buyer, on the other hand, in connection therewith, or any rescission, waiver, compromise, consolidation or other amendment or modification of any of the terms of this Agreement, the Transaction Documents or any other agreement evidencing, securing or otherwise

executed by the Seller and the Buyer in connection with the Seller Guaranteed Obligations; (c) the addition, substitution or release of any Person now or hereafter interested in the transactions contemplated by this Agreement or the Transaction Documents; (d) any change in the corporate existence, structure or direct or indirect ownership of Buyer, any Seller Parent Guarantor or any other Person now or hereafter liable with respect to the Seller Guaranteed Obligations or otherwise interested in the transactions contemplated by this Agreement or the Transaction Documents; (e) any insolvency, bankruptcy, reorganization, moratorium or other similar proceeding affecting Buyer, any Seller Parent Guarantor or any other Person now or hereafter liable with respect to any of the Seller Guaranteed Obligations, or any of their respective assets, or otherwise interested in the transactions contemplated by this Agreement or the Transaction Documents; (f) subject to Section 5.15(a)(iii), the adequacy of any other means the Buyer may have of obtaining payment related to any of the Seller Guaranteed Obligations; (g) the value, genuineness, validity, regularity, illegality or enforceability of this Agreement or any Transaction Document; (h) any discharge of each Seller Parent Guarantor as a matter of law or equity (other than as a result of payment of the Seller Guaranteed Obligations in accordance with their terms); and (i) the existence of any claim, set off or other right that the Seller Parent Guarantors may have at any time against the Buyer, the Seller or the Company other than those available to Seller against the Buyer under this Agreement or the Transaction Documents. To the fullest extent permitted by applicable Law, each Seller Parent Guarantor hereby expressly waives any and all rights or defenses arising by reason of any Law which would otherwise require any election of remedies by the Buyer. The Buyer shall not be required to proceed against Seller first before proceeding against the Seller Parent Guarantors under this Section 5.15, and each Seller Parent Guarantor waives promptness, diligence, notice of the acceptance of this Section 5.15 and of the Seller Guaranteed Obligations, presentment, demand for payment, notice of non-performance, default, dishonor and protest, notice of the incurrence of the Seller Guaranteed Obligations and all other notices or similar requirements of any kind (except for notices to be provided to Buyer and Buyer's counsel in accordance with Section 9.3 of this Agreement), all defenses which may be available by virtue of any valuation, stay, moratorium law or other similar Law now or hereafter in effect, any right to require the marshalling of assets of Seller, Seller Parent Guarantor or any other Person now or hereafter liable with respect to the Seller Guaranteed Obligations or otherwise interested in the transactions contemplated by this Agreement, and all suretyship defenses generally (other than fraud or intentional misconduct by the Buyer or any of its Affiliates, defenses to the payment of the Seller Guaranteed Obligations that are available to Seller under this Agreement or breach by the Buyer of this Section 5.15). Each Seller Parent Guarantor acknowledges that it will receive substantial direct and indirect benefits from the transactions contemplated by this Agreement and that the waivers set forth in this Section 5.15 are knowingly made in contemplation of such benefits.

(d) Each Seller Parent Guarantor's Liabilities under this Section 5.15 shall terminate upon, and such Seller Parent Guarantor shall not have any further Liabilities under this Section 5.15 from and after, the earliest to occur of (i) the indefeasible payment by such Seller Parent Guarantor of an amount of the Seller Guaranteed Obligations equal to its allocable share (as set forth on Schedule C) of the Cap, (ii) the indefeasible payment by Seller of an amount of the Seller Guaranteed Obligations equal to the Cap, (iii) the latest to occur of (A) the date that is one (1) year following the Closing Date (except that if any claim to enforce the payment of the Seller Guaranteed Obligations is made by Buyer to or against Seller or the Seller Parent Guarantors prior to such date, then the date immediately following the date upon which such claim is finally satisfied or otherwise resolved by agreement of the parties thereto or by a final, non-appealable

judgment of a court of competent jurisdiction (subject to Section 9.14) and (B) the date on which neither Seller nor any of its Affiliates owns, directly or indirectly, any of the Company Interests (provided that any such Transfer of such Company Interests by Seller and/or any of its Affiliates was completed in compliance with Section 5.16), (iv) Buyer or any of its Affiliates seeking to impose Liability on any Seller Parent Guarantor in excess of its allocable share (as set forth on Schedule C) of the Cap and (v) Buyer or any of its Affiliates seeking to impose Liability on any Affiliate of Seller or any Affiliate of a Seller Parent Guarantor (other than the Seller Parent Guarantors and Seller, as applicable), in which case, other than clause (i), (A) if any Seller Parent Guarantor has previously made any payments under this Section 5.15, it shall be entitled to receive the amount of all such payments from Buyer and (B) none of the Seller Parent Guarantors nor any other Affiliates of Seller or any Affiliates of Seller Parent Guarantor (other than Seller) shall have any liability to Buyer with respect to the transactions contemplated hereby.

(e) Buyer hereby covenants and agrees that it shall not institute, and shall cause its Affiliates not to institute, any proceeding or bring any other claim arising under, or in connection with, the Seller Guaranteed Obligations, against any of the Seller Parent Guarantors or any Affiliate thereof (other than Seller), except for claims against the Seller Parent Guarantors for the Seller Guaranteed Obligations under this Section 5.15. Notwithstanding anything to the contrary contained in this Section 5.15, Buyer hereby agrees that to the extent Seller is relieved for any reason from its obligations under this Agreement pursuant to the terms hereof that correspond to the Seller Guaranteed Obligations in this Section 5.15, each Seller Parent Guarantor shall be similarly relieved of the Seller Guaranteed Obligations under this Section 5.15 to the extent hereof.

(f) Until the earliest to occur of any of events set forth in clauses (i) through (v) of Section 5.15(d), each Seller Parent Guarantor shall (i) not take steps to accelerate the dissolution or liquidation of the limited partnerships comprising such Seller Parent Guarantor such that such dissolution or liquidation would occur earlier than required by the applicable limited partnership agreements and (ii) ensure that none of the limited partnerships comprising such Seller Parent Guarantor are terminated.

(g) Each Seller Parent Guarantor's address for notices given pursuant to this Agreement is as set forth in Section 9.3 and notices to each Seller Parent Guarantor pursuant to this Agreement shall be governed by Section 9.3.

Section 5.16 Other Sales of Company Interests. Notwithstanding any other provision in this Agreement to the contrary, in no event shall Seller, and Seller shall cause its Affiliates not to, directly or indirectly sell, grant, convey, assign, Transfer or deliver, nor agree to directly or indirectly sell, grant, convey, assign, Transfer or deliver, any of the Company Interests owned by Seller or any such Affiliate (whether through one transaction or a series of related transactions) if such direct or indirect sale, conveyance, assignment, Transfer or delivery would result in any Person or group of Persons (together with their respective Affiliates and including, for clarity, Persons with general partners, advisors or managers that are Affiliates) owning a greater number of Company Interests than the Purchased Interests; provided that, and notwithstanding the foregoing, the foregoing provisions of this Section 5.16 shall not apply to circumstances where (a) Seller and/or such Affiliate is required to make an offer under Section 7.07 of the LLC Agreement after the Closing in order to enter into an agreement after the Closing to sell Company Interests owned by Seller and/or such Affiliate and an existing equity holder of the Company elects to



acquire all or a portion of such Company Interests pursuant to such offer and, as a result of such acquisition pursuant to such offer, such equity holder owns a greater number of Company Interests than the Purchased Interests or (b) provided that Seller and any such Affiliate shall have first complied in all respects with the second to the last sentence of this Section 5.16, Seller and/or such Affiliate participates as a “Drag-Along Seller” (as defined in the LLC Agreement) pursuant to Section 7.09 of the LLC Agreement. Seller agrees that it shall not, and shall cause its Affiliates not to, participate as a “Drag-Along Seller” pursuant to Section 7.09 of the LLC Agreement; provided that the foregoing obligation shall, from and after the Closing, be applicable only if Buyer and its Affiliates (and any successor in interest to any of the Purchased Interests) do not participate as a “Drag-Along Seller” pursuant to Section 7.09 of the LLC Agreement. If and to the extent Seller is permitted to Transfer any Company Interests to any Affiliate hereunder and under the LLC Agreement, and Seller effectuates such Transfer, Seller shall ensure that such Affiliate agrees to be bound by all of Seller's obligations under this Section 5.16 pursuant to an instrument in writing with Buyer in form and substance satisfactory to Buyer, acting reasonably.

ARTICLE VI.  
CONDITIONS TO CLOSING

Section 6.1 Conditions Precedent to Obligations of Buyer and Seller. The respective obligations of each Party to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or, if permissible, waiver by such Party) at or prior to the Closing Date of each of the following conditions:

(a) No Adverse Law. No Governmental Authority shall have issued, enacted, entered, promulgated or enforced any Law (whether temporary, preliminary or permanent) that is in effect and restrains, enjoins, renders illegal or otherwise prohibits the transactions contemplated hereby.

(b) Required Regulatory Approvals. The Consents listed on Schedule D (“Required Regulatory Approvals”) shall have been obtained at or prior to the Closing, such approvals shall have become Final Orders, and, unless waived by Buyer, none of Buyer, any Affiliate of Buyer nor any Company Entity shall have been required to take or agree to any Prescribed Actions pursuant to or with respect to obtaining any Required Regulatory Approval.

(c) Required Consents. All Consents listed in Schedule E (the “Required Consents”) shall have been obtained.

Section 6.2 Conditions Precedent to Obligations of Seller. The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction (or waiver by Seller) at or prior to the Closing Date of each of the following additional conditions:

(a) Accuracy of Buyer’s Representations and Warranties. The representations and warranties of Buyer contained in this Agreement, disregarding all qualifications contained herein relating to materiality or Material Adverse Effect, shall be true and correct in each case on and as of the Closing Date (except for such representations and warranties which by their express provisions are made only as of an earlier date, in which case, as of such earlier date), except to the extent that the failure of such representations and warranties to be so true and correct would not, individually or in the aggregate, have a Material Adverse Effect on Buyer; *provided*, that (i) the

Fundamental Representations of Buyer shall be true and correct in all material respects in each case on and as of the Closing Date (except for such representations and warranties which by their express provisions are made only as of an earlier date, in which case, as of such earlier date) and (ii) the representations and warranties set forth in Section 4.6 shall be true and correct in all respects in each case on and as of the Closing Date (except for such representations and warranties which by their express provisions are made only as of an earlier date, in which case, as of such earlier date).

(b) Covenants and Agreements of Buyer. Buyer shall have performed and complied in all material respects with all of the covenants and agreements hereunder required to be performed and complied with by it prior to the Closing; *provided* that Buyer shall have performed and complied in all respects with the covenants and agreements set forth in Section 5.4(k) required to be performed and complied with by it prior to the Closing.

(c) Preliminary Purchase Price. Buyer shall have paid the Preliminary Purchase Price to Seller pursuant to Section 2.2.

(d) Concurrent Closing. The transactions contemplated by any Other PSA shall have been consummated or be consummated concurrently with the Closing hereunder.

(e) Closing Documents. Buyer shall have delivered, or caused to be delivered, all agreements, instruments and documents required to be delivered by Buyer under Section 2.4(b).

Section 6.3 Conditions Precedent to Obligations of Buyer. The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction (or waiver by Buyer) at or prior to the Closing Date of each of the following additional conditions:

(a) Accuracy of Seller's Representations and Warranties. The representations and warranties of Seller contained in this Agreement, disregarding all qualifications contained herein relating to materiality or Material Adverse Effect, shall be true and correct, in each case on and as of the Closing Date (except for such representations and warranties which by their express provisions are made only as of an earlier date, in which case, as of such earlier date), except to the extent that the failure of such representations and warranties to be so true and correct would not, individually or in the aggregate, have a Material Adverse Effect on Seller or on the Company Entities; *provided*, that the Fundamental Representations of Seller shall be true and correct in all material respects in each case on and as of the Closing Date (except for such representations and warranties which by their express provisions are made only as of an earlier date, in which case, as of such earlier date).

(b) Covenants and Agreements of Seller. Seller shall have performed and complied in all material respects with all of the covenants and agreements hereunder required to be performed and complied with by Seller prior to the Closing.

(c) No Material Adverse Effect. From the date of this Agreement there shall not have occurred and be continuing a Material Adverse Effect with respect to the Company Entities.

(d) Membership into the Company. At the Closing, Buyer shall be admitted as a member of the Company and Buyer's ownership of the Purchased Interests and, if applicable, the

Pro Rata Portion of the Additional Interests shall be registered in the books of the Company maintained for such purpose in accordance with the LLC Agreement, and evidence of the foregoing shall have been provided to Buyer.

(e) Closing Documents. On or prior to the Closing Date, Seller shall have delivered, or caused to be delivered, all agreements, instruments and documents required to be delivered by Seller pursuant to Section 2.4(a).

## ARTICLE VII. SURVIVAL, INDEMNIFICATION AND REMEDIES

Section 7.1 Survival. Each and every Fundamental Representation made by Seller and Buyer contained in this Agreement and in any Closing Certificate shall survive for a period of one (1) year following the Closing. Subject to the final sentence of this Section 7.1, none of Seller, Buyer, the Buyer Parent or any of their respective Affiliates shall have any Liability whatsoever with respect to any such representations or warranties from and after the time such representation or warranty ceases to survive hereunder. Each and every representation and warranty (other than any Fundamental Representation) shall expire at the Closing; and, subject to the final sentence of this Section 7.1, none of Seller, Buyer, the Buyer Parent or any of their respective Affiliates shall have any Liability whatsoever with respect to any such representation or warranty thereafter. Each covenant (other than the covenants which by their terms are to be performed by the Parties following the Closing, including, for the avoidance of doubt, Section 5.16 (collectively, the “Surviving Covenants”)) contained in this Agreement (collectively, the “Pre-Closing Covenants”) shall survive for a period of six (6) months following the Closing and, subject to the final sentence of this Section 7.1, none of Seller, Buyer, the Buyer Parent or any of their respective Affiliates shall have any Liability whatsoever pursuant to this Article VII with respect to any such Pre-Closing Covenant thereafter. Each Surviving Covenant shall survive the Closing Date until such Surviving Covenant is fully performed and, subject to the final sentence of this Section 7.1, none of Seller, Buyer, the Buyer Parent or any of their respective Affiliates shall have any Liability whatsoever pursuant to this Article VII with respect to any such Surviving Covenants thereafter. Notwithstanding the foregoing, any representation, warranty or covenant that would otherwise terminate in accordance with this Section 7.1 shall continue to survive if a Claim Notice or Indemnity Notice (as applicable) shall have been timely given in accordance with Section 7.3 on or prior to such termination date, until the related claim for indemnification has been satisfied or otherwise resolved as provided in Section 7.3.

### Section 7.2 Indemnification.

(a) Subject to the other provisions of this Article VII, from and after the Closing, Seller shall indemnify the Buyer Indemnified Parties in respect of, and hold each of them harmless from and against, any and all Damages suffered, incurred or sustained by any of them resulting from, arising out of or relating to (i) any breach or inaccuracy of any Fundamental Representation made by Seller herein or in Seller’s Closing Certificate (disregarding all qualifications contained herein relating to materiality or Material Adverse Effect (both with respect to the amount of Damages and whether a breach or inaccuracy has occurred)), or (ii) any breach of or failure to perform any Pre-Closing Covenant or Surviving Covenant on the part of Seller contained in this Agreement.

(b) Subject to the other provisions of this Article VII, from and after the Closing, Buyer shall indemnify the Seller Indemnified Parties in respect of, and hold each of them harmless from and against, any and all Damages suffered, incurred or sustained by any of them resulting from, arising out of or relating to (i) any breach or inaccuracy of any Fundamental Representations made by Buyer herein or in Buyer's Closing Certificate (disregarding all qualifications contained herein relating to materiality or Material Adverse Effect (both with respect to the amount of Damages and whether a breach or inaccuracy has occurred)), or (ii) any breach of or failure to perform any Pre-Closing Covenant or Surviving Covenant on the part of Buyer contained in this Agreement.

(c) Seller shall have no liability to the Buyer Indemnified Parties for Damages suffered, incurred or sustained by any of them resulting from, arising out of or relating to any breach or inaccuracy of any representation and warranty unless and until unless the aggregate amount of all Damages suffered by Buyer Indemnified Parties exceeds \$5 million, and then only for the amount in excess of \$5 million.

(d) Seller's liability for Damages under this Agreement resulting from, arising out of, or relating to any breach or inaccuracy of any Fundamental Representation made by Seller or any breach of or failure to perform any Pre-Closing Covenant or Surviving Covenant on the part of Seller contained in this Agreement shall be limited to, in the aggregate, an amount equal to the Purchase Price.

(e) If a Buyer Indemnified Party provides a Claim Notice or Indemnity Notice (as applicable) in accordance with Section 7.3 and to the extent the Damages claimed with respect thereto are covered by the RWI and EOP, such Buyer Indemnified Party shall first seek to recover the full amount of such Damages covered under the RWI and EOP, and Seller shall have no indemnification obligations and no liability for any such Damages covered under the RWI and EOP under this Article VII unless and until such Indemnified Party shall have sought recovery for such Damages under the RWI and EOP and shall have been denied recovery of the full amount of such Damages (*provided* that, for the avoidance of doubt, nothing in this Section 7.2(e) shall prohibit or limit the right of any Buyer Indemnified Party to take any actions reasonably necessary to preserve their indemnification rights under this Article VII). The amount which an Indemnifying Party is or may be required to pay to an Indemnified Party in respect of Damages for which indemnification is provided under this Agreement shall be reduced by any amounts actually received (including amounts received under the RWI and EOP and any other insurance policies) by or on behalf of any Indemnified Party or its Affiliates from third parties and any Tax benefit to the Indemnified Party or its Affiliates arising in connection with the payment of any such Damages (such amounts and benefits are collectively referred to herein as "Indemnity Reduction Amounts"). If any Indemnified Party or its Affiliates receives any Indemnity Reduction Amounts in respect of a claim for which indemnification is provided under this Agreement after the full amount of such claim has been paid by an Indemnifying Party or after an Indemnifying Party has made a partial payment of such claim and such Indemnity Reduction Amounts exceed the remaining unpaid balance of such claim, then the Indemnified Party shall promptly remit to the Indemnifying Party an amount equal to the excess (if any) of (i) the amount theretofore paid by the Indemnifying Party in respect of such claim, less (ii) the amount of the indemnity payment that would have been due if such Indemnity Reduction Amounts in respect thereof had been received before the indemnity payment was made. An insurer or other third party who would otherwise be obligated to pay any claim shall not be relieved of the responsibility with respect thereto or, solely by virtue of the

indemnification provisions hereof, have any subrogation rights with respect thereto, it being expressly understood and agreed that no insurer or any other third party shall be entitled to any benefit they would not be entitled to receive in the absence of the indemnification provisions by virtue of the indemnification provisions hereof; *provided*, that, for the avoidance of doubt, nothing in this Agreement shall constitute or be deemed to constitute a waiver of any subrogation rights of any insurer under the RWI and EOP in respect of (x) Intentional Fraud or (y) any changes, modifications, or amendments to, or waivers of, the terms of any Other PSA in breach of this Agreement. Each of Seller and Buyer, as appropriate, shall, or shall cause each Indemnified Party to, use its reasonable best efforts to mitigate Damages. For purposes of this Section 7.2(e), any Indemnified Party will be deemed to realize a Tax benefit in a taxable period in respect of any Damages incurred by such Indemnified Party to the extent that the cumulative liability for Taxes of the Indemnified Party for such taxable period through the end of the taxable period, calculated with such Damages excluded, exceeds the actual cumulative liability for Taxes of the Indemnified Party for such taxable period through the end of such taxable period, calculated with such Damages included.

Section 7.3 Method of Asserting Claims. All claims for indemnification by any Indemnified Party under Section 5.2(a) and Section 7.2 shall be asserted and resolved as follows:

(a) In the event that any Action is asserted against or sought to be collected from any Indemnified Party by any Person other than a Party in respect of which an Indemnified Party intends to make a claim for indemnification pursuant to Section 5.2(a) or Section 7.2 (a “Third-Party Claim”), then such Indemnified Party shall promptly deliver a Claim Notice to the Indemnifying Party in accordance with Section 7.3(b). In the event that any such Third-Party Claim is asserted against any Indemnified Party, the Indemnifying Party shall be entitled to assume and control the defense of such Third-Party Claim, with counsel reasonably satisfactory to such Indemnified Party, and, after delivering written notice to such Indemnified Party of its election to assume and control the defense of such Third-Party Claim, the Indemnifying Party shall not be liable to such Indemnified Party for any legal or other expenses subsequently incurred by such Indemnified Party in connection therewith; *provided* that in the event that the Indemnifying Party elects to assume and control the defense thereof, the Indemnified Party may participate in such defense at the Indemnified Party’s expense. If the Indemnifying Party does not elect to assume and control the defense of any Third-Party Claim, then it shall not be obligated to pay the fees and expenses of more than one counsel for the Indemnified Parties with respect to such Third-Party Claim, unless the Indemnified Parties shall have been advised by outside legal counsel that representation of any such Indemnified Parties by the same counsel would be inappropriate under applicable standards of professional conduct due to actual or potential conflicts of interest between them, in which case, the Indemnifying Party shall be obligated to pay the fees and expenses of such additional counsel as is necessary to address such conflicts. No Indemnifying Party shall consent to entry of any judgment or enter into any settlement of any Third-Party Claim of which it has assumed and controls the defense hereunder without the consent of the Indemnified Party, to the extent such judgment or settlement would have an adverse impact on the Indemnified Party, which consent shall not be unreasonably withheld or delayed; *provided*, that such consent shall not be required if (i) the settlement agreement contains a full and unconditional release by all parties asserting the Third-Party Claim of all Indemnified Parties affected by such Third-Party Claim and (ii) the settlement is for money damages only. No Indemnifying Party shall be subject to any

Liability for any settlement of any Third-Party Claim made without its consent, which consent shall not be unreasonably withheld or delayed.

(b) In the event that any Indemnified Party intends to make a claim (including with respect to any Third-Party Claim) for indemnification pursuant to Section 5.2(a) or Section 7.2, such Indemnified Party shall deliver an Indemnity Notice promptly to the Indemnifying Party; *provided*, that the failure by any Indemnified Party to deliver such Indemnity Notice shall not impair such Indemnified Party's rights hereunder except to the extent that any Indemnifying Party has been prejudiced thereby, and then only to the extent of such prejudice. The Indemnifying Party shall notify the Indemnified Party within thirty (30) days after its receipt of such Indemnity Notice as to whether the Indemnifying Party disputes its Liability for any claim set forth in the Indemnity Notice. If the Indemnifying Party notifies the Indemnified Party that it does not dispute the claim set forth in the Indemnity Notice, or fails to notify the Indemnified Party within such thirty (30)-day period whether the Indemnifying Party disputes such claim, then the Indemnifying Party shall be deemed to be liable hereunder for indemnifying the Indemnified Party for indemnifiable Damages in respect of such claim, subject to the other provisions of this Article VII, when such Damages have been finally determined or when the Indemnifying Party and the Indemnified Parties have mutually agreed in writing as to the amount of such Damages, if earlier.

(c) The Parties shall cooperate with one another with respect to resolving any claim or Liability with respect to which one Party is obligated to provide indemnification hereunder.

(d) Notwithstanding anything contained in this Agreement, any amounts payable pursuant to this Article VII shall be paid without duplication, and in no event shall any Indemnified Party be indemnified under different provisions of this Agreement for the same Damages.

#### Section 7.4 Limitations on Remedies.

(a) EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE III OR SELLER'S CLOSING CERTIFICATE, THE PURCHASED ASSETS ARE BEING ACQUIRED "AS IS, WHERE IS," AND EACH OF SELLER AND ITS AFFILIATES EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO THE PURCHASED ASSETS OR THE BUSINESS, OPERATIONS, ASSETS OR CONDITION (FINANCIAL OR OTHERWISE) OF THE COMPANY ENTITIES, AND EACH OF SELLER AND ITS AFFILIATES EXPRESSLY DISCLAIMS, AND BUYER HEREBY WAIVES, ANY REPRESENTATION OR WARRANTY OF QUALITY, MERCHANTABILITY, NON-INFRINGEMENT, USAGE, OR SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE ASSETS OF THE COMPANY ENTITIES, OR ANY PART THEREOF, OR AS TO THE WORKMANSHIP THEREOF, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT, OR COMPLIANCE WITH AND LIABILITIES ARISING UNDER ENVIRONMENTAL LAWS (INCLUDING WITH RESPECT TO THE USE, PRESENCE, DISPOSAL OR RELEASE OF HAZARDOUS MATERIALS AND ANY LIABILITIES ARISING UNDER OR WITH RESPECT TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OR ANY OTHER ANALOGOUS LAW), OR AS TO THE CONDITION OF THE ASSETS OF THE COMPANY ENTITIES, OR ANY PART THEREOF, INCLUDING WHETHER THE

COMPANY ENTITIES POSSESS SUFFICIENT REAL PROPERTY OR PERSONAL PROPERTY TO OPERATE THE BUSINESS OF THE COMPANY ENTITIES, IN EACH CASE, EXCEPT AS EXPRESSLY SET FORTH HEREIN.

(b) Except for the express obligations of Seller under this Agreement, for and in consideration of the Purchased Assets owned by Seller, from and after the Closing, Buyer, on behalf of itself and its direct and indirect equity holders and Subsidiaries, Affiliates, Representatives and each of the respective heirs, executors, administrators, successors and assigns of any of the foregoing (each a “Releasor”), hereby absolutely and unconditionally releases, acquits and forever discharges, to the fullest extent permitted by Law, Seller and its past, present and future direct and indirect equity holders, Subsidiaries, Affiliates, and each of its and its Subsidiaries’ and Affiliates’ present and former Representatives, direct and indirect equity holders, and each of the respective heirs, executors, administrators, successors and assigns of any of the foregoing (each, a “Releasee”) of, from and against any and all Actions (including all claims, demands and causes of action for contribution and indemnity under statute or common law), Damages and Liabilities of every kind, nature and description whatsoever, whether known or unknown, both in law and in equity, in each case to the extent arising out of or resulting from (i) Seller’s or such Releasee’s ownership and/or operation of the Purchased Assets or the assets, business, operations, conduct, services, products and/or employees (including former employees) of any of the Company Entities (or its predecessors), whether related to any period of time before or after the Closing, including any Liabilities under Environmental Law or (ii) except as expressly set forth in this Agreement, any representation or warranty as to the accuracy of any projections, estimates or budgets, future revenues, future results from operations, future cash flows, the future condition of the Purchased Assets, any Company Entity or the businesses or assets thereof or any other information provided or not provided by or on behalf of Seller, any Company Entity or any Affiliate or Representative of any of the foregoing in connection with the transactions contemplated hereby, including in any memorandum or management presentation received by Buyer, its Affiliates or its or their respective Representatives, during due diligence, in the Data Room, and in any oral, written or electronic response to any information request provided to Buyer, its Affiliates or its or their respective Representatives. Buyer agrees not to, and agrees to cause the other Releasors not to, assert any claim with respect to any such Actions, Damages or Liabilities against the Releasees; *provided, however*, that notwithstanding the foregoing, neither Buyer nor any other Releasor releases any of its rights and interests under this Agreement.

(c) None of the Seller Indemnified Parties and none of the Buyer Indemnified Parties shall be entitled to any recovery under this Agreement or any other Transaction Document following Closing for any of its or its Affiliates’ special, exemplary, punitive, consequential, or indirect damages; *provided*, that the foregoing shall not apply to (i) Third-Party Claims for which any Party is obligated to provide indemnification hereunder and (ii) any consequential or indirect damages that are a reasonably foreseeable consequence of the applicable breach, inaccuracy or failure to perform (including, to the extent reasonably foreseeable, diminution of value of the Purchased Assets and, if applicable, the Additional Purchased Assets and lost Distributions (provided that, for clarity, all references to Seller in such definition and any related definitions shall be read as Buyer) with respect to the Purchased Assets and, if applicable, the Additional Purchased Assets.

Section 7.5 Exclusive Remedies. From and after the Closing, except for Intentional Fraud, the remedies set forth in this Article VII shall be the sole and exclusive remedy with respect to any and all claims relating, directly or indirectly, to the subject matter of this Agreement. Without limiting the generality of the foregoing and subject to Section 5.13(b), Section 9.12 (including as it relates to Section 5.10, Section 5.13(b), Section 5.15(f) and Section 5.16), this Article VII and Article VIII, Buyer and Seller hereby waive, to the fullest extent permitted under applicable Law, any and all rights, claims and causes of action (except for Intentional Fraud) that it or any of its respective Affiliates may have against any other Party or any of its Affiliates with respect to the subject matter of this Agreement, whether in law or equity.

#### ARTICLE VIII. TERMINATION

Section 8.1 Termination Events. Without prejudice to other remedies which may be available to the Parties by Law or this Agreement, this Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing:

- (a) by mutual written consent of Seller and Buyer;
- (b) by Seller, on the one hand, or Buyer, on the other hand, by giving written notice to Buyer or Seller, as the case may be, if the Closing shall not have occurred by the Termination Date; *provided*, that such Termination Date may be extended by written agreement of Seller and Buyer; and *provided further*, that a Party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(b) if such Party has breached any of its covenants, agreements or other obligations hereunder in a manner that would reasonably be expected to cause any condition of the terminating Party set forth in Article VI not to be satisfied or the failure of the Closing to have occurred by the Termination Date;
- (c) by Seller by giving written notice to Buyer if Buyer has breached any of its covenants, agreements or other obligations hereunder in a manner that would reasonably be expected to cause any condition of Seller set forth in Article VI not to be satisfied and, except in the case of any breach of Buyer's obligation to effect the Closing and pay the Preliminary Purchase Price in accordance with the terms of Article II, such breach has not been cured within the earlier of (x) thirty (30) days after written notification thereof and (y) five (5) Business Days prior to the Termination Date; *provided*, that Seller shall not be permitted to terminate pursuant to this subsection (c) if Seller is in breach hereunder;
- (d) by Buyer by giving written notice to Seller if Seller has breached any of its covenants, agreements or other obligations hereunder in a manner that would reasonably be expected to cause any condition of Buyer set forth in Article VI not to be satisfied and such breach has not been cured within the earlier of (x) thirty (30) days after written notification thereof and (y) five (5) Business Days prior to the Termination Date; *provided*, that Buyer shall not be permitted to terminate pursuant to this subsection (d) if Buyer is in breach hereunder;
- (e) by either Seller, on the one hand, or Buyer, on the other hand, by giving written notice to Buyer or Seller, as the case may be, if any Governmental Authority shall have issued, enacted, entered, promulgated or enforced any Law or taken any other action permanently



restraining, enjoining or otherwise prohibiting the transactions contemplated hereby, and such Law shall not be subject to appeal or shall have become final and non-appealable; *provided*, that the right to terminate this Agreement under this subsection (e) shall not be available to any Party if the action of the Governmental Authority was primarily due to the failure of such Party to perform any of its obligations hereunder; or

(f) by Seller by giving written notice to Buyer if the aggregate amount of the Regulatory Commitments exceeds \$ [REDACTED].

Section 8.2 Effect of Termination. In the event of any termination of this Agreement pursuant to Section 8.1, all rights and obligations of the Parties hereunder shall terminate without any Liability on the part of either Party, any Company Entity or any Affiliate of any of the foregoing in respect thereof, except that (a) provisions, and the obligations of Buyer and Seller, as the case may be, in the last two sentences of Section 5.2(a), under Section 5.5, this Article VIII and Article IX of this Agreement shall remain in full force and effect and (b) subject to Section 8.3(c), such termination shall not relieve any Party of any Liability for any intentional and willful breach of this Agreement prior to such termination.

### Section 8.3 Buyer Termination Fee.

(a) In the event this Agreement is terminated by Seller pursuant to Section 8.1(c) based on a failure by Buyer to perform its covenants or agreements under Section 5.4 (or by (x) Seller pursuant to Section 8.1(b) or (y) Seller or Buyer pursuant to Section 8.1(e) in either case in circumstances in which Seller could terminate this Agreement pursuant to Section 8.1(c) based on a failure by Buyer to perform its covenants or agreements under Section 5.4), and, at the time of such termination, all other conditions to the Closing set forth in Section 6.1 and Section 6.3 have been satisfied (other than those conditions that by their terms are to be satisfied at the Closing but which are capable of being satisfied at the Closing if the Closing were to occur), or, if permissible, waived, Buyer shall, no later than five (5) Business Days following such termination, pay, or cause to be paid, in immediately available funds by wire transfer, an amount equal to Thirty Million Dollars (\$30,000,000.00) (such amount, the “Buyer Termination Fee”), to Seller (or its designees) to an account or accounts that have been designated by Seller to Buyer in writing.

(b) If Buyer fails to promptly pay the Buyer Termination Fee when due and, in order to obtain such payment, Seller commences an Action to recover the Buyer Termination Fee that results in a final judgment against Buyer for the Buyer Termination Fee, Buyer shall pay to Seller, together with the Buyer Termination Fee, (i) interest on the Buyer Termination Fee from (and including) the date of termination of this Agreement until (and including) the date of payment of the Buyer Termination Fee at a rate per annum equal to the Prime Rate in effect on the date of termination of this Agreement plus two percent (2%) and (ii) any fees, costs and expenses (including legal fees) incurred by Seller, the Company Entities or their respective Affiliates in connection with any such Action.

(c) Without limiting any rights of Seller under Section 9.12 prior to the termination of this Agreement pursuant to Section 8.1, if this Agreement is terminated under circumstances in which Buyer is obligated to pay the Buyer Termination Fee under Section 8.3(a), then upon payment of the Buyer Termination Fee and, if applicable, the costs and expenses of Seller pursuant

to Section 8.3(b) in accordance therewith, Buyer shall not have any further liability with respect to this Agreement or the transactions contemplated hereby to Seller, and payment of the Buyer Termination Fee and such costs and expenses by Buyer shall be Seller's sole and exclusive remedy for any Damages suffered or incurred by Seller, the Company Entities or any of their respective Affiliates or Representatives in connection with this Agreement, the transactions contemplated hereby (and the termination thereof) or any matter forming the basis for such termination; *provided* that nothing in this Section 8.3(c) shall release Buyer from liability for intentional and willful breach of this Agreement prior to such termination. The Parties acknowledge and agree that in no event will Buyer be required to pay the Buyer Termination Fee on more than one occasion.

(d) Each of the Parties acknowledges and agrees that in the circumstances where the Buyer Termination Fee is payable, Seller's damages would be difficult or impossible to quantify with reasonable certainty and accordingly the payment provided for in this Section 8.3 is a payment of liquidated damages (and not penalties) and the agreements contained in this Section 8.3 are an integral part of this Agreement and the transactions contemplated hereby, and that without these agreements, Seller would not enter into this Agreement.

#### Section 8.4 Seller Termination Fee.

(a) In the event this Agreement is terminated by Seller pursuant to Section 8.1(f), and at the time of such termination all other conditions to the Closing set forth in Section 6.1 and Section 6.2 have been satisfied (other than those conditions that by their terms are to be satisfied at the Closing but which are capable of being satisfied at the Closing if the Closing were to occur), or, if permissible, waived, Seller shall, no later than five (5) Business Days following such termination, pay, or cause to be paid, in immediately available funds by wire transfer, an amount equal to [REDACTED] Dollars (\$ [REDACTED]) (such amount, the "Seller Termination Fee") to Buyer (or its designees) to an account or accounts that have been designated by Buyer to Seller in writing.

(b) If Seller fails to promptly pay the Seller Termination Fee when due and, in order to obtain such payment, Buyer commences an Action to recover the Seller Termination Fee that results in a final judgment against Seller for the Seller Termination Fee, Seller shall pay to Buyer, together with the Seller Termination Fee, (i) interest on the Seller Termination Fee from (and including) the date of termination of this Agreement until (and including) the date of payment of the Seller Termination Fee at a rate per annum equal to the Prime Rate in effect on the date of termination of this Agreement plus two percent (2%) and (ii) any fees, costs and expenses (including legal fees) incurred by Buyer or its Affiliates in connection with any such Action.

(c) Without limiting any rights of Buyer under Section 9.12 prior to the termination of this Agreement pursuant to Section 8.1, if this Agreement is terminated under circumstances in which Seller is obligated to pay the Seller Termination Fee under Section 8.4(a), then upon payment of the Seller Termination Fee and, if applicable, the costs and expenses of Buyer pursuant to Section 8.4(b) in accordance therewith, Seller shall not have any further liability with respect to this Agreement or the transactions contemplated hereby to Buyer, and payment of the Seller Termination Fee and such costs and expenses by Seller shall be Buyer's sole and exclusive remedy for any Damages suffered or incurred by Buyer or any of its Affiliates or Representatives in connection with this Agreement, the transactions contemplated hereby (and the termination

thereof) or any matter forming the basis for such termination; *provided* that nothing in this Section 8.4(c) shall release Seller from liability for intentional and willful breach of this Agreement. The Parties acknowledge and agree that in no event will Seller be required to pay the Seller Termination Fee on more than one occasion.

(d) Each of the Parties acknowledges and agrees that in the circumstances where the Seller Termination Fee is payable, Buyer's damages would be difficult or impossible to quantify with reasonable certainty and accordingly the payment provided for in this Section 8.4 is a payment of liquidated damages (and not penalties) and the agreements contained in this Section 8.4 are an integral part of this Agreement and the transactions contemplated hereby, and that without these agreements, Buyer would not enter into this Agreement.

#### ARTICLE IX. MISCELLANEOUS

Section 9.1 Parties in Interest. This Agreement shall be binding on, and solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing set forth in this Agreement, express or implied, shall be construed to confer, directly or indirectly, upon or give to any Person other than the Parties any benefits, rights or remedies under or by reason of, or any rights to enforce or cause to enforce, any provisions of this Agreement; *provided*, that each of following Persons shall be third-party beneficiaries hereof, as set forth in the following provisions hereof: (a) the Indemnified Parties, as set forth in Article VII, (b) the directors, managers, committee members and officers of the Company Entities, as set forth in Section 5.8, (c) the Releasees, as set forth in Section 7.4(b), and (d) the applicable investment advisors, as set forth in Section 9.4(d).

Section 9.2 Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign (by contract, stock sale, operation of Law or otherwise) either this Agreement or any of its rights, interests, or obligations hereunder without the express prior written consent of the other Parties, and any attempted assignment, without such consent, shall be null and void; *provided* that Buyer may assign this Agreement and its rights and obligations hereunder to a different acquisition vehicle all of the economic interests of which are indirectly owned by Buyer Parent, so long as (a) Buyer is not relieved of its obligations under this Agreement and the other Transaction Documents unless Seller otherwise expressly agrees in writing and (b) such assignee assumes the obligation to perform such obligations in accordance with the terms of this Agreement and the other Transaction Documents, and (c) the Buyer Parent Commitment Letter and the Buyer Parent Guarantee each remain in full force and effect with respect to such assignee.

Section 9.3 Notices. All notices and other communications required or permitted to be given by any provision of this Agreement (or in connection with the matters contemplated hereby) shall be in writing and mailed (certified or registered mail, postage prepaid, return receipt requested) or sent by hand, electronic mail, overnight courier or facsimile transmission (with acknowledgment received), charges prepaid and addressed to the intended recipient as follows, or to such other addresses or numbers as may be specified by a Party from time to time by like notice to the other Parties:

If to Seller or to any Seller Parent Guarantor:

Level 15, 125 West 55th Street  
New York, New York 10019  
Attention: Christopher Leslie  
Facsimile: (212) 231-1828  
E-mail: [chris.leslie@macquarie.com](mailto:chris.leslie@macquarie.com)

with a copy to: [MFGMIRALEGALNOTICES@macquarie.com](mailto:MFGMIRALEGALNOTICES@macquarie.com)

with a copy to: Latham & Watkins LLP  
885 Third Avenue  
New York, New York 10022  
Attention: Thomas W. Christopher  
Facsimile: (212) 751-4864  
E-mail: [thomas.christopher@lw.com](mailto:thomas.christopher@lw.com)

If to Buyer: c/o OMERS Infrastructure Management Inc.  
100 Adelaide St W, 21st Floor Reception  
Toronto, ON M5H 0E2  
Canada  
Attention: Steven Zucchet, Managing Director  
Facsimile: (416) 361-6075  
E-mail: [szucchet@omers.com](mailto:szucchet@omers.com)

with a copy to: OMERS Infrastructure Management Inc.  
900-100 Adelaide St W  
Toronto, ON M5H 0E2  
Canada  
Attention: Jennifer Guerard, Managing Director, Legal  
Facsimile: (416) 361-6075  
E-mail: [jguerard@omers.com](mailto:jguerard@omers.com)

with a copy to: Torys LLP  
79 Wellington St. W. 30th Floor  
Box 270, TD South Tower  
Toronto, Ontario M5K 1N2 Canada  
Attention: Krista Hill  
Facsimile: (416) 865-7380  
Email: [khill@torys.com](mailto:khill@torys.com)

with a copy to:           Torys LLP  
                                  1114 Avenue of the Americas  
                                  23rd Floor  
                                  New York, New York 10036-7703  
                                  Attention: Michael Horwitz  
                                  Facsimile: (212) 880-6296  
                                  Email:     mhorwitz@torys.com

All notices and other communications given in accordance with the provisions of this Agreement shall be deemed to have been given and received when delivered by hand or transmitted by electronic mail or facsimile (with acknowledgment received), three (3) Business Days after the same are sent by certified or registered mail, postage prepaid, return receipt requested or one (1) Business Day after the same are sent by a reliable overnight courier service, with acknowledgment of receipt.

Section 9.4    Amendments and Waivers.

(a)     This Agreement may not be amended, supplemented or otherwise modified except in a written instrument executed by each of the Parties.

(b)     No delay or omission in the exercise of any right, power or remedy to any Party as a result of any breach or default by any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of, or acquiescence in, any such breach or default, or of any similar breach or default occurring later, nor shall any such delay, omission or waiver of any single breach or default be deemed a waiver of any other breach occurring before or after that waiver. No waiver by any of the Parties of any of the provisions hereof shall be effective unless explicitly set forth in writing and executed by the Party sought to be charged with such waiver.

(c)     To the extent that Seller is (i) entitled to grant any agreement, consent, waiver or approval to, or (ii) required to obtain the agreement, consent, waiver or approval of, or provide notice to, any other Party (or the Company) under any provision of the LLC Agreement for the execution and delivery of this Agreement, the performance of any obligations hereunder, or the consummation of the transactions contemplated hereby, Seller hereby grants such agreement, consent, waiver or approval (including Seller's approval of Buyer as the transferee of the Purchased Interests), and hereby waives (and shall exercise its Seller Company Rights in such manner consistent with permitting the Company to waive) compliance by the Buyer with such requirement of the LLC Agreement (but not, for the avoidance of doubt, compliance with any requirement under any related provision of this Agreement) with respect to the transactions contemplated by this Agreement.

(d)     To the extent that Buyer or any of its Affiliates is an investment advisory client of Seller or any Affiliate thereof (including, without limitation, Macquarie Infrastructure and Real Assets Inc. or any other Macquarie Group entity), Buyer hereby consents to and waives, for the benefit of the applicable investment advisor, any conflicts of interest presented by the transactions contemplated hereby by virtue of Buyer or any such Affiliate thereof being an investment advisory client of such applicable investment advisor.

Section 9.5 Exhibits and Schedules.

(a) All Exhibits and Schedules and the Disclosure Schedules attached hereto are hereby incorporated herein by reference and made a part hereof.

(b) Seller shall have the right (but not the obligation) to deliver to Buyer, at any time prior to the Closing Date, a supplement to the Seller Disclosure Schedule (the "Closing Date Schedule Supplement") to disclose any matter arising or discovered after the date hereof that would have been required to be set forth in the Seller Disclosure Schedule for the representations and warranties of Seller set forth herein to be true and correct, and the Seller Disclosure Schedule shall be deemed to be modified, supplemented and amended to include the items listed in the Closing Date Schedule Supplement for all purposes hereunder, other than to cure any breach or inaccuracy of any representation or warranty of Seller contained in this Agreement for purposes of Article VII. If any item set forth in the Closing Date Schedule Supplement discloses any event, circumstance or development that, individually or in the aggregate when taken together with other previously disclosed events, circumstances or developments, would reasonably be expected to cause the failure of any of the conditions set forth in Section 6.3(a) to be satisfied, then Buyer may terminate this Agreement by delivering notice of termination to Seller within fifteen (15) Business Days of its receipt of such Closing Date Schedule Supplement; *provided* that, if Buyer does not deliver such notice within such fifteen (15)-Business Day period, then Buyer shall be deemed to have irrevocably waived its right to terminate this Agreement with respect to such item and its right to not consummate the transactions contemplated hereby with respect to such item (*provided* that for purposes of determining whether any of the conditions set forth in Section 6.3(a) would reasonably be expected to be satisfied, Buyer shall be entitled to consider and include the aggregate effects of all previously disclosed items in any prior Closing Date Schedule Supplement), in each case, after giving effect to such item under any of the conditions set forth in Section 6.3(a), but shall not be deemed to have irrevocably waived its right to indemnification under Section 7.2 with respect to such item.

Section 9.6 Headings. The table of contents and section headings contained in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement or affect in any way the meaning or interpretation of this Agreement.

Section 9.7 Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 9.8 Entire Agreement. This Agreement (including the Schedules and the Exhibits hereto), the other Transaction Documents and the Confidentiality Agreement constitute the entire agreement among the Parties with respect to the subject matter hereof and thereof and supersede any prior understandings, negotiations, agreements, statements or representations among the Parties, the Company Entities or any of their respective Affiliates of any nature, whether written or oral, to the extent they relate in any way to the subject matter hereof or thereof.

Section 9.9 Severability. If any provision of this Agreement or the application of any such provision to any Person or circumstance shall, under applicable Laws, be declared by any court of competent jurisdiction to be invalid, illegal, void or unenforceable in any respect, all other provisions of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it has been held invalid, illegal, void or unenforceable, shall nevertheless remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. Upon such determination that any provision, or the application of any such provision, is invalid, illegal, void or unenforceable under applicable Laws, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable Law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the greatest extent possible. Notwithstanding anything contained herein, under no circumstance shall the obligation of Seller to deliver any of the Purchased Assets be enforceable absent enforceability of the obligation of Buyer to pay the Purchase Price, and vice versa.

Section 9.10 Expenses.

(a) Buyer shall be obligated to pay any and all reasonable out-of-pocket costs of any audit of any Company Entity as may be required to enable Buyer to complete and file any filing by Buyer or an Affiliate of Buyer with any Governmental Authority or otherwise.

(b) Unless otherwise provided herein, including as provided in Section 2.2, (i) each Party agrees to pay, without right of reimbursement from any other Party, all costs and expenses incurred by such Party incident to the performance of its obligations hereunder, including the fees and disbursements of counsel, accountants, financial advisors, experts and consultants employed by the respective Parties in connection with the transactions contemplated hereby, and (ii) Seller agrees to pay, without right of reimbursement from Buyer, all Transaction Expenses incurred by any of the Company Entities, in the case of each of clauses (i) and (ii), whether or not the transactions contemplated by this Agreement are consummated. Seller shall ensure that the payment or reimbursement of Transaction Expenses contemplated by clause (ii) of this Section 9.10(b) shall be paid by the Seller to the applicable vendors or reimbursed to the Company at or prior to the Closing.

Section 9.11 No Recourse Against Non-Party Affiliates; Several Liability. Other than pursuant to and to the extent provided in Section 5.15, the Buyer Parent Commitment Letter and the Buyer Parent Guarantee, each of the Parties covenants, agrees and acknowledges that all claims, obligations, Liabilities, or causes of action (whether in contract or in tort, in equity or at Law, or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to this Agreement, or the negotiation, execution, or performance of this Agreement (including any representation or warranty made in, in connection with, or as an inducement to, this Agreement), may be made only against (and are those solely of) the entities that are expressly identified as Parties in the preamble to this Agreement (the "Contracting Parties"). Other than pursuant to and to the extent provided in Section 5.15, the Buyer Parent Commitment Letter and the Buyer Parent Guarantee, no Person who is not a Contracting Party, including any (a) past, present or future Representative or Affiliate of such Contracting Party (other than any such Affiliate that is also a Contracting Party, and then solely with respect to such Affiliate Contracting Party's Liability hereunder, and not the Liability of any other Contracting

Party), (b) incorporator, Controlling person or direct or indirect holder of any Equity Interests or securities of any Contracting Party (whether such holder is a limited or general partner, member, stockholder or otherwise), or (c) Representative, Affiliate, incorporator, Controlling person or direct or indirect holder of any Equity Interests or securities of any of the foregoing (the “Non-Party Affiliates”), shall have any Liability (whether in contract or in tort, in equity or at Law, or granted by statute) for any claims, causes of action, obligations, or Liabilities arising under, out of, in connection with, or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or in its negotiation, execution, performance, or breach; and, to the maximum extent permitted by applicable Law, each Contracting Party hereby waives and releases all such Liabilities, claims, causes of action and obligations against any such Non-Party Affiliates. Without limiting the generality of the foregoing, to the maximum extent permitted by applicable Law, other than pursuant to and to the extent provided in Section 5.15, the Buyer Parent Commitment Letter and the Buyer Parent Guarantee, (i) each Contracting Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available in equity or at Law, or granted by statute, to avoid or disregard the entity form of a Contracting Party or otherwise impose Liability of a Contracting Party on any Non-Party Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise; (ii) each Contracting Party disclaims any reliance upon any Non-Party Affiliates with respect to the performance of this Agreement or any representation or warranty made in, in connection with, or as an inducement to this Agreement; and (iii) each Party hereby waives and releases the Non-Party Affiliates from any personal liability under this Agreement or any documents or instruments delivered in connection herewith or with the transactions contemplated hereby for any claim based on, in respect of or by reason of such obligations or by their creation.

Section 9.12 Specific Performance. Notwithstanding anything in this Agreement to the contrary, but subject to Section 8.3 and Section 8.4, (a) each Party recognizes and acknowledges that a breach by it of any covenants or agreements contained in this Agreement shall cause the other Parties to sustain irreparable harm for which it would not have an adequate remedy at Law, and therefore in the event of any such breach the aggrieved Party shall, without the posting of bond or other security (any requirement for which the Parties hereby waive), be entitled to the remedy of specific performance of such covenants and agreements, including injunctive and other equitable relief, in addition to any other remedy to which it might be entitled, (b) a Party shall be entitled to an injunction or injunctions to prevent breaches of this Agreement, and (c) in the event that any action is brought in equity to enforce the provisions of this Agreement, no Party shall allege, and each Party hereby waives the defense or counterclaim, that there is an adequate remedy at law. Without limiting the foregoing, the Parties agree that any failure by the Parties to comply with their respective obligations under Section 5.10, Section 5.13(b), Section 5.15(f) and Section 5.16 would constitute a material breach of Seller's or Buyer's, as applicable, obligations under this Agreement and Buyer or Seller, as applicable, shall be entitled to specific performance of Seller's or Buyer's as applicable, obligations under such provisions, in each case, pursuant to and in accordance with this Section 9.12.

Section 9.13 No Partnership or Agency; No Voting Agreement. Nothing in the Agreement shall constitute a partnership between the Parties or any of them or constitute any Party as agent of any other Party for any purpose whatsoever. Nothing in this Agreement shall be deemed to constitute a voting agreement among the Parties or between any of them.



Section 9.14 Governing Law. This Agreement, and all claims and causes of action (whether in contract, tort, at law in equity or otherwise) that may be based upon, arise out of, or relate to this Agreement or the Transaction Documents, any of the transactions contemplated hereby or thereby or the negotiation, execution, performance or enforcement of this Agreement shall be governed by and construed in accordance with the Law of the state of Delaware without giving effect to any choice or conflict of laws provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware.

Section 9.15 Consent to Jurisdiction; Waiver of Jury Trial.

(a) Each of the Parties irrevocably submits to the exclusive jurisdiction of (i) state courts of the State of Delaware located in New Castle County and (ii) the United States District Court for the District of the State of Delaware for the purposes of any suit, Action or other proceeding arising out of or relating to this Agreement, the negotiation, execution, performance and enforcement of this Agreement or any transaction contemplated hereby (and agrees not to commence any Action, suit or proceeding relating hereto except in such courts). Each of the Parties further agrees that service of any process, summons, notice or document hand delivered or sent by recognized overnight carrier to such Party's respective address set forth in Section 9.3 outside the territorial jurisdiction of the courts referred to in this Section 9.15 shall be effective service of process for any Action, suit or proceeding in the State of Delaware with respect to any matters to which it has submitted to jurisdiction as set forth in the immediately preceding sentence. However, the foregoing shall not limit the right of a Party to effect service of process on another Party by any other legally available method. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any Action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in (i) state courts of the State of Delaware located in New Castle County or (ii) the United States District Court for the District of the State of Delaware, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Action, suit or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each Party agrees that a final judgment in any Action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.

(b) EACH OF THE PARTIES IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER, IN CONNECTION WITH OR RELATING TO THIS AGREEMENT, ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE ACTIONS OF THE PARTIES IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

Section 9.16 Counterparts. This Agreement may be executed in any number of counterparts (including by telecopy and electronic imaging scans), each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or other electronic method of transmission shall be equally effective as delivery of an original executed counterpart.

*[Signature pages follow.]*

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

**SELLER:**

MIP PADUA HOLDINGS, L.P.

By: MIP Washington Holdings GP LLC,  
a general partner

By: \_\_\_\_\_

Name: Mark Fay

Title: Authorized Signatory

By: \_\_\_\_\_

Name: David Handelsmann

Title: Authorized Signatory

MIP PADUA HOLDINGS, L.P.

By: MIP II Washington Holdings GP LLC,  
a general partner

By: \_\_\_\_\_

Name: Mark Fay

Title: Authorized Signatory

By: \_\_\_\_\_

Name: David Handelsmann


Title: Authorized Signatory

**SELLER PARENT GUARANTORS:**

(solely with respect to Section 5.15 and, solely with respect to Section 5.15(f), Section 9.12)

MACQUARIE INFRASTRUCTURE PARTNERS  
CANADA, L.P.


By: Macquarie Infrastructure Partners Canada  
GP Ltd., as its general partner

By:   
Name: Mark Fay  
Title: Authorized Signatory

By:   
Name: David Handelsmann  
Title: Authorized Signatory

MACQUARIE INFRASTRUCTURE PARTNERS  
INTERNATIONAL, L.P.


By: Macquarie Infrastructure Partners U.S.  
GP LLC, as its general partner

By:   
Name: Mark Fay  
Title: Authorized Signatory

By:   
Name: David Handelsmann  
Title: Authorized Signatory

MACQUARIE INFRASTRUCTURE PARTNERS  
A, L.P.


By: Macquarie Infrastructure Partners U.S.  
GP LLC, as its general partner

By:   
Name: Mark Fay  
Title: Authorized Signatory

By:   
Name: David Handelsmann  
Title: Authorized Signatory

MACQUARIE INFRASTRUCTURE PARTNERS  
II AIV, L.P.


By: Macquarie Infrastructure Partners II GP  
LLC, as its general partner

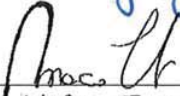
By:   
Name: Mark Fay  
Title: Authorized Signatory

By:   
Name: David Handelsmann  
Title: Authorized Signatory

**BUYER:**

**MOBY CANADA LIMITED PARTNERSHIP,**  
by its general partner,  
**MOBY GP CANADA CORPORATION**

By:   
Name: Steven Zucchet  
Title: Managing Director

By:   
Name: MARCO FORTINA  
Title: DIRECTOR

**SCHEDULE A**

Target Distribution Amount

<b>Distribution Date</b>	<b>Target Distribution Amount (USD)</b>
09/30/2018	\$9,005,685.93
12/31/2018	\$0.00
03/31/2019	\$8,887,359.84
<b>Total</b>	<b>\$17,893,045.77</b>

## **SCHEDULE B**

### Scheduled Entities

1. Avista Corporation (which will include Hydro One Limited from and after the acquisition of Avista Corporation by Hydro One Limited)
2. Berkshire Hathaway Energy Company
3. Cascade Natural Gas Corporation
4. MDU Resources Group, Inc.
5. Northwest Natural Gas Company
6. PacifiCorp (Pacific Power and Light)
7. Portland General Electric Company
8. TransAlta Corporation
9. Avangrid, Inc.
10. NRG Energy, Inc.



**SCHEDULE C**

Seller Parent Guarantor Allocable Share

<b>Seller Parent Guarantor</b>	<b>Allocable Share</b>
Macquarie Infrastructure Partners Canada, L.P.	7.6543%
Macquarie Infrastructure Partners International, L.P.	35.6444%
Macquarie Infrastructure Partners A, L.P.	34.1439%
Macquarie Infrastructure Partners II AIV, L.P.	22.5574%

## SCHEDULE D

### Required Regulatory Approvals

1. CFIUS Approval
2. FERC Approval
3. WUTC Approval
4. If required in connection with the transactions contemplated by this Agreement, EU Approval.
5. Any additional antitrust/competition approvals of or from any Governmental Authority as any Party may reasonably determine is required to be obtained in connection with the transactions contemplated by this Agreement and of which such Party notifies in writing the other Party.

## **SCHEDULE E**

### Required Consents

1. The Consent of Puget Intermediate Holdings Inc. pursuant to Section 10.6(b) of the Loan Agreement with respect to the sale, grant, conveyance, assignment, transfer and delivery to Buyer of a Pro Rata Portion of the Loan (as defined in the Loan Agreement) owing at the Closing to Seller thereunder.
2. The Consent of each of Puget Intermediate Holdings, Inc., Puget Equico LLC, Puget Energy Inc., Puget Sound Energy Inc., Puget LNG LLC and Puget Western Inc. pursuant to Section 8.1 of the Voting Agreement dated as of February 6, 2009 and attached to the Company's LLC Agreement with respect to the transactions contemplated by this Agreement.

**SCHEDULE F**

RWI and EOP

See attached.

EXECUTION COPY



**AIG INSURANCE COMPANY OF CANADA**  
A Member Company of AIG.  
120 Bremner Boulevard, Suite 2200  
Toronto, Ontario, Canada M5J 0A8

**POLICY NUMBER: 17712134**

**BINDER AGREEMENT**

**BUYER-SIDE REPRESENTATIONS AND WARRANTIES INSURANCE**

**NOTICE: THE COVERAGE PROVIDED UNDER ANY INSURANCE POLICY ISSUED PURSUANT HERETO SHALL BE PROVIDED PURSUANT TO A CLAIMS MADE AND REPORTED INSURANCE POLICY. SUBJECT TO THE TERMS AND CONDITIONS OF SUCH POLICY, COVERAGE SHALL BE LIMITED TO LOSS THAT THE NAMED INSURED REPORTS TO THE INSURER DURING THE POLICY PERIOD OR WITHIN THE THIRTY (30) DAY PERIOD IMMEDIATELY FOLLOWING THE EXPIRY DATE. PLEASE READ THIS AGREEMENT AND ANY INSURANCE POLICY ISSUED PURSUANT HERETO CAREFULLY AND DISCUSS EACH SUCH DOCUMENT WITH YOUR INSURANCE AGENT OR BROKER.**

**NOTICE: DEFENCE COSTS COVERED UNDER ANY INSURANCE POLICY ISSUED PURSUANT HERETO SHALL BE PART OF LOSS AND AS SUCH SHALL BE SUBJECT TO THE RETENTION AND THE LIMIT OF LIABILITY.**

**NOTICE: THE INSURER REFERRED TO HEREIN DOES NOT AND WILL NOT ASSUME ANY DUTY TO DEFEND. NOTWITHSTANDING THE FOREGOING, IF THE RETENTION HAS BEEN COMPLETELY EXHAUSTED, THEN, IN ACCORDANCE WITH AND SUBJECT TO THE TERMS AND CONDITIONS OF ANY INSURANCE POLICY ISSUED PURSUANT HERETO, THE INSURER SHALL REIMBURSE THE INSUREDS FOR DEFENCE COSTS COVERED UNDER SUCH POLICY.**

All capitalized terms used but not defined in this Binder Agreement (along with all Exhibits hereto, this "Agreement") shall have the respective meanings assigned thereto in the Draft Policy (as defined below). **All references to dollars or \$ shall be to the lawful currency of the United States of America.**

1. **Date:** August 8, 2018
2. **(a) Named Insured:** Moby Canada Limited Partnership  
c/o OMERS Infrastructure Management Inc.  
100 Adelaide St W, 21st Floor Reception  
Toronto, ON M5H 0E2  
Canada  
Attention: Steven Zucchet, Managing Director  
Facsimile: (416) 361-6075  
E-mail: szucchet@omers.com

**This Agreement provides only a summary of conditional coverage. Please refer to the Policy for the actual terms, conditions and exclusions of coverage.**

- (b) Additional Insureds:** The Buyer Indemnified Parties (other than (i) the Named Insured and (ii) the third-party advisors, representatives or agents of the Named Insured or any of its Affiliates).
- Collectively, the Named Insured, the Additional Insureds, Collectively, the Named Insured, the Additional Insureds, their Affiliates and each of their respective successors and assigns, are referred to herein as the "Insureds".
- 3. Insurer:** AIG Insurance Company of Canada, a corporation incorporated under the laws of Canada.
- 4. Insurance Broker:** EgR Inc.  
600, De La Gauchetière O., 6th floor, Montreal, Quebec, H3B 4L2
- The Insurance Broker is the broker of record and is responsible for the collection, reporting and payment of applicable taxes and fees.
- 5. Acquisition Agreement:** Purchase and Sale Agreement entered into as of August 8, 2018, by and among (i) MIP Padua Holdings, L.P., (ii) Moby Canada Limited Partnership by its general partner Moby GP Canada Corporation, and (iii) solely with respect to Sections 5.15 and, solely with respect to Section 5.15(f), Section 9.12 thereof and not for purposes of any other Article, Section or provision of the Acquisition Agreement, Macquarie Infrastructure Partners Canada, L.P., Macquarie Infrastructure Partners International, L.P., Macquarie Infrastructure Partners A, L.P., and Macquarie Infrastructure Partners II AIV, L.P (attached hereto as Exhibit C).
- 6. Coverage:** Buyer-side representations and warranties insurance coverage for Loss in excess of the Retention that is reported by the Named Insured to the Insurer during the Policy Period or within the thirty (30) day period immediately following the Expiry Date in accordance with the terms and conditions of the policy attached hereto as Exhibit A (the "Draft Policy").
- Any changes to the Draft Policy shall be mutually agreed upon by the Insurer and the Named Insured.
- 7. Policy Period:** From August 8, 2018 ("Inception") until [\_\_\_\_\_] <sup>1</sup> (the "Expiry Date").
- 8. Limit of Liability:** \$40,000,000 in the aggregate.
- 9. Retention:** \$5,000,000, in the aggregate.
- 10. Premium:** \$769,250<sup>2</sup>
- provided, however,* that if the Interim Period is greater than 180 days, the premium will increase to \$884,638.
- The Premium is non-refundable, subject to Section 15 below.
- 11. Brokerage Commission:** The brokerage commission is NIL.

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<sup>1</sup> The date that is the six-year anniversary of the Closing Date

<sup>2</sup> Excludes certain taxes and fees. See Section 12 of this Agreement for more information.

**This Agreement provides only a summary of conditional coverage. Please refer to the Policy for the actual terms, conditions and exclusions of coverage.**

- 12. Taxes:** The Premium is exclusive of any applicable sales tax and any other applicable tax, fee or surcharge. It is the Insureds' responsibility to pay any applicable sales tax and any other applicable tax, fee or surcharge.
- 13. Exclusions:** All items set forth in Section 4 of the Draft Policy.
- 14. Conditions:** Issuance of the final, executed buyer-side representations and warranties insurance policy contemplated by this Agreement and the Draft Policy (the "Policy"), and coverage for any Loss thereunder shall be subject to the satisfaction of the following conditions; provided that the issuance of the Policy shall be deemed acknowledgement by the Insurer that all such conditions have been satisfied or waived:
- (a) The Insurer shall have received 10% of the Premium at Inception in accordance with the wire transfer instructions provided by the Insurer to the Insurance Broker.
  - (b) The Insurer shall have received the remaining 90% of the Premium at the Closing in accordance with the wire transfer instructions provided by the Insurer to the Insurance Broker.
  - (c) The closing of the transactions contemplated by the Acquisition Agreement (the "Closing") shall have occurred in accordance with the terms and conditions of the Acquisition Agreement.
  - (d) Neither the Insureds nor any of their respective Affiliates shall have (i) amended, supplemented or rescinded the Acquisition Agreement (or entered into any agreement or arrangement which would have such an effect), (ii) given any consent or waiver thereunder, or (iii) granted any authority to take any of the actions in clauses (i) or (ii) above, in each case, without the prior written consent of the Insurer if such amendment, supplement, rescission, agreement, arrangement, consent, waiver or grant would reasonably be expected to adversely affect the Insurer or its rights or liability under this Agreement or the Draft Policy.
  - (e) The Insurer shall have received copies of (i) the final, executed Acquisition Agreement (including all schedules, exhibits, attachments and amendments thereto) and (ii) the final, executed Ancillary Documents (including all schedules, exhibits, attachments and amendments thereto).
  - (f) The Insurer shall have received an Inception No Claims Declaration, executed by an authorized representative of the Named Insured as of Inception, in the form attached hereto as Exhibit B-1.
  - (g) The Insurer shall have received a Closing No Claims Declaration, executed by an authorized representative of the Named Insured as of Closing, in the form attached hereto as Exhibit B-2. For the avoidance of doubt and notwithstanding anything to the contrary herein, if the Closing No Claims Declaration contains Actual Knowledge of an Interim Breach,

**This Agreement provides only a summary of conditional coverage. Please refer to the Policy for the actual terms, conditions and exclusions of coverage.**

the Insurer shall not be entitled to terminate this Agreement by reason of the failure by the Insureds to satisfy the condition set forth in this paragraph 14(g), and the Policy will continue, but the Policy will exclude any Loss arising out of such Interim Breach pursuant to Section 4(a) of the Draft Policy.

- (h) The Insurer shall have received a copy of a CD or DVD-ROM containing a true, correct and complete copy of the electronic data room created in connection with the Acquisition.
- (i) The Insureds shall have provided the Insurer with satisfactory access to the Deal Team Members to allow the Insurer to complete a "bring down" due diligence investigations prior to the Closing.
- (j) The Named Insured shall have provided the Insurer with all information provided to the Named Insured by the Sellers in writing identifying any Breach (provided it is readily apparent on the face of such information provided to the Named Insured that the matter disclosed therein constitutes a Breach) between Inception and Closing.
- (k) The Insurer shall have received the underwriting fee of \$40,000 by wire transfer in accordance with the wire transfer instructions provided by the Insurer to the Named Insured. The Insurer hereby acknowledges that this amount has been previously received by the Insurer as of the date hereof.

**15. Failure to Satisfy Conditions:**

If (i) the condition set forth in paragraph (a) of Section 14 above is not satisfied on or prior to August 15, 2018, (ii) the condition set forth in paragraph (b) of Section 14 above is not satisfied on or before the date that is 30 days after the Closing Date, (iii) either of the conditions set forth in paragraphs (c) or (d) of Section 14 above is not satisfied at any time prior to issuance of the Policy, (iv) either of the conditions set forth in paragraphs (e) or (h) of Section 14 above is not satisfied on or before the date that is 60 days after the Closing Date, (v) the condition set forth in paragraph (f) of Section 14 above is not satisfied on or before 6 p.m. E.T. on the date hereof, (vi) the condition set forth in paragraph (g) of Section 14 above is not satisfied on or before 6 p.m. E.T. on the Closing Date, (vii) either of the conditions set forth in paragraphs (i) or (j) of Section 14 above is not satisfied at or immediately prior to Closing, (viii) there shall have occurred a Material Adverse Effect (as defined in the Acquisition Agreement) with respect to the Company Entities (as defined in the Acquisition Agreement) at any time on or after the date hereof or (ix) the Closing shall not have occurred on or before the Termination Date (as defined in the Acquisition Agreement), then the Insurer shall be entitled to terminate this Agreement by written notice to the Named Insured.

If (y) this Agreement is so terminated, or (z) the Acquisition Agreement is terminated and the transactions abandoned pursuant to Article VIII thereof, (a) this Agreement shall be void ab initio and have no force or effect and the Insurer shall have no obligation or

**This Agreement provides only a summary of conditional coverage. Please refer to the Policy for the actual terms, conditions and exclusions of coverage.**



liability hereunder or in connection herewith and (b)(I) if the Insureds have paid the entire amount of the Premium, 90% of the Premium shall be refunded to the Insureds and the remaining 10% shall be kept by the Insurer as a termination fee, (II) if the Insureds have only paid the initial 10% of the Premium, the Insureds shall have no obligation to pay the remaining 90% of the Premium and the Insurer shall be entitled to keep such 10% of the Premium as a termination fee or (III) if the Insureds have not paid any portion of the Premium, the Insureds shall pay to the Insurer within five (5) days of termination a termination fee of 10% of the Premium by wire transfer in accordance with the wire transfer instructions provided by the Insurer to the Insurance Broker. The Named Insured shall deliver a notice to the Insurer as soon as reasonably practicable after any Insured becomes aware that the Acquisition Agreement has been terminated. For the avoidance of doubt and notwithstanding anything to the contrary herein, the rights and obligations relating to the payment or retention (as applicable) of the termination fee set forth in clauses (b)(I), (b)(II) and (b)(III) of this paragraph shall survive any such termination.

- 16. Arbitration and Governing Law:** As set forth, *mutatis mutandis*, in Section 9 of the Draft Policy.
- 17. Insured Representation:** As set forth, *mutatis mutandis*, in Section 10 of the Draft Policy.
- 18. Amendments:** This Agreement may be amended or modified, in whole or in part, only by a duly authorized agreement in writing executed by the parties hereto and which makes reference to this Agreement.
- 19. Assignment:** As set forth, *mutatis mutandis*, in Section 12(c) of the Draft Policy.
- 20. Entire Agreement:** This Agreement constitutes the entire agreement and understanding concerning the subject matter of this Agreement and supersedes the terms and conditions of any prior oral or written agreements, discussions or other communications entered into between the Insurer and/or its Affiliates (including their respective representatives), on the one hand, and the Insureds and/or their respective Affiliates (including their respective representatives), on the other hand, concerning the subject matter of this Agreement.
- 21. Counterparts:** This Agreement may be executed and delivered by the parties hereto (including by facsimile transmission) in counterparts, each of which when executed shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same agreement.
- 22. Effectiveness of Agreement:** Notwithstanding anything to the contrary herein, including without limitation the Insurer's signature below, if this Agreement is not signed by the Named Insured and returned to the Insurer by 11:59 p.m. E.T. on the date hereof, then the offer provided in this Agreement shall automatically terminate and expire, whereupon this Agreement shall be void *ab initio* and have no force or effect, and the Insurer shall have no obligation or liability hereunder or in connection herewith.

**This Agreement provides only a summary of conditional coverage. Please refer to the Policy for the actual terms, conditions and exclusions of coverage.**

*[Signature page follows]*

**This Agreement provides only a summary of conditional coverage. Please refer to the Policy for the actual terms, conditions and exclusions of coverage.**

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed as of the date first mentioned above.

AIG Insurance Company of Canada

Moby GP Canada Corporation acting on  
behalf of Moby Canada Limited Partnership



By: \_\_\_\_\_  
Name: Lynn Oldfield  
Title: Authorized Representative

By: \_\_\_\_\_  
Name: John Knowlton  
Title: President

By: \_\_\_\_\_  
Name: Jennifer Guerard  
Title: President

**This Agreement provides only a summary of conditional coverage. Please refer to the Policy for the actual terms, conditions and exclusions of coverage.**

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first mentioned above.

AIG Insurance Company of Canada

Moby GP Canada Corporation acting on behalf of Moby Canada Limited Partnership

By: \_\_\_\_\_  
Name:  
Title:

By:   
Name: Steven Zucchet  
Title: Director

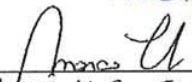
By:   
Name: MARCO FONTANA  
Title: DIRECTOR

Exhibit A

Draft Buyer-Side Representations and Warranties Insurance Policy  
[Attached]

**This Agreement provides only a summary of conditional coverage. Please refer to the Policy for the actual terms, conditions and exclusions of coverage.**

AIG DRAFT 08.07.18



**AIG INSURANCE COMPANY OF CANADA**

A Member Company of AIG.  
120 Bremner Boulevard, Suite 2200  
Toronto, Ontario, Canada M5J 0A8

**POLICY NUMBER: 17712134**

**BUYER-SIDE REPRESENTATIONS AND WARRANTIES INSURANCE POLICY**

**NOTICE: THIS IS A CLAIMS MADE AND REPORTED POLICY. SUBJECT TO THE TERMS AND CONDITIONS OF THIS POLICY, COVERAGE IS LIMITED TO CLAIMS THAT THE NAMED INSURED REPORTS TO THE INSURER DURING THE POLICY PERIOD OR WITHIN THE THIRTY (30) DAY PERIOD IMMEDIATELY FOLLOWING THE EXPIRY DATE. PLEASE READ THIS POLICY CAREFULLY AND DISCUSS IT WITH YOUR INSURANCE AGENT OR BROKER.**

**NOTICE: DEFENCE COSTS COVERED UNDER THIS POLICY ARE PART OF LOSS AND AS SUCH ARE SUBJECT TO THE RETENTION AND THE LIMIT OF LIABILITY.**

**NOTICE: THE INSURER DOES NOT ASSUME ANY DUTY TO DEFEND. NOTWITHSTANDING THE FOREGOING, IF THE RETENTION HAS BEEN COMPLETELY EXHAUSTED, THEN, IN ACCORDANCE WITH AND SUBJECT TO THE TERMS AND CONDITIONS OF THIS POLICY, THE INSURER SHALL REIMBURSE THE INSUREDS FOR DEFENCE COSTS COVERED UNDER THIS POLICY.**

**DECLARATIONS**

All capitalized terms used but not defined in this Policy shall have the respective meanings assigned thereto in the Acquisition Agreement. All references to dollars or \$ shall be to the lawful currency of the United States of America.

**Item 1. Named Insured:**

Moby Canada Limited Partnership  
c/o OMERS Infrastructure Management Inc.  
100 Adelaide St W, 21st Floor Reception  
Toronto, ON M5H 0E2  
Canada  
Attention: Steven Zucchet, Managing Director  
Facsimile: (416) 361-6075  
E-mail: szucchet@omers.com

**Additional Insureds:**

The Buyer Indemnified Parties (other than (i) the Named Insured and (ii) the third-party advisors, representatives or agents of the Named Insured or any of its Affiliates).  
Collectively, the Named Insured, the Additional Insureds, their Affiliates and each of their respective successors and assigns, are referred to herein as the "Insureds".

- Item 2. Acquisition Agreement: Purchase and Sale Agreement entered into as of August 8, 2018, by and among (i) MIP Padua Holdings, L.P., (ii) Moby Canada Limited Partnership, by its general partner Moby GP Canada Corporation, and (iii) solely with respect to **Error! Reference source not found.** and solely with respect to Section 5.15(f), Section 9.12 and not for purposes of any other Article, Section or provision of the Acquisition Agreement, Macquarie Infrastructure Partners Canada, L.P., Macquarie Infrastructure Partners International, L.P., Macquarie Infrastructure Partners A, L.P., and Macquarie Infrastructure Partners II AIV, L.P.
- Item 3. Policy Period: From August 8, 2018 (“Inception”) until [\_\_\_\_\_] <sup>1</sup> (the “Expiry Date”).
- Item 4. Limit of Liability: \$40,000,000 in the aggregate.
- Item 5. Retention: \$5,000,000, in the aggregate.
- Item 6. Premium: \$769,250  
*provided, however,* that if the Interim Period is greater than 180 days, the premium will increase to \$884,638.
- Item 7. Brokerage Commission: The brokerage commission is NIL.
- Item 8. Taxes: The Premium is exclusive of any applicable sales tax and any other applicable tax, fee or surcharge. It is the Insureds’ responsibility to pay any applicable sales tax and any other applicable tax, fee or surcharge.
- Item 9. Insurance Broker: EgR Inc.  
600, De La Gauchetière O., 6th floor, Montreal, Quebec,  
H3B 4L2

[DRAFT, NOT FOR EXECUTION]

\_\_\_\_\_  
Authorized Representative

<sup>1</sup> The date that is the six-year anniversary of the Closing Date.

**AIG INSURANCE COMPANY OF CANADA**

**BUYER-SIDE REPRESENTATIONS AND WARRANTIES INSURANCE POLICY**

**This Buyer-Side Representations and Warranties Insurance Policy** (including any Declarations, exhibits, attachments or endorsements attached hereto, collectively, this "Policy") is issued by the Insurer to the Insureds and represents the complete agreement between the Insurer and the Insureds concerning the coverage provided hereunder.

**WHEREAS**, the Insureds or certain of them have entered into the Acquisition Agreement;

**WHEREAS**, the Insureds, pursuant to certain sections of the Acquisition Agreement, may be entitled to indemnification from certain persons or entities for certain damages resulting from Breaches; and

**WHEREAS**, the Insureds desire to purchase insurance to insure them against Loss, and the Insurer desires to provide such insurance subject to the terms and conditions of this Policy.

**NOW, THEREFORE**, in consideration of the payment of the Premium, the Insurer and, by accepting this Policy, the Insureds agree as follows:

**SECTION 1. DEFINITIONS**

- (a) "\$" or "dollar" means the lawful currency of the United States of America.
- (b) "Acquisition" means the acquisition, merger, consolidation, exchange or other combination contemplated by the Acquisition Agreement.
- (c) "Acquisition Agreement" means the agreement set forth in Item 2 of the Declarations, including any exhibits, schedules or other attachments thereto (as such agreement may be amended from time to time in accordance with the terms and conditions of this Policy), an executed copy of which is attached hereto as Exhibit A.
- (d) "Actual Knowledge" means with respect to a particular fact, event or condition, that any Person had an actual conscious awareness of such fact, event or condition; provided that, for purposes of determining whether a Person had Actual Knowledge of the existence of a Breach, such Person shall also have an actual conscious awareness that the underlying fact, event or condition constitutes a Breach. For the avoidance of doubt Actual Knowledge shall not, in any case, include any imputed or constructive knowledge, any knowledge of any outside advisors or agents or any duty or obligation of inquiry. The Insurer shall bear the burden of proving that any such Person had Actual Knowledge of any underlying fact, event and condition and any Breach.
- (e) "Additional Insureds" shall have the meaning set forth in Item 1 of the Declarations.
- (f) "Affiliate" of any person or entity means any person or entity that directly or indirectly controls, is controlled by or is under common control with, such person or entity.
- (g) "Ancillary Documents" means the certificates, instruments, documents or agreements delivered pursuant to the Acquisition Agreement and listed or described on Exhibit E attached hereto.
- (h) "Breach" means
  - (i) any breach of, or inaccuracy in, the Covered Representations and Warranties; and/or



- (ii) any breach of, or inaccuracy in, any representation or warranty set forth in any Ancillary Documents;

in the case of each of clauses (i) and (ii), made as of the date of the Acquisition Agreement or as of the Closing; provided, that, in the event that Closing is 18 months or later following the date of the Acquisition Agreement, the definition of Breach shall only include the representations and warranties set forth in (i) and (ii) above to the extent they are made as of the Acquisition Agreement.

For purposes of determining whether any Breach of, or inaccuracy in, any representation or warranty set forth in the Covered Representations and Warranties, or in any Ancillary Documents, and the amount of Losses arising therefrom, such determination shall be made disregarding all qualifications as to materiality or Material Adverse Effect contained in such representation or warranty (as if such words were deleted from such representation and warranty); *provided, however*, that if the period between the Inception and the Closing is longer than 14 months and 14 days, the Insurer shall not disregard qualifications as to materiality or Material Adverse Effect from any representation or warranty that is made as of the Closing.

- (i) “Claim Notice” means a claim notice substantially in the form attached hereto as Exhibit B.
- (j) “Covered Representations and Warranties” means the representations and warranties set forth in Sections 3.1 (Organization); 3.2 (Authorization); 3.3 (Noncontravention); 3.4 (Governmental Consents); 3.5 (Title to Purchased Assets; Subsidiaries); 3.6 (Brokers’ Fees); 3.7 (Litigation); 3.8(a) (Affiliate Contracts); [3.8(b) (Affiliate Contracts)];<sup>2</sup> 3.9 (Anti-Money Laundering; Anti-Bribery and Sanctions) and 3.10 (Purchase Price; Buyer Termination Fee) of the Acquisition Agreement, [provided, that, the representations and warranties set forth in Section 3.8(b) (Affiliate Contracts) of the Acquisition Agreement shall only be included in the definition of Covered Representations and Warranties to the extent such representations and warranties are made as of Closing.]<sup>3</sup>
- (k) “Deal Team Members” means those individuals whose names are set forth on Exhibit C attached hereto.
- (l) “Declarations” means, collectively, those items set forth as Item 1 through Item 9 on the pages labeled as “Declarations.”
- (m) “Defense Costs” means the fees, costs, expenses and other amounts (including lawyers’, accountants’, consultants’, experts’ and other professional advisors’ fees, costs, disbursements and expenses) incurred by or on behalf of the Insureds (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) in the investigation, settlement, adjustment, defense or appeal of (i) a Third Party Demand or (ii) a potential Third Party Demand or notice thereof, but only in the event that such potential Third Party Demand is hereafter made and reported pursuant to the terms herein. Defense Costs do not include any salaries, benefits or other compensation for officers, employees or consultants of any of the Insureds (other than consultants specifically retained in connection with the investigation, settlement, adjustment, defense or appeal of such Third Party Demand).
- (n) “Expiry Date” shall have the meaning set forth in Item 3 of the Declarations.

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<sup>2</sup> Prior to Closing, the Insurer may (in the Insurer’s sole discretion, acting reasonably and in good faith and after reasonable consultation with the Named Insured) provide coverage for the representations set forth in this Section 3.8(b), pending the Insurer’s satisfactory review of Buyer’s monitoring of, and diligence with regard to, the payments contemplated by this representation and warranty.

- (o) "Inception" shall have the meaning set forth in Item 3 of the Declarations.
- (p) "Insurance Broker" shall have the meaning set forth in Item 9 of the Declarations.
- (q) "Insureds" shall have the meaning set forth in Item 1 of the Declarations.
- (r) "Insurer" means AIG Insurance Company of Canada, a corporation incorporated under the laws of Canada.
- (s) "Interim Breach" means any Breach with respect to which (i) the material facts, events or conditions, as applicable, which caused such Breach to exist first occurred during the Interim Period and (ii) any of the Deal Team Members obtained Actual Knowledge during the Interim Period. A Breach of any representation or warranty made as of the date of execution of the Acquisition Agreement that was existing as of such date shall in no event be considered an Interim Breach.
- (t) "Interim Period" means the period beginning at the execution of the Acquisition Agreement and ending immediately prior to the Closing.
- (u) "Limit of Liability" shall have the meaning set forth in Item 4 of the Declarations.
- (v) "Loss" means any and all Damages (as defined in the Acquisition Agreement) to which the Insureds would be entitled to recover in respect of any Breach pursuant to the terms of the Acquisition Agreement (including any related Defense Costs payable hereunder), without regard to the liability limitations set forth in Sections 5.15(a) or 7.2(d) of the Acquisition Agreement or the survival limitations set forth in Section 7.1 of the Acquisition Agreement; provided, however, with respect to an Losses directly incurred by the Company, the Loss under this Policy shall be 23.8872% of such direct Loss of the Company (which percentage reflects the Named Insured's ownership interest in the Company at Closing). For the avoidance of doubt, Losses incurred directly by the Insureds shall not be subject to the aforementioned proviso. For the purposes of calculating the amount of any Loss, Loss for any item shall be net of reserves or accruals specifically established on or specifically included in the financial statements of the Company (including the notes thereto) with respect to such item.  
  
For purposes of determining whether any Breach of, or inaccuracy in, any representation or warranty set forth in the Covered Representations and Warranties, or in any Ancillary Documents, and the amount of Losses arising therefrom, such determination shall be made disregarding all qualifications as to materiality or Material Adverse Effect contained in such representation or warranty (as if such words were deleted from such representation and warranty); provided, however, that if the period between the Inception and the Closing is longer than 14 months and 14 days, the Insurer shall not disregard qualifications as to materiality or Material Adverse Effect from any representation or warranty that is made as of the Closing.
- (w) "Most Favourable Jurisdiction" means the jurisdiction where the act, error or omission giving rise to the Breach or the Loss took place, the Claim Notice was made, any relief was awarded, any Insured is incorporated or has its principal place of business, or the Insurer is incorporated or has its principal place of business.
- (x) "Named Insured" shall have the meaning set forth in Item 1 of the Declarations.
- (y) "No Claims Declaration" means the (i) Inception No Claims Declaration executed and delivered to the Insurer in connection with the underwriting of this Policy, an executed copy of which is attached hereto as Exhibit D-1 and (ii) Closing No Claims Declaration

executed and delivered to the Insurer in connection with the underwriting of this Policy, an executed copy of which is attached hereto as Exhibit D-2.

- (z) “Policy” shall have the meaning set forth in the Preamble.
- (aa) “Policy Period” shall have the meaning set forth in Item 3 of the Declarations.
- (bb) “Premium” shall have the meaning set forth in Item 6 of the Declarations.
- (cc) “Retention” shall have the meaning set forth in Item 5 of the Declarations.
- (dd) “Seller” shall have the meaning set forth in the Acquisition Agreement.
- (ee) “Specified Person” shall mean (i) any Deal Team Member (to the extent such person is employed by the Named Insured or any Affiliate of the Named Insured), and (ii) the chief executive officer, chief financial officer, general counsel or any person who holds a functionally equivalent position at the Named Insured; provided, however, that Specified Person shall only include individuals during the period such person is employed by any Insured.
- (ff) “Third Party Demand” means any claim, demand, notice, complaint, investigation, proceeding or other threat made or legal, arbitral or other action brought against, or the initiation of a tax audit or examination of, any Insured by any person or entity (other than (i) an Affiliate of any of the Insureds at the time such action is brought, (ii) any other Insured (other than employees of the Insureds) or (iii) the Insurer in connection with this Policy which, if successful, would result in Loss.

## **SECTION 2. INSURING AGREEMENT**

Subject to the terms and conditions of this Policy, the Insurer shall indemnify the Insureds for, or pay on their behalf, any Loss in excess of the Retention that is reported by the Named Insured to the Insurer during the Policy Period or within the 30 day period immediately following the Expiry Date in accordance with Section 5 of this Policy.

## **SECTION 3. LIMIT OF LIABILITY; RETENTION; OFFSETTING RECOVERIES**

- (a) Limit of Liability. The Insurer’s aggregate liability under this Policy shall not exceed the Limit of Liability.
- (b) Retention. The Retention is an aggregate one. The Insurer shall only be liable for Loss in excess of the Retention. The Retention shall only be eroded by Loss for which the Insurer would be liable under this Policy but for the Retention. The Insureds shall not be required to proceed against the Seller for recovery under the Acquisition Agreement for a claim to be made or a Loss to be payable under this Policy. Any amounts that an Insured may ultimately recover from the Seller in compensation for the Retention borne by the Insureds under this Policy shall be for the sole benefit of the Insureds and shall neither constitute an offsetting recovery nor be reimbursable to the Insurer.
- (c) Offsetting Recoveries. Loss shall be reduced by (i) any related offsetting recoveries (including recoveries from any other insurance policies or indemnities) or (ii) any reduction in tax that has been paid, credited or allowed as a direct result of a Loss that has been or will be paid under this Policy, in each of clauses (i) and (ii) to the extent actually received or actually realized (net of any costs of recovery thereof (including lawyers’, accountants’, consultants’ and experts’ fees, costs and expenses and similar costs and expenses incurred as a result of such recovery) and net of any increase in any

tax paid or payable as a result of the receipt, or right to receive, any payment under this Policy) by any of the Insureds during the period ending on the later of the expiration of the Policy Period or the tax year in which the Expiry Date with respect to such Loss occurs. For the avoidance of doubt, (y) Loss shall not be reduced pursuant to the immediately preceding sentence (i) by deductibles paid by the Insureds under other insurance policies or (ii) if any such other insurance policy does not provide recovery for such Loss and (z) Loss shall include any increase in insurance premiums under other insurance policies resulting from seeking recovery thereunder.

#### **SECTION 4. EXCLUSIONS**

The Insurer shall not be liable to pay that portion of Loss:

- (a) arising out of or resulting from any (i) Breach of which any of the Deal Team Members had Actual Knowledge prior to the Inception, (ii) Interim Breach, or (iii) material inaccuracy in any No Claims Declaration (giving effect to the knowledge qualification language contained therein) but only to the extent (A) such Loss is proximately related to the substantive content of such material inaccuracy and (B) the Insurer is actually prejudiced by such material inaccuracy with the Insurer bearing the burden of proving any such actual prejudice;
- (b) arising out of or resulting from any, punitive or exemplary damages or criminal or civil fines or penalties (except, in each case, to the extent (i) insurable by applicable law of the Most Favourable Jurisdiction and (ii) awarded or assessed against the Insureds in connection with a Third Party Demand pursuant to (A) a final settlement consented to in writing by the Insurer in accordance with Section 6 of this Policy or (B) a final and non-appealable (x) order of a governmental or regulatory agency, (y) judgment of a court of competent jurisdiction or (z) award of an arbitrator, arbitration panel or similar adjudicative body); provided that this exclusion shall not apply to Defense Costs relating to Losses that are the subject of the exclusion under this Section 4(c);
- (c) for the non-monetary portion of any injunctive, equitable or other non-monetary relief, provided that this exclusion shall not apply to Defense Costs related thereto or any monetary impact resulting from such injunctive or equitable relief;
- (d) arising out of or resulting from any covenant or breach thereof (other than any covenant to indemnify in respect of a Breach) except to the extent that such Loss would independently arise out of or result from a Breach;
- (e) arising out of or resulting from asbestos or Polychlorinated Biphenyls; or
- (f) for the monetary amount by which any unfunded or underfunded defined benefit plans (including any multiemployer plan withdrawal liability) are unfunded or underfunded.

For certainty, if only part of a Loss is excluded under this Section 4, the Insurer shall remain liable for that part of such Loss which is not so excluded (subject to the terms, conditions and exclusions of this Policy).

#### **SECTION 5. CLAIM FILING PROCEDURE; PAYMENT OF LOSS; NOTICE PROVISIONS**

- (a) Claim Notice. The Named Insured shall deliver a Claim Notice to the Insurer, signed by an authorized representative of the Named Insured, as soon as reasonably practicable after any Specified Person obtains Actual Knowledge of any (i) Breach, (ii) Third Party Demand and/or (iii) Loss; provided, that, failure to provide timely notice shall excuse the Insurer from performance hereunder only to the extent that such failure actually

prejudices the Insurer; provided, however, that in no event may a Claim Notice be delivered to the Insurer later than thirty (30) days following the Expiry Date. For the avoidance of doubt, the Named Insured shall deliver a Claim Notice in each such instance regardless of whether the matters described in such Claim Notice will, or are reasonably likely to, give rise to Loss that is within the Retention. Attached to the Claim Notice shall be a description that is as detailed as is reasonably practicable, after reasonable inquiry, of the facts, circumstances and issues leading up to the delivery of the Claim Notice (in light of the Actual Knowledge of the Specified Person), including a specific reference to the implicated representations and warranties. A Claim Notice may be supplemented by the Insureds at any time after such Claim Notice is first submitted. In no event may a Claim Notice be delivered to the Insurer later than thirty (30) days following the Expiry Date; provided, however, if a Claim Notice pursuant to clause (i) or (ii) of this Section 5(a) is delivered to the Insurer on or prior to the thirtieth (30<sup>th</sup>) day immediately following the Expiry Date, then any subsequent Loss arising out of the Breach, facts, matters or circumstances, or Third Party Demand identified in such Claim Notice shall be deemed reported at the time such Claim Notice was received by the Insurer. Furthermore, the Insurer acknowledges that the Insureds may have incomplete knowledge of a Breach, matter that could reasonably be expected to give rise to a Breach, Third Party Demand and/or Loss at the time that a Claim Notice in connection therewith is delivered to the Insurer hereunder and that any Claim Notice may reflect such incomplete knowledge. In disclosing such information, the Insureds expressly do not waive any attorney-client privilege associated with such information or any protection afforded by the work-product doctrine with respect to any of the matters disclosed or discussed therein. No information contained therein shall be deemed to be an admission by any Insured to any third party of any matter whatsoever (including any violation of law or breach of contract).

- (b) Correspondence. Subsequent to delivery of a Claim Notice, the Named Insured shall provide the Insurer with a copy of any formal and material correspondence between any of the Insureds or their respective representatives, on the one hand, and any other person or entity, on the other hand, relating to such Claim Notice, as well as any pleadings or similar documents relating to such Claim Notice, in each case to the extent in the Insureds' possession. The Insurer shall cooperate in good faith with the Insureds to preserve the privileged status of any such correspondence, pleading or other document; provided that, if after such good faith cooperation the Insureds reasonably determine that the privileged status of any such correspondence, pleadings or other document cannot be preserved, then the Insureds shall not be required to disclose the portion of such correspondence, pleadings or document for which the privileged status cannot be preserved.
- (c) Insurer's Response. The Insurer shall respond to a Claim Notice as soon as reasonably practicable after the Insurer receives a Claim Notice notifying it of a Breach, Third Party Demand or Loss (and in all instances within sixty (60) days after such receipt), and to the extent the Insurer has sufficient information to do so, shall provide its position on coverage based on the information then available to the Insurer. To the extent the Insurer does not possess sufficient information to formulate its position on coverage, in such response, the Insurer shall provide a reasonably detailed explanation to the Insured as to why it is unable to do so. In any event, the Insurer shall use commercially reasonable efforts to meet any litigation or other deadlines provided by the Insured in writing in connection with a Claim Notice.
- (d) Payment of Loss. Any Loss paid by the Insurer pursuant to this Policy shall be paid to the Named Insured as representative of all the Insureds. At the written request of the Named Insured, the Insurer shall pay any Loss payable hereunder to any lender of the Insureds at an address the Named Insured instructs the Insurer in writing pursuant to Section 5(e)

of this Policy, or to such other person or entity as the Named Insured instructs the Insurer in writing pursuant to Section 5(e) of this Policy.

- (e) Notice. Any notice (including a Claim Notice) or other communication concerning the subject matter of this Policy shall be made in writing and shall be effective upon receipt, and (i) if to any of the Insureds, shall be delivered to the Named Insured at its mailing address set forth in Item 1 of the Declarations with a copy to be sent to the Managing Director, Legal at the same address set forth in Item 1 of the Declarations, and (ii) if to the Insurer, shall be delivered to it at the following address:

AIG Insurance Company of Canada  
Claims Department- Financial Lines  
120 Bremner Boulevard, Suite 2200  
Toronto, Ontario M5J OA8

with a copy sent simultaneously to:

AIG Insurance Company of Canada  
c/o c-Claim for Financial Lines  
AIG Claims, Inc.  
175 Water Street, 7th Floor  
New York, NY 10038  
c-claim@aig.com

If the Named Insured so requests in writing to the Insurer, and for purposes of convenience only, and not as a condition precedent to any rights under this Policy, a copy of any such notice or other communication shall be sent simultaneously to the Insureds' Insurance Broker at its mailing address set forth in Item 9 of the Declarations.

and a copy to Atlantic Global Risk LLC at the following address:

Atlantic Global Risk LLC  
230 Park Avenue  
New York  
NY 10169  
newclaims@atlanticgrp.com  
richard.french@atlanticgrp.com

## **SECTION 6. DEFENCE COSTS; THIRD PARTY DEMANDS AND CLAIMS PARTICIPATION; SETTLEMENTS AND JUDGMENTS**

- (a) Defence Costs. Once the Retention is exhausted, the Insurer shall, within seventy-five (75) days of the Insurer's receipt of an invoice, reimburse the Insureds for any reasonable Defence Costs previously incurred and set forth in such invoice. For the avoidance of doubt, and notwithstanding anything in the Acquisition Agreement or this Policy to the contrary, (i) reasonable Defence Costs are part of Loss and are subject to the Limit of Liability and (ii) unreasonable Defence Costs shall not constitute Loss hereunder. Once the Insureds have provided reasonable support for their Defence Costs, the burden shall be on the Insurer to demonstrate that such Defence Costs are unreasonable.
- (b) Third Party Demands and Claims Participation. The Insurer does not assume any duty to defend the Insureds with respect to any Third Party Demand or otherwise. The Insureds shall, to the extent not prohibited by the Acquisition Agreement, defend and contest any Third Party Demand with counsel consented to by the Insurer in writing (such consent not to be unreasonably withheld, conditioned or delayed); provided that such consent shall

not be required for any representation of the Insureds by Torys LLP. The Insurer, at its sole expense, shall be entitled to effectively associate in, using reasonable efforts to not allow such association to unduly interfere with or unduly impede, the defense, prosecution, negotiation and settlement of any Third Party Demand or any matter that is reasonably likely to involve the Insurer or this Policy to the same extent that any Insured has such rights pursuant to the Acquisition Agreement; provided that, subject to the consent rights expressly given to the Insurer in Sections 6(a) through (c) of this Policy, the Insureds shall control all decisions with respect to the defence, prosecution, negotiation and settlement of any Third Party Demand.

- (c) Settlements and Judgments. With respect to any Third Party Demand, only Loss resulting from settlements or consent judgments consented to by the Insurer in writing (such consent not to be unreasonably withheld, conditioned or delayed), or resulting from a final judgment by a court of competent jurisdiction, an award of an arbitrator or arbitration panel or an order of a governmental or regulatory agency or authority shall deplete the Retention or be recoverable as Loss, provided, however, that consent by the Insurer shall not be required if the amount of such settlement or consent judgment together with any amounts previously reducing the Retention plus Loss reasonably anticipated in respect of pending claims, together with reasonably anticipated Defence Costs, would not exceed the first \$750,000 of the Retention, in the aggregate.
- (d) Territory. This Policy extends to Breaches and Losses taking place or being incurred, as applicable, anywhere in the world.

#### **SECTION 7. CERTAIN COVENANTS OF THE INSURED**

- (a) Mitigation. With respect to any Loss or potential Loss, the Insureds shall, and to the extent reasonably possible shall cause their respective Affiliates to, take all commercially reasonable actions required by applicable law to mitigate such Loss or potential Loss after any Specified Person acquiring Actual Knowledge of any event that would reasonably be expected to give rise to any Losses; provided that the failure of any Insured to so mitigate shall only reduce the rights of the Insureds to recover for Loss under this Policy to the extent of the Loss that would have been avoided by such mitigation and the burden of proving such amount shall be on the Insurer; provided further that the Insureds shall not be required or obligated to seek recovery or recourse under the Acquisition Agreement. The reasonable costs of efforts to mitigate shall be considered Losses under this Policy, subject to the terms, conditions and exclusions of this policy.
- (b) Cooperation and Information. In addition to the obligations set forth in Section 5 of this Policy, the Insureds shall, and to the extent reasonably possible shall use commercially reasonable efforts to cause their respective Affiliates to, reasonably cooperate with the Insurer and, in a timely manner, provide the Insurer with reasonably complete and accurate information in the possession of the Insureds that the Insurer reasonably requests in connection with any Claim Notice or other matter relating to this Policy. Such cooperation shall include, upon the Insurer's written request, given reasonably in advance, and at the Insurer's cost and expense, subject to the terms of existing confidentiality agreements, permitting the Insurer to examine, photocopy and/or take extracts during normal business hours from the books, records, data, files and information of the Insureds and their respective Affiliates and reasonable access to the Insureds' and their respective Affiliates' representatives for interviews and depositions under oath during normal business hours and at reasonable locations in a manner that does not unreasonably interfere with the Insureds' business. The Insurer and the Insureds shall cooperate in good faith to preserve the privileged status of any information provided pursuant to this Section 7(b); provided that, if after such good faith cooperation the Insureds reasonably determine that the privileged status of information cannot be

preserved, then the Insureds shall not be required to disclose the portion of such information for which the privileged status cannot be preserved.

- (c) Acquisition Agreement. The Insureds shall not, and to the extent reasonably possible shall cause their respective Affiliates not to, (i) amend, supplement or rescind the Acquisition Agreement (or enter into any agreement or arrangement that would have such an effect), (ii) give any consent or waiver thereunder or (iii) grant any authority to take any of the actions in clauses (i) or (ii) above, in each case, without the prior written consent of the Insurer (such consent not to be unreasonably withheld, conditioned or delayed) if such amendment, supplement, rescission, agreement, arrangement, consent, waiver or grant would actually prejudice the Insurer or its rights or liability under this Policy.
- (d) Maintenance of Due Diligence Records. Until the later of 90 days after (i) the expiration of the Policy Period and (ii) to the extent that there are any pending claims or disputes, the final resolution of all claims or disputes relating to this Policy, the Insureds shall, and to the extent reasonably possible shall cause their respective Affiliates to, use commercially reasonable efforts to maintain one copy (which may be an electronic copy) or to instruct its advisors to retain such a copy of all of their respective materials relating to the due diligence conducted in connection with the Acquisition; provided that the Insureds may destroy documents in the ordinary course of their business consistent with past practices and their document retention guidelines so long as such destruction is not done with the intent to harm the Insurer.
- (e) Other Insurance Coverage. The Insurer acknowledges that (i) the insurance coverage in place at the Company Entities was commercially reasonable at the time of Closing and (ii) any modification to such insurance coverage done in the ordinary course of such business is commercially reasonable. The coverage provided under this Policy shall, subject to Section 3(c) of this Policy, be excess coverage of any other valid and collectible insurance policy with respect to any loss arising out of or resulting from the underlying facts and circumstances of any (i) Breach or matter that would reasonably be expected to give rise to a Breach, (ii) Third Party Demand and/or (iii) Loss. The Named Insured shall investigate, and shall discuss with the Insurer, whether any bond, indemnity or other insurance policy is applicable or available with respect to the matters described in any Claim Notice; provided that any dispute as to the applicability of, or delay in obtaining, coverage pursuant such bond, indemnity or other insurance policy shall not be a basis for refusal of payment hereunder. Without limiting any obligation of the Insured pursuant to Section 7(a) of this Policy, the Named Insured shall not be obligated to first pursue claims for Breach against any other insurance policy or other source of recovery prior to being eligible for any payment under this Policy and if there is a dispute as to whether the coverage under this Policy shall be excess of other coverage or if other coverage shall be excess of the coverage under this Policy, the Insured may recover under this Policy and the Insurer shall be subrogated to the extent provided in Section 8 of this Policy to the Insured's rights to such other coverage.
- (f) Reimbursements. After any payment by the Insurer in connection with this Policy, (i) if it is finally determined pursuant to the procedures set forth in Section 9 of this Policy that all or any portion of the amount paid did not constitute Loss or is excluded from coverage under this Policy or (ii) if any of the Insureds or their respective Affiliates actually receive amounts from any insurance, indemnification or other source, which, when netted against any cost of recovery or other Loss, reduces the amount of Loss actually incurred, then the Insureds or such Affiliate shall promptly, and in no event later than 60 days after such determination or receipt, but subject to the provisions of Section 3(c) of this Policy, reimburse or refund to the Insurer the amount overpaid. For the avoidance of doubt, to the extent the remaining Limit of Liability was depleted in respect of any payment by the Insurer pursuant to the immediately preceding sentence, the remaining Limit of Liability



shall, following its reimbursement or refund to the Insurer, immediately be increased by such amount.

- (g) Failure to Comply. Any failure of the Insureds to comply with any of the provisions of Sections 5, 7 or 8 of this Policy shall not relieve the Insurer of its obligations under this Policy except to the extent (and then only to the extent) the Insurer is actually prejudiced thereby; provided, however, that in no event may a Claim Notice be delivered to the Insurer later than thirty (30) days following the Expiry Date.

## SECTION 8. SUBROGATION

- (a) Subject to Section 8(b), after a Specified Person has Actual Knowledge of any (i) Breach or matter that would reasonably be expected to give rise to a Breach, (ii) Third Party Demand and/or (iii) Loss, the Insureds shall take commercially reasonable steps to preserve (i) any indemnification or other rights against any other person or entity for such Loss and (ii) preserve the Insurer's subrogation rights with respect thereto; provided that in no event shall the Insureds waive any subrogation rights of Insurer under the Acquisition Agreement in respect of Intentional Fraud (as defined in the Acquisition Agreement) (including, for the avoidance of doubt, any such subrogation rights against the Seller in respect of Intentional Fraud) or in respect of any changes, modifications, or amendments to, or waivers of, the terms of any Other PSA (as defined in the Acquisition Agreement) which results in a breach of the Acquisition Agreement.
- (b) Except as provided in Sections 8(c) and 8(d) below, in the event and to the extent of any payment by the Insurer in connection with this Policy, the Insurer shall be subrogated to, and the Insureds shall assign to the Insurer, all of the Insureds' respective rights of recovery against any person or entity (other than (i) the Company Entities, (ii) the Seller, (iii) any Insured (other than any Insured who held a direct or indirect ownership interest in the Seller prior to Closing) or (iv) any direct or indirect parent, subsidiary, Affiliate, shareholder, member, director, officer or partner (or the functional equivalent of any such position), of any of the foregoing, except, in the case of the foregoing clauses (iii) and (iv), if such entity or individual was affiliated with the Company Entities or any of their Affiliates prior to the Closing and is not an Affiliate of any Company Entities following the Closing) based upon, arising out of or relating to such payment. With respect to subrogation claims against customers, clients or suppliers of any person or entity described in clauses (i) through (iii) of the preceding sentence, the Insurer shall not be entitled to subrogate against such customers, clients or suppliers for Losses without the express prior written consent of the Named Insured (such consent not to be unreasonably withheld, conditioned or delayed) until the aggregate amount of all such Losses exceeds \$600,000 ("Subrogation Threshold"); provided that after such Losses exceed the Subrogation Threshold, the Insurer shall be permitted to subrogate against such customers (except with respect to sales taxes), clients or suppliers without the consent of the Named Insured and the Insurer shall only be required to provide notice to the Named Insured of its intent to institute such subrogation claim. If the Insureds are unable to assign such rights to the Insurer, then, instead of assigning such rights to the Insurer, the Insureds shall allow the Insurer to bring suit in their name. The Insureds shall, and to the extent reasonably possible shall cause their respective subsidiaries to, cooperate with the Insurer and use commercially reasonable efforts (including execution of any papers and the taking of other actions as the Insurer may reasonably request) to secure and further such subrogation and assignment rights, all at the sole cost and expense of the Insurer. In no event shall the Insureds or their respective Affiliates knowingly waive any rights in a manner that would reasonably be expected to adversely affect any such subrogation or assignment rights.
- (c) The Insurer waives and releases all rights of subrogation or contribution, or rights acquired by assignment against: (i) the Company Entities and (ii) any Insured.

- (d) The Insurer hereby agrees to waive any right of subrogation arising hereunder against the Seller and any direct or indirect parent, subsidiary, Affiliate, shareholder, member, director, officer or partner (or the functional equivalent of such position) of the Seller, except (i) in instances of Intentional Fraud by the Seller in connection with the Acquisition Agreement and the transactions contemplated thereby and (ii) in instances of any changes, modifications, or amendments to, or waivers of, the terms of any Other PSA (as defined in the Acquisition Agreement) which results in a breach of the Acquisition Agreement.
- (e) Any amounts recovered by the Insurer as a result of the exercise of subrogation rights shall be applied in the following order: (i), to reimburse the Insurer for any costs and expenses incurred in connection with such recovery; (ii) to reimburse the Insured for any Loss borne by it in excess of the Limit of Liability under this Policy (but for avoidance of doubt, only to the extent of such excess); (iii) to reimburse the Insurer in respect of any Loss which the Insurer has paid under this Policy; and (iv) to reimburse the Insureds in respect of any Loss which the Insureds have retained by reason of the Retention. For the avoidance of doubt, the remaining Limit of Liability shall immediately be increased by any amount paid to the Insurer pursuant to clause (iii) of the precedent sentence.
- (f) The Insurer shall bear all costs and expenses incurred in connection with any subrogation efforts or actions taken by the Insurer and the Insurer shall promptly reimburse the Insureds, and their Affiliates for any reasonable costs and expenses incurred in connection with any subrogation efforts in connection with this Section. Notwithstanding the foregoing, in the event of any cross-claim, counterclaim or third party demand asserted against the Insured in connection with any assignment or subrogation claim pursued by the Insurer, which counterclaim or third party demand arises out of the same or similar facts and allegations out of which such subrogation or assignment arose or would itself lead to a Breach, the Insurer shall, subject to the terms and conditions of this Policy (including without limitation, the Retention, Limit of Liability and exclusions), indemnify the Insureds (including, but not limited to the reimbursement for Defense Costs in accordance with Section 6(a) hereof) with respect to such cross-claim, counterclaim or third party demand. Except for the foregoing, the Insureds shall defend at their own expense, and satisfy any liability with respect to, any counterclaim or third party demand asserted in connection with any subrogation or assignment claim pursued by the Insurer, except to the extent such counterclaim or third party demand, if determined adversely to the Insureds or their Affiliates, would reasonably be expected to give rise to Loss, in which case the Insurer shall, subject to the terms and conditions of this Policy (including without limitation, the Retention, Limit of Liability and exclusions) indemnify the Insureds (including, but not limited to the reimbursement for Defense Costs in accordance with Section 6(a) hereof) with respect to such counterclaim or third party demand and satisfy any liability with respect to Loss covered hereunder.

**SECTION 9. ARBITRATION; CHOICE OF LAW; INTERPRETATION AND RULES OF CONSTRUCTION**

- (a) It is hereby understood and agreed that all disputes or differences which may arise under this Policy, whether arising before or after termination of this Policy, including any determination of the amount of Loss, shall be referred to and finally resolved by arbitration under the Ontario *Arbitration Act, 1991*, S.O., 1991, c. 17, and shall be conducted in accordance with its provisions, rules and regulations. The place of the arbitration shall be the City of Toronto in the Province of Ontario. The language of the arbitration shall be English. With regard to any specific arbitration, there shall be three arbitrators. The arbitrators shall be disinterested individuals having knowledge of the legal, corporate or insurance issues relevant to the matters in dispute. The Insurer shall appoint one arbitrator and the Insureds shall appoint one arbitrator. The third arbitrator shall be the chairman and shall be appointed by agreement of the two party-appointed

arbitrators. The written decision of the arbitrators shall be provided to both parties and shall be binding on them. The arbitrators' award shall not include costs or legal fees or other costs and disbursements. Each party shall bear equally the expenses of the arbitration.

- (b) The construction, validity and performance of this Policy shall be interpreted under the substantive laws of the State of Delaware, without reference to conflicts-of-laws principles that would require or allow for the application of the law of any other jurisdiction. Nothing in this Section 9(b) shall affect or override the definition and use of "Most Favorable Jurisdiction" in this Policy. In connection with any dispute hereunder, no award or judgment, including any award or judgment of expenses or costs, shall be entered or payable in an amount exceeding the remaining Limit of Liability.
- (a) This Policy shall be construed in the manner most consistent with the relevant terms and conditions of this Policy without regard to authorship of language and without any presumption in favor of either party. The descriptions in the headings of this Policy are solely for convenience, and form no part of the interpretation or the terms and conditions of coverage. The words "include" or "including" in this Policy shall be deemed to be followed by the words "without limitation".

#### **SECTION 10. ACKNOWLEDGEMENTS AND REPRESENTATIONS**

- (a) By accepting this Policy, the Named Insured, on behalf of itself and each of the Additional Insureds, acknowledges that (i) the Named Insured was represented by competent and experienced legal counsel of its choice in connection with this Policy, and (ii) the Insureds are purchasing the coverage described in this Policy with full knowledge and acceptance of its terms and conditions without any reliance on any representation, warranty, advice or other statement not set forth in this Policy by the Insurer or any of its representatives or advisors regarding any legal, tax or accounting implications or requirements of the coverage described in this Policy.
- (b) By accepting this Policy, the Named Insured acknowledges to the Insurer that the Insurer shall not be liable in any manner for any action taken or not taken in reliance upon any notice given by the Named Insured.

#### **SECTION 11. SERVICE OF SUIT**

- (a) Subject to any provision in this Policy requiring or allowing for arbitration, in the event of failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer and the Insured shall submit to the jurisdiction of the Courts in the Province of Ontario, located in the City of Toronto. Nothing in this Section 11 constitutes or should be understood to constitute a waiver of the Insurer's rights to commence or remove an action to a federal court located in the Province of Ontario Canada, as permitted by the laws of Canada. It is further agreed that service of process in such suit may be made upon General Counsel, AIG Insurance Company of Canada, 120 Bremner Boulevard, Suite 2200, Toronto, Ontario, Canada M5J 0A8, or his or her representative, and that in any suit instituted against the Insurer upon this Policy, the Insurer will abide by the final decision of such court or of any appellate court in the event of any appeal.

#### **SECTION 12. OTHER MATTERS**

- (a) Cancellation and Renewal. This Policy is non-renewable. Subject to Section 12(e) below, this Policy is non-cancelable, except in the event that the Insureds fail to pay the Premium within thirty (30) days of Inception.

- (b) Waiver and Amendment. The terms of this Policy may not be waived or amended except pursuant to a written endorsement executed and issued by the Insurer and consented to by the Named Insured.
- (c) Assignment. This Policy and the rights and obligations hereunder are not assignable by the Insureds without the prior written consent of the Insurer (such consent not to be unreasonably withheld, conditioned or delayed); provided that, with prior notice to the Insurer, this Policy and the rights and obligations hereunder may be assigned by the Named Insured (i) to a subsidiary or an Affiliate of the Named Insured, (ii) to a subsequent purchaser, assignee, transferee or successor in interest, whether by amalgamation, merger, stock or asset acquisition of the Named Insured, or (iii) as collateral security to any creditor or lender in respect of borrowed monies (it being understood that any such assignment shall become effective upon written notice to the Insurer); provided, however, that no assignment of this Policy under this Policy shall otherwise alter the terms of coverage for a pending or threatened claim or to create multiple claims or multiple payees for the same claim. Notwithstanding anything to the contrary in this Policy, in no event may an assignee of the Named Insured be an entity formed in a jurisdiction outside of Canada or an individual that is not a citizen of Canada. The Insurer may assign this Policy to another insurer that is a subsidiary or affiliate of the Insurer without the consent of the Insureds provided such other insurer's financial strength rating (AM Best or Standard & Poor's) is equal to or better than that of the Insurer at the time of such assignment.
- (d) Entire Agreement. This Policy (together with all of the documents, amendments and schedules referenced herein, but solely to the extent reference herein) constitutes the entire agreement and understanding concerning the subject matter of this Policy and supersedes any prior oral or written agreements, discussions or other communications entered into between the Insurer and/or its Affiliates (including their respective representatives), on the one hand, and the Insureds and/or their respective Affiliates (including their respective representatives), on the other hand, concerning the subject matter of this Policy.
- (e) Statutory Conditions. It is hereby understood and agreed that only in the event that this Policy is made or deemed to be made in the provinces of Alberta, British Columbia or Manitoba pursuant to the provisions of the Insurance Acts of Alberta, British Columbia or Manitoba, the following "Change of Interest", "Termination of Insurance", "Notice" and "Statute of Limitation" provisions will apply to this Policy:
- (i) Change of Interest. The Insurer is liable for covered loss or damage occurring after an authorized assignment under the *Bankruptcy and Insolvency Act (Canada)* or a change of title by succession, by operation of law or by death.
- (ii) Termination of Insurance. This Policy may be terminated by the Named Insured at any time on request. If this Policy is terminated by the Named Insured, the Insurer must refund as soon as practicable the excess of premium actually paid by the Named Insured over the short rate Premium for the expired time specified in the Policy, but in no event may the short rate premium for the expired time be less than any minimum retained premium specified in this Policy.
- (iii) Notice. Written notice to the Insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the Insurer in the province. Written notice to the Insured may be personally delivered at, or sent by registered mail addressed to, the Insured's last known address as provided to the Insurer by the Insured.

- (iv) Statute of Limitation. Every action or proceeding against the Insurer for the recovery of insurance money payable under this Policy is absolutely barred unless commenced within the time set out in the Insurance Act.
  
- (f) Facsimile and Email Signatures. Delivery of an executed counterpart of a signature page to this Policy by facsimile, electronic transmission or scanned pages shall be effective as delivery of a manually executed counterpart signature page to this Policy.

*[Signature Page Follows]*

By signing below, the President and Chief Executive Officer of the Insurer agrees on behalf of the Insurer to all the terms of this Policy.

**[ \*\*\* Cut and paste Insurer's signature block here \*\*\* ]**

This Policy shall not be valid unless signed at the time of issuance by an authorized representative of the Insurer, either below or on the Declarations page of the Policy.

**Exhibit A**

**Acquisition Agreement**

[Attached]

**Exhibit B**

**Form of Claim Notice**

Reference is hereby made to the Representations and Warranties Insurance Policy, Policy No. 17712134, issued by AIG Insurance Company of Canada to the Insureds (the "Policy"). All capitalized terms used but not defined in this Claim Notice shall have the respective meanings assigned thereto in the Policy.

Pursuant to the terms and conditions of the Policy, the undersigned Named Insured hereby reports that (check all that apply):

- a) \_\_\_\_\_ Preliminary Notice. A Specified Person has Actual Knowledge of a Breach or a matter under investigation by such Specified Person which would reasonably be expected to give rise to a Breach. Attached hereto is a reasonably complete description, after reasonable inquiry, of such Breach or matter, to the extent known to a Specified Person, including without limitation the representations and/or warranties which may have been breached, a description of such Breach or possible Breach, the date such Specified Person first learned of such Breach, fact or circumstance, and the amount of Loss which could reasonably be expected to result, in each case to the extent known to the Named Insured.
- b) \_\_\_\_\_ Third Party Demand. A Specified Person has Actual Knowledge of a Third Party Demand that was asserted against \_\_\_\_\_ by \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ on \_\_\_\_\_. Attached hereto is a reasonably complete description, after reasonable inquiry, of all material facts, circumstances and issues, to the extent known, relating to such Third Party Demand, including without limitation the representations and/or warranties which allegedly contain a Breach, the facts alleged in the Third Party Demand, the date such Specified Person first learned of such Third Party Demand, and the amount of Loss which could reasonably be expected to result, in each case to the extent known to the Named Insured.
- c) \_\_\_\_\_ Loss. A \$ \_\_\_\_\_ Loss occurred on \_\_\_\_\_. Attached hereto is a reasonably complete description, after reasonable inquiry, of all material facts, circumstances and issues, to the extent known, relating to such Loss, including without limitation the representations and/or warranties which allegedly contain a Breach and the date a Specified Person first learned of such Loss, in each case to the extent known to the Named Insured.

[\*\*\*Insert Named Insured\*\*\*]

By: \_\_\_\_\_  
Name:  
Title:



**Exhibit C**

**Deal Team Members**

- Steven Zucchet
- Marco Fontana
- Jennifer Guerard



**Exhibit D-1**

**Inception No Claims Declaration**

[Attached]

**Exhibit D-2**

**Closing No Claims Declaration**

**Exhibit E**

**Ancillary Documents**

- The certificate delivered by Seller pursuant to Section 2.4(a)(iv) of the Acquisition Agreement solely with regard to the certification of the conditions set forth in Section 6.3(a) of the Acquisition Agreement.

**CUSTOMER ADVISORY  
REGARDING THE ENFORCEMENT OF  
ECONOMIC EMBARGOES AND TRADE SANCTIONS**

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This Trade Sanction Advisory is part of **AIG Insurance Company of Canada** comprehensive compliance program and is meant to serve as a reminder of the existing applicable legal requirements with respect to Trade Sanctions.

Your rights as a policyholder and payments to you, any insured or claimant, for loss under this policy may be affected by the administration and enforcement of economic embargoes and trade sanctions applicable to you, any insured, claimant and/or to the insurer and their respective controlling entities (hereinafter "Trade Sanctions").

#### **WHAT IS AN ECONOMIC EMBARGO AND/OR TRADE SANCTION**

Trade Sanctions involve the imposition by a country of legal measures to restrict or prohibit trade, services or other economic activity with a target country, entity or individual. For example, the Parliament of Canada has enacted legislation authorizing the imposition of Trade Sanctions through the *United Nations Act*, the *Special Economic Measures Act* and some provisions of the *Export and Import Permits Act*.

Depending upon the identity, domicile, place of incorporation or nationality of the policyholder, insured, claimant, insurer, or the parent company and ultimate controlling entity of the policyholder, insured, claimant or insurer, or the country where the claim arises, Trade Sanctions of foreign countries, including the United States of America, may be applicable. The application of sanctions could necessitate the seizure or freezing of property, including but not limited to the payment of a claim.

Existing Trade Sanctions can be amended, and new Trade Sanctions can be imposed, at any time.

#### **OBLIGATIONS PLACED ON US AS A RESULT OF TRADE SANCTIONS**

If we determine that you or any insured, additional insured, loss payee, or claimant are on a prohibited list or are connected to a sanctioned country, entity or individual, or a prohibited activity, as designated by the relevant Trade Sanction, we may be required to comply with the requirements of the applicable Trade Sanction, which by way of example, may include blocking or "freezing" property and payment of any funds and the reporting of such occurrences to the relevant authorities within the prescribed time periods, if any.

#### **POTENTIAL ACTIONS BY US**

Depending upon the requirements of the relevant Trade Sanction:

1. We may be required to immediately cancel your coverage effective on the day that we determine that we have transacted business with an individual or entity associated with your policy on a prohibited list or connected to a sanctioned country as described in the relevant Trade Sanction.
2. If we cancel your coverage, you may not receive a return premium unless permitted pursuant to the relevant Trade Sanction. All blocked or frozen funds will be placed in an interest bearing blocked account established on the books of a financial institution.
3. We may not pay a claim, accept premium or exchange monies or assets of any kind to or with individuals, entities or companies (including a bank) on a prohibited list or connected to, or carrying on business in, a sanctioned country as designated by the relevant Trade Sanction. Furthermore, we may not defend or provide any other benefits under your policy to individuals, entities or companies on a prohibited list or connected to, or carrying on business in, a sanctioned country as designated by the relevant Trade Sanction.

**AVIS À LA CLIENTIÈLE  
CONCERNANT L'APPLICATION DES  
EMBARGOS ÉCONOMIQUES ET DES SANCTIONS COMMERCIALES**

---

Le présent avis concernant les sanctions commerciales fait partie du programme intégré de conformité de Compagnie d'Assurance AIG du Canada et vise à rappeler les exigences juridiques actuelles applicables quant aux sanctions commerciales.

Vos droits à titre de titulaire de police et les paiements qui sont dus à vous, à un assuré ou à un demandeur, à la suite d'un sinistre aux termes de la présente police, peuvent être touchés par l'administration et l'application d'embargos économiques et de sanctions commerciales qui sont applicables contre vous ou contre un assuré, un demandeur ou l'assureur et leurs entités contrôlantes (ci-après appelées les « sanctions commerciales »).

**DÉFINITION D'UN EMBARGO ÉCONOMIQUE OU D'UNE SANCTION COMMERCIALE**

Un pays impose des sanctions commerciales lorsqu'il prend des mesures juridiques pour restreindre ou interdire le commerce, les services ou d'autres activités économiques avec un pays, une entité ou une personne en particulier. Par exemple, le Parlement du Canada a adopté une législation permettant l'imposition de sanctions commerciales en vertu de la *Loi sur les Nations Unies*, de la *Loi sur les mesures économiques spéciales* et de certaines dispositions de la *Loi sur les licences d'exportation et d'importation*.

Selon l'identité, le domicile, le lieu de constitution ou la nationalité du titulaire de police, de l'assuré, du demandeur, de l'assureur ou de la société mère et de l'entité contrôlante finale du titulaire de police, de l'assuré, du demandeur ou de l'assureur, ou selon le pays où le sinistre a eu lieu, des sanctions commerciales imposées par des pays étrangers, notamment les États-Unis d'Amérique, peuvent s'appliquer. L'application de sanctions pourrait nécessiter la saisie ou le gel d'un bien, notamment de l'indemnité d'assurance.

Les sanctions commerciales actuelles peuvent être modifiées et de nouvelles sanctions commerciales peuvent être imposées à tout moment.

**OBLIGATIONS NOUS INCOMBANT EN RAISON DE SANCTIONS COMMERCIALES**

Si vous ou un assuré, un assuré supplémentaire, un bénéficiaire ou un demandeur êtes sur une liste d'interdiction ou êtes liés à un pays, à une entité ou à une personne faisant l'objet d'une sanction ou à une activité interdite, visé par la sanction commerciale pertinente, nous pourrions devoir nous conformer aux exigences de la sanction commerciale applicable, qui, par exemple, peut inclure le blocage ou le gel d'un bien ou du paiement de fonds et la déclaration de cette mesure aux autorités compétentes dans les délais prescrits, le cas échéant.

**MESURES ÉVENTUELLES DE NOTRE PART**

Selon les exigences de la sanction commerciale pertinente :

1. Nous pourrions être tenus de résilier immédiatement votre couverture, avec prise d'effet le jour où nous estimons que nous avons fait affaires avec une personne ou une entité associée à votre police qui se trouve sur une liste d'interdiction ou liée à un pays visé par la sanction commerciale pertinente.
2. Si nous résilions votre couverture, vous ne recevrez peut-être pas un remboursement de prime si la sanction commerciale applicable ne le permet pas. Tous les fonds bloqués ou gelés seront placés dans un compte bloqué portant intérêt ouvert auprès d'une institution financière.

3. Il est possible que nous ne puissions pas régler un sinistre, accepter une prime ou échanger de l'argent ou des biens de quelque sorte que ce soit lorsque la personne, l'entité ou la société intéressée (y compris une banque) se trouve sur une liste d'interdiction, est liée à un pays sanctionné ou exerce des activités dans un pays visé par la sanction commerciale pertinente. De plus, il pourrait nous être impossible de défendre ou d'indemniser par ailleurs aux termes de votre police des personnes, des entités ou des sociétés qui se trouvent sur une liste d'interdiction, sont liées à un pays sanctionné ou exercent des activités dans un pays visé par la sanction commerciale pertinente.



**Exhibit B-1**

**Inception No Claims Declaration**

The undersigned, the Director and President of Moby GP Canada Corporation acting on behalf of the Named Insured, hereby certifies as of immediately prior to Inception:

1. I have read and understand the Acquisition Agreement and the written due diligence reports referenced in paragraph 4 below.
2. After reasonable inquiry of the Deal Team Members, none of the Deal Team Members has Actual Knowledge of any Breach except, as provided below:

a. \_\_\_\_\_; and

b. \_\_\_\_\_.

3. I, on behalf of the Insureds, acknowledge that the Policy referenced below excludes any Loss arising out of, relating to or resulting from any material inaccuracy in this No Claims Declaration or any disclosed Breach.

4. The Insurer has been provided with true, complete and correct copies of all written due diligence reports prepared by the Insureds and/or their advisors in connection with the Acquisition.

All capitalized terms used but not defined in this No Claims Declaration shall have the respective meanings assigned to thereto in the Representations and Warranties Insurance Policy No. 17712134, issued by AIG Insurance Company of Canada to the Insureds.

Sign Name:  \_\_\_\_\_

Print Name: John Knowlton

Title: President

Sign Name:  \_\_\_\_\_

Print Name: Steven Zucchet

Title: Director

Date: 08-08-2018

**Exhibit B-2**

**Closing No Claims Declaration**

The undersigned, the \_\_\_\_\_ of the Named Insured, hereby certifies as of immediately prior to Closing:

1. After reasonable inquiry of the Deal Team Members, the Deal Team Members have read and understand the Acquisition Agreement, any Ancillary Documents delivered as of the date hereof and the written due diligence reports referenced in paragraph 4 below.
2. After reasonable inquiry of the Deal Team Members immediately prior to Closing, none of the Deal Team Members has Actual Knowledge of any Interim Breach, except, as provided below:
  - a. \_\_\_\_\_; and
  - b. \_\_\_\_\_.
3. I, on behalf of the Insureds, acknowledge that the Policy referenced below excludes any Loss arising out of, relating to or resulting from any material inaccuracy in this No Claims Declaration or any disclosed Interim Breach in paragraph 2 above.
4. The Insurer has been provided with true, complete and correct copies of all written due diligence reports prepared by the Insureds and/or their advisors in connection with the Acquisition.
5. I, on behalf of the Insureds, confirm that none of the Deal Team Members has Actual Knowledge of any matter that would reasonably be expected to cause any conditions set forth in Article VI of the Acquisition Agreement to not be satisfied.

All capitalized terms used but not defined in this No Claims Declaration shall have the respective meanings assigned to thereto in the Representations and Warranties Insurance Policy No. 17712134, issued by AIG Insurance Company of Canada to the Insureds.

Sign Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Date:** \_\_\_\_\_

**This Agreement provides only a summary of conditional coverage. Please refer to the Policy for the actual terms, conditions and exclusions of coverage.**

**Draft Acquisition Agreement**

**Exhibit C**

**This Agreement provides only a summary of conditional coverage. Please refer to the Policy for the actual terms, conditions and exclusions of coverage.**

**CUSTOMER ADVISORY  
REGARDING THE ENFORCEMENT OF  
ECONOMIC EMBARGOES AND TRADE SANCTIONS**

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This Trade Sanction Advisory is part of **AIG Insurance Company of Canada** comprehensive compliance program and is meant to serve as a reminder of the existing applicable legal requirements with respect to Trade Sanctions.

Your rights as a policyholder and payments to you, any insured or claimant, for loss under this policy may be affected by the administration and enforcement of economic embargoes and trade sanctions applicable to you, any insured, claimant and/or to the insurer and their respective controlling entities (hereinafter "Trade Sanctions").

**WHAT IS AN ECONOMIC EMBARGO AND/OR TRADE SANCTION**

Trade Sanctions involve the imposition by a country of legal measures to restrict or prohibit trade, services or other economic activity with a target country, entity or individual. For example, the Parliament of Canada has enacted legislation authorizing the imposition of Trade Sanctions through the *United Nations Act*, the *Special Economic Measures Act* and some provisions of the *Export and Import Permits Act*.

Depending upon the identity, domicile, place of incorporation or nationality of the policyholder, insured, claimant, insurer, or the parent company and ultimate controlling entity of the policyholder, insured, claimant or insurer, or the country where the claim arises, Trade Sanctions of foreign countries, including the United States of America, may be applicable. The application of sanctions could necessitate the seizure or freezing of property, including but not limited to the payment of a claim.

Existing Trade Sanctions can be amended, and new Trade Sanctions can be imposed, at any time.

**OBLIGATIONS PLACED ON US AS A RESULT OF TRADE SANCTIONS**

If we determine that you or any insured, additional insured, loss payee, or claimant are on a prohibited list or are connected to a sanctioned country, entity or individual, or a prohibited activity, as designated by the relevant Trade Sanction, we may be required to comply with the requirements of the applicable Trade Sanction, which by way of example, may include blocking or "freezing" property and payment of any funds and the reporting of such occurrences to the relevant authorities within the prescribed time periods, if any.

**POTENTIAL ACTIONS BY US**

Depending upon the requirements of the relevant Trade Sanction:

1. *We may be required to immediately cancel your coverage effective on the day that we determine that we have transacted business with an individual or entity associated with your policy on a prohibited list or connected to a sanctioned country as described in the relevant Trade Sanction.*
2. *If we cancel your coverage, you may not receive a return premium unless permitted pursuant to the relevant Trade Sanction. All blocked or frozen funds will be placed in an interest bearing blocked account established on the books of a financial institution.*
3. *We may not pay a claim, accept premium or exchange monies or assets of any kind to or with individuals, entities or companies (including a bank) on a prohibited list or connected to, or carrying on business in, a sanctioned country as designated by the relevant Trade Sanction. Furthermore, we may not defend or provide any other benefits under your policy to individuals, entities or companies on a prohibited list or connected to, or carrying on business in, a sanctioned country as designated by the relevant Trade Sanction.*

**This Agreement provides only a summary of conditional coverage. Please refer to the Policy for the actual terms, conditions and exclusions of coverage.**

**AVIS À LA CLIENTÈLE  
CONCERNANT L'APPLICATION DES  
EMBARGOS ÉCONOMIQUES ET DES SANCTIONS COMMERCIALES**

---

Le présent avis concernant les sanctions commerciales fait partie du programme intégré de conformité de Compagnie d'Assurance AIG du Canada et vise à rappeler les exigences juridiques actuelles applicables quant aux sanctions commerciales.

Vos droits à titre de titulaire de police et les paiements qui sont dus à vous, à un assuré ou à un demandeur, à la suite d'un sinistre aux termes de la présente police, peuvent être touchés par l'administration et l'application d'embargos économiques et de sanctions commerciales qui sont applicables contre vous ou contre un assuré, un demandeur ou l'assureur et leurs entités contrôlantes (ci-après appelées les « sanctions commerciales »).

**DÉFINITION D'UN EMBARGO ÉCONOMIQUE OU D'UNE SANCTION COMMERCIALE**

Un pays impose des sanctions commerciales lorsqu'il prend des mesures juridiques pour restreindre ou interdire le commerce, les services ou d'autres activités économiques avec un pays, une entité ou une personne en particulier. Par exemple, le Parlement du Canada a adopté une législation permettant l'imposition de sanctions commerciales en vertu de la *Loi sur les Nations Unies*, de la *Loi sur les mesures économiques spéciales* et de certaines dispositions de la *Loi sur les licences d'exportation et d'importation*.

Selon l'identité, le domicile, le lieu de constitution ou la nationalité du titulaire de police, de l'assuré, du demandeur, de l'assureur ou de la société mère et de l'entité contrôlante finale du titulaire de police, de l'assuré, du demandeur ou de l'assureur, ou selon le pays où le sinistre a eu lieu, des sanctions commerciales imposées par des pays étrangers, notamment les États-Unis d'Amérique, peuvent s'appliquer. L'application de sanctions pourrait nécessiter la saisie ou le gel d'un bien, notamment de l'indemnité d'assurance.

Les sanctions commerciales actuelles peuvent être modifiées et de nouvelles sanctions commerciales peuvent être imposées à tout moment.

**OBLIGATIONS NOUS INCOMBANT EN RAISON DE SANCTIONS COMMERCIALES**

Si vous ou un assuré, un assuré supplémentaire, un bénéficiaire ou un demandeur êtes sur une liste d'interdiction ou êtes liés à un pays, à une entité ou à une personne faisant l'objet d'une sanction ou à une activité interdite, visé par la sanction commerciale pertinente, nous pourrions devoir nous conformer aux exigences de la sanction commerciale applicable, qui, par exemple, peut inclure le blocage ou le gel d'un bien ou du paiement de fonds et la déclaration de cette mesure aux autorités compétentes dans les délais prescrits, le cas échéant.

**MESURES ÉVENTUELLES DE NOTRE PART**

Selon les exigences de la sanction commerciale pertinente :

- 1. Nous pourrions être tenus de résilier immédiatement votre couverture, avec prise d'effet le jour où nous estimons que nous avons fait affaires avec une personne ou une entité associée à votre police qui se trouve sur une liste d'interdiction ou liée à un pays visé par la sanction commerciale pertinente.*
- 2. Si nous résilions votre couverture, vous ne recevrez peut-être pas un remboursement de prime si la sanction commerciale applicable ne le permet pas. Tous les fonds bloqués ou gelés seront placés dans un compte bloqué portant intérêt ouvert auprès d'une institution financière.*
- 3. Il est possible que nous ne puissions pas régler un sinistre, accepter une prime ou échanger de l'argent ou des biens de quelque sorte que ce soit lorsque la personne, l'entité ou la société intéressée (y compris une banque) se trouve sur une liste d'interdiction, est liée à un pays sanctionné ou exerce des activités dans un pays visé par la sanction commerciale pertinente. De plus, il pourrait nous être impossible de défendre ou d'indemniser par ailleurs aux termes de votre police des personnes, des entités ou des sociétés qui se trouvent sur une liste d'interdiction, sont liées à un pays sanctionné ou exercent des activités dans un pays visé par la sanction commerciale pertinente.*

**This Agreement provides only a summary of conditional coverage. Please refer to the Policy for the actual terms, conditions and exclusions of coverage.**

**This Agreement provides only a summary of conditional coverage. Please refer to the Policy for the actual terms, conditions and exclusions of coverage.**



**IRONSHORE CANADA LTD.**  
333 BAY STREET, SUITE 1120, TORONTO, ON M5H 2R2  
ADMINISTRATOR FOR  
**PEMBROKE MANAGING AGENCY - LLOYD'S SYNDICATE 4000**  
**UMR# B6081CB002561D**

**BUYER-SIDE EXCESS REPRESENTATIONS AND WARRANTIES INSURANCE POLICY**  
**BINDER LETTER**

August 8, 2018

<b>POLICY NO.</b>	C446158518
<b>AGREEMENT</b>	Purchase and Sale Agreement entered into as of August 8, 2018, by and among (i) MIP Padua Holdings, L.P., (ii) Moby Canada Limited Partnership by its general partner Moby GP Canada Corporation and (iii) solely with respect to Section 5.15 and, solely with respect to Section 5.15(f), Section 9.12 thereof and not for purposes of any other Article, Section or provision of the Acquisition Agreement, Macquarie Infrastructure Partners Canada, L.P., Macquarie Infrastructure Partners International, L.P., Macquarie Infrastructure Partners A, L.P., and Macquarie Infrastructure Partners II AIV, L.P
<b>NAMED INSURED</b>	Moby Canada Limited Partnership c/o OMERS Infrastructure Management Inc. 100 Adelaide St W, 21st Floor Reception Toronto, ON M5H 0E2 Canada Attention: Steven Zucchet, Managing Director and Managing Director, Legal Facsimile: (416) 361-6075 E-mail: szucchet@omers.com
<b>POLICY PERIOD</b>	From August 8, 2018 ("Inception") until the date that is the six-year anniversary of the Closing Date (the "Expiry Date").
<b>LIMIT OF LIABILITY</b>	\$40,000,000 in the aggregate, excess of the \$40,000,000, excess the Retention.
<b>RETENTION</b>	\$5,000,000, in the aggregate
<b>PREMIUM (EXCLUDING TAX)</b>	\$576,938 (exclusive of insurance tax); provided, however, that if the Interim Period is longer than 180 days, the Premium will increase to \$663,478
<b>SCHEDULE OF PRIMARY POLICY</b>	AIG Insurance Company of Canada Policy #: 17712134 Limit of Liability: \$40,000,000, in the aggregate
<b>BROKER</b>	EgR Inc. 600, De La Gauchetière O.

	6th floor, Montreal Quebec, H3B 4L2
<b>COMMISSION</b>	The brokerage commission is NIL.
<b>POLICY FORM</b>	The Buyer's excess representation and warranty insurance policy including all schedules and appendices as attached hereto as Appendix A.

**COVERAGE FORMS AND ENDORSEMENTS SCHEDULE:**

BUYER-SIDE EXCESS REPRESENTATIONS AND WARRANTIES INSURANCE POLICY as attached hereto as Appendix A. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Policy attached hereto as Appendix A.

**CONDITIONS OF THE BINDER:**

Issuance of the final Policy and coverage for any Loss thereunder shall be subject only to the satisfaction of the following conditions:

1. Receipt of:
  - a. A final closing set of documents, including the final, executed Acquisition Agreement (with all schedules, exhibits and attachments thereto) on or prior to 60 days following the Closing Date.
  - b. An electronic copy containing, to the Named Insured's Actual Knowledge (as defined in the Primary Policy), the online data room on or prior to 60 days following the Closing Date.
  - c. Final copy of Primary Policy (and related binder)
2. Payment of 10% of the Premium to the Insurer in cleared funds on or prior to August 13, 2018 and payment of the balance of the 90% of the Premium to the Insurer in cleared funds within 30 days of the Closing Date.
3. The closing of the transactions contemplated by the Acquisition Agreement (the "Closing") shall have occurred in accordance with the terms and conditions of the Acquisition Agreement.
4. Delivery to the Insurer of electronic copies of the executed Inception No Claims Declaration and Closing No Claims Declaration in the time periods specified in the Primary Policy.
5. Reasonable access to the Deal Team Members to allow the Insurer to participate in the "bring down" due diligence investigation prior to the Closing.

**Important: Read Carefully**

This Binder shall terminate automatically upon the issuance of the policy. This Binder does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from offering or providing insurance. To the extent any such prohibitions apply, this binder is void ab initio.

**Issuing Company:** Pembroke Syndicate 4000 at Lloyd's

Thank you for your consideration. If you have any questions or concerns, please feel free to contact me.

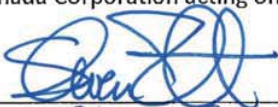
Sincerely,

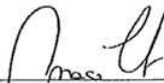
Ironshore Canada Ltd.

By:   
Dane Hambrook



Moby GP Canada Corporation acting on behalf of Moby Canada Limited Partnership

Sign Name:   
Print Name: Steven Zucchet  
Title: Director

Sign Name:   
Print Name: Lukas Forman  
Title: Director

**Appendix A – Policy Form**

**[See attached]**

**IRONSHORE CANADA LTD.**  
EXCESS REPRESENTATIONS AND WARRANTIES  
(BUYER-SIDE)  
**INSURANCE POLICY**

**Policy #: C446158518**

Ironshore Canada LTD.  
Administrator For:  
Pembroke Managing Agency – Lloyd's Syndicate 4000  
333 Bay Street, Suite 1120  
Toronto, ON M5H 2R2  
UMR# B6081CB002561D

**Insurance Broker**  
EgR Inc.  
600, De La Gauchetière O.  
6th floor, Montreal  
Quebec, H3B 4L2

**NOTICE: THIS IS A CLAIMS MADE AND REPORTED POLICY. SUBJECT TO THE TERMS AND CONDITIONS OF THIS POLICY, COVERAGE IS LIMITED TO LIABILITY FOR ACTS COVERED BY PRIMARY POLICY FOR CLAIMS THAT THE INSURED REPORTS TO THE UNDERWRITER IN ACCORDANCE WITH THE TERMS OF THIS POLICY. PLEASE READ THIS POLICY CAREFULLY AND DISCUSS IT WITH YOUR INSURANCE AGENT OR BROKER.**

**NOTICE: DEFENSE COSTS COVERED UNDER THIS POLICY ARE PART OF LOSS AND AS SUCH ARE SUBJECT TO THE RETENTION (AS DEFINED IN THE PRIMARY POLICY) AND THE LIMIT OF LIABILITY.**

**DECLARATIONS**

**ITEM A. Named Insured:** Moby Canada Limited Partnership  
c/o OMERS Infrastructure Management Inc.  
100 Adelaide St W, 21st Floor Reception  
Toronto, ON M5H 0E2  
Canada  
Attention: Steven Zucchet, Managing Director and  
Managing Director, Legal  
Facsimile: (416) 361-6075  
E-mail: szucchet@omers.com

**Additional Insureds:** Same as the Additional Insureds in the Primary Policy.

Collectively, the Named Insured, the Additional Insureds, their Affiliates and each of their respective successors and assigns, are referred to herein as the "Insureds".

**ITEM B. Policy Period:** From August 8, 2018 ("Inception") until the date that is the six-year anniversary of the Closing Date (the "Expiry Date").

**ITEM C. Limit of Liability:** \$40,000,000 in the aggregate.

**ITEM D. Schedule of Primary Policy:**

Primary Insurer: AIG Insurance Company of Canada  
Policy Number: 17712134  
Underlying Limit of Liability: \$40,000,000, in the aggregate

Retention: \$5,000,000, in the aggregate

**ITEM E. Address for Claims-Related Notices:**

via mail:  
Ironshore Canda Ltd. – Syndicate 4000  
333 Bay Street, Suite 1120  
Toronto, ON M5H 2R2  
ATTENTION: CLAIMS  
[IronCanadaClaims@ironshore.com](mailto:IronCanadaClaims@ironshore.com)

**ITEM F. Address for All Other Notices:**

via mail:  
Ironshore Canda Ltd. – Syndicate 4000  
333 Bay Street, Suite 1120  
Toronto, ON M5H 2R2  
ATTENTION: Dane Hambrook

**ITEM G. Underwriter:** Ironshore Canada Ltd., administrator for Pembroke Managing Agency – Lloyd's Syndicate 4000.

**ITEM H: Insurance Broker** EgR Inc.  
600, De La Gauchetière O.  
6th floor, Montreal  
Quebec, H3B 4L2

**ITEM I. Premium:** \$576,938 (exclusive of insurance tax); provided, however, that if the Interim Period is longer than 180 days, the Premium will increase to \$663,478.

**ITEM J. Commission:** The brokerage commission is NIL.

**ITEM K. ENDORSEMENTS:**  
1) Terrorism Risk Insurance Act  
2) OFAC Compliance Notice

## **PEMBROKE SYNDICATE 4000 AT LLOYD'S EXCESS REPRESENTATIONS AND WARRANTIES INSURANCE POLICY**

In consideration of the payment of the Premium, the Underwriter and the Insureds agree as follows:

### **I. INSURING AGREEMENT – FOLLOW FORM COVERAGE**

This Policy shall provide coverage in excess of the Underlying Limit of Liability and the aggregate Retention of the Primary Policy. Coverage shall follow form to the same terms, conditions, and limitations as are contained in the Primary Policy as of the inception of this Policy, except as otherwise provided herein. In no event shall this Policy grant broader coverage than is provided by the Primary Policy.

### **II. PRIMARY POLICY**

A. *EXHAUSTION OR REDUCTION*: It is expressly agreed that liability for any Loss shall attach to the Underwriter only after either: (i) the insurer(s) of the Primary Policy has paid the full amount of their respective liability for such Loss; or (ii) the Insureds shall have paid or incurred any portion of such Loss that, together with any payments by such insurer(s) above, exceeds the Retention and the Underlying Limit of Liability of the Primary Policy; or (iii) the Insured(s) shall have (a) entered into a settlement in accordance with the provisions of the Primary Policy and, if applicable, this Policy, obligating it to pay a Loss that exceeds the Retention and the Underlying Limit of Liability of the Primary Policy, or (b) been held in court or arbitral order to be obligated to pay a Loss that exceeds the Retention and the Underlying Limit of Liability of the Primary Policy. The Underwriter shall then be liable to pay Loss that exceeds the Retention and the Underlying Limit of Liability of the Primary Policy up to the Limit of Liability. In the event such payments described above exhaust the Primary Policy but not this Policy, then this Policy shall continue as primary insurance, subject to its terms, conditions and limitations. In the event such payments described above only reduce the Primary Policy, then this policy shall continue as excess of the reduced Primary Policy. In no way shall any payments by the Insureds constitute a waiver of any terms, conditions or limitations of the Primary Policy or of this Policy. The risk of uncollectability of any Primary Policy (in whole or in part), whether because of financial impairment or insolvency of an underlying insurer or for any other reason, is expressly retained by the Insureds and is not insured by or assumed by the Underwriter.

B. *MAINTENANCE*: The Insureds agree that the Primary Policy shall be maintained in full effect while this Policy is in force. If the Insureds fail to do so, the Underwriter shall only be liable under this Policy to the extent it would have been liable had the Insureds maintained such insurance and the Insureds shall be self-insured for the amount of any Primary Policy which is not maintained.

### **III. PARTICIPATION, COOPERATION, NOTICE AND CANCELLATION**

The Underwriter may, at its sole option and expense, elect to participate in the investigation, settlement or defense of any Breach or potential Breach, even if the Primary Policy has not been exhausted, to the extent that such Breach or potential Breach is reasonably likely to involve this Policy. The Insured shall not admit or assume any liability, enter into any settlement agreement, or stipulate to any judgment without the prior written consent of the Underwriter, which consent shall not be unreasonably withheld, conditioned or delayed, in each case with respect to a Breach or potential Breach for which a claim is made under this Policy. Only those settlements and stipulated judgments that have been consented (such consent not to be unreasonably, withheld or conditioned) to by the Insurer shall be recoverable as Loss under the terms of this Policy.

The Insureds shall give the Underwriter all information and cooperation as the Underwriter may reasonably require, subject to the limitations, terms and conditions of the Primary Policy. All notices shall be given to the Underwriter at the applicable address set forth in either Item E or Item F of the Declarations and in accordance with all appropriate notice provisions of the Primary Policy. This Policy may only be cancelled in accordance with the appropriate cancellation provisions of the Primary Policy. All notices given to the Insureds shall be delivered to the Named Insured at its mailing address set forth in Item A of the Declarations with a copy sent to the Managing Director, Legal, at the same address set forth in Item 1 of the Declarations.

#### IV. DEFINITIONS

- A. Insureds mean those individuals and/or entities set forth in Item A of the Declarations.
- B. Limit of Liability means that amount of liability set forth in Item C of the Declarations.
- C. Primary Policy means the policy in Item D of the Declarations.
- D. Underlying Limit of Liability means the amount of liability of the Primary Policy set forth in Item D of the Declarations.
- E. Underwriter, Premium and Policy Period shall have the meanings set forth in the Declarations.
- F. All other capitalized terms shall have the meanings set forth in the Primary Policy.

#### V. CHOICE OF LAW, SERVICE OF SUIT, ABRITRATION

- (A) It is hereby understood and agreed that all disputes or differences which may arise under this Policy, whether arising before or after termination of this Policy, including any determination of the amount of Loss, shall be referred to and finally resolved by arbitration under the Ontario *Arbitration Act, 1991*, S.O., 1991, c. 17, and shall be conducted in accordance with its provisions, rules and regulations. The place of the arbitration shall be the City of Toronto in the Province of Ontario. The language of the arbitration shall be English. With regard to any specific arbitration, there shall be three arbitrators. The arbitrators shall be disinterested individuals having knowledge of the legal, corporate or insurance issues relevant to the matters in dispute. The Insurer shall appoint one arbitrator and the Insureds shall appoint one arbitrator. The third arbitrator shall be the chairman and shall be appointed by agreement of the two party-appointed arbitrators. The written decision of the arbitrators shall be provided to both parties and shall be binding on them. The arbitrators' award shall not include costs or legal fees or other costs and disbursements. Each party shall bear equally the expenses of the arbitration.
- (B) The construction, validity and performance of this Policy shall be interpreted under the substantive laws of the State of Delaware, without reference to conflicts-of-laws principles that would require or allow for the application of the law of any other jurisdiction. Nothing in this Section V(B) shall affect or override the definition and use of "Most Favorable Jurisdiction" in this Policy or the Primary Policy. In connection with any dispute hereunder, no award or judgment, including any award or judgment of expenses or costs, shall be entered or payable in an amount exceeding the remaining Limit of Liability.
- (C) Subject to any provision in this Policy requiring or allowing for arbitration, in the event of failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer and the Insured shall submit to the jurisdiction of the Courts in the Province of Ontario, located in the City of Toronto. Nothing in this Section V constitutes or should be understood to constitute a waiver of the Insurer's rights to commence or remove an action to a federal court located in the Province of Ontario Canada, as permitted by the laws of Canada. It is further agreed that service of process in such suit may be made upon General Counsel, Ironshore Canada Ltd., 333 Bay Street, Suite 1120, Toronto, ON M5H 2R2., or his or her representative, and that in any suit instituted against the Insurer upon this Policy, the Insurer will abide by the final decision of such court or of any appellate court in the event of any appeal.

IN WITNESS WHEREOF, the Company has caused this policy to be executed and attested, and if required by state law, this policy shall not be valid unless countersigned by a duly authorized representative of the Company.

Ironshore Canada Ltd.  
333 Bay Street, Suite 1120, Toronto, ON M5H 2R2  
Administrator for Pembroke Managing Agency - LLOYD'S SYNDICATE 4000

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**ENDORSEMENT NO: 1  
TERRORISM ENDORSEMENT  
EFFECTIVE: POLICY INCEPTION**

**TERRORISM RISK INSURANCE ACT**

**CONFIRMATION OF ACCEPTANCE OF CERTIFIED ACTS OF TERRORISM**

We previously notified you that in accordance with the federal Terrorism Risk Insurance Act, as amended (TRIA), we must make "certified acts of terrorism" coverage available in the policies we offer.

A "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury in accordance with the provisions of TRIA to be an act of terrorism under TRIA. The criteria contained in TRIA for "certified act of terrorism" include the following:

1. The act results in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to TRIA; and
2. The act results in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of an United States mission; and
3. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals acting as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

The United States Department of the Treasury will reimburse insurers for 85% of that portion of insured losses attributable to certified acts of terrorism that exceeds the applicable insurer deductible. Effective January 1, 2016, this percentage will be reduced to 84%, effective January 1, 2017 to 83%, effective January 1, 2018 to 82%, effective January 1, 2019 to 81%, and effective January 1, 2020 to 80%. However, if aggregate insured losses under TRIA exceed \$100 billion in a Calendar Year the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion. The United States government has not charged any premium for their participation in covering terrorism losses.

If aggregate insured losses attributable to terrorist acts certified under TRIA exceed \$100 billion in a Calendar Year and we have met, or will meet, our insurer deductible under TRIA, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion. In such case, your coverage for terrorism losses may be reduced on a pro rata basis in accordance with procedures established by the Treasury, based on its estimates of aggregate industry losses and our estimate that we will exceed our insurer deductible. In accordance with the Treasury's procedures, amounts paid for losses may be subject to further adjustments based on differences between actual losses and estimates.

At that time we advised you that you will not be required to pay a premium for "certified acts of terrorism" coverage at this time. As a result of our notification, you have accepted "certified acts of terrorism" coverage.

**HG 00 H045 054 0212 0115**

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**ENDORSEMENT NO: 2**  
**OFAC ENDORSEMENT**  
**EFFECTIVE: POLICY INCEPTION**

**Policy Number: C446158518**  
Insured Name: Moby Canada Limited Partnership

**Effective Date: August 8, 2018**

**OFAC COMPLIANCE NOTICE**

Payment of Loss under this Policy shall only be made in full compliance with all United States of America economic or trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

**Date:**

**Authorized Signatory**

EXECUTION COPY



**AIG INSURANCE COMPANY OF CANADA**  
A Member Company of AIG.  
120 Bremner Boulevard, Suite 2200  
Toronto, Ontario, Canada M5J 0A8

**POLICY NUMBER: 17712134**

**BINDER AGREEMENT**

**EXCESS REPRESENTATIONS AND WARRANTIES INSURANCE**

**NOTICES: DEPENDING ON THE TERMS, CONDITIONS AND EXCLUSIONS OF THE FOLLOWED POLICY, ANY POLICY ISSUED PURSUANT HERETO (1) MAY ONLY PROVIDE COVERAGE FOR LOSS FROM CLAIMS FIRST MADE OR FIRST MADE AND REPORTED DURING ITS POLICY PERIOD OR WITHIN THE FORTY-FIVE (45) DAY PERIOD IMMEDIATELY FOLLOWING THE EXPIRY DATE; (2) MAY HAVE ITS LIMITS OF LIABILITY REDUCED BY THE PAYMENT OF DEFENSE COSTS AND/OR CLAIMS EXPENSES; AND (3) MAY NOT IMPOSE A DUTY TO DEFEND ON THE INSURER. PLEASE READ THE FOLLOWED POLICY AND THE DRAFT POLICY ATTACHED HERETO CAREFULLY AND DISCUSS THE COVERAGE PROVIDED THEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.**

All "Bold" typeface terms used but not defined in this Binder Agreement (along with all Exhibits hereto, this "**Agreement**") shall have the respective meanings assigned thereto in the **Draft Policy** (as defined below), unless otherwise noted.

"\$" or "dollar" means the lawful currency of the United States.

**Effective Date:** August 8, 2018

**Policyholder:** Moby Canada Limited Partnership

**Policyholder Address:** c/o OMERS Infrastructure Management Inc.  
100 Adelaide St W, 21st Floor Reception  
Toronto, ON M5H 0E2  
Canada  
Attention: Steven Zucchet, Managing Director  
Facsimile: (416) 361-6075  
E-mail: szucchet@omers.com

**Policy Period:** From August 8, 2018 ("**Inception**") until [ ]<sup>1</sup> (the "**Expiry Date**").

**Limit of Liability:** \$20,000,000, in the aggregate.

**Total Underlying Limits:** \$80,000,000, in the aggregate.

**Retention Under Followed** \$5,000,000, in the aggregate. (subject to any dropdown and/or erosion provisions or

<sup>1</sup> The date that is the six-year anniversary of the Closing Date.

**This Agreement provides only a summary of conditional coverage. Please refer to the Policy for the actual terms, conditions and exclusions of coverage.**

**Policy:** other provisions specified in the **Followed Policy**).

**Insurer:** AIG Insurance Company of Canada

**Insurer Address:** 120 Bremner Boulevard, Suite 2200  
Toronto, Ontario, Canada M5J 0A8

**Premium:** \$237,987

*provided, however,* that if the Interim Period is greater than 180 days, the premium will increase to \$273,685.

The **Premium** is non-refundable.

**Brokerage Commission:** The brokerage commission is NIL.

**Taxes:** The **Premium** is exclusive of any applicable sales tax and any other similar applicable tax, fee or surcharge. It is the **Policyholder's** responsibility to pay any applicable sales tax and any other similar applicable tax, fee or surcharge.

**Insurance Broker:** EgR Inc.  
600, De La Gauchetière O., 6th floor, Montreal, Quebec, H3B 4L2

The **Insurance Broker** is the broker of record and is responsible for the collection, reporting and payment of applicable taxes and fees.

It is the **Insurance Broker's** responsibility to follow applicable laws and, in particular, to see that the appropriate tax (and stamping fee, if applicable) is collected and paid.

**Coverage:** Excess representations and warranties insurance coverage, excess of the **Total Underlying Limits** and **Retention Under Followed Policy**, in accordance with the terms and conditions of the policy attached hereto as Exhibit A (the "**Draft Policy**").

Any changes to the **Draft Policy** shall be mutually agreed upon by the **Insurer** and the Policyholder.

**SCHEDULE OF UNDERLYING COVERAGE**

	<b>Underlying Insurer</b>	<b>Underlying Policy</b>	<b>Underlying Limit</b>	<b>Underlying Policy Period</b>
*	AIG Insurance Company of Canada	17712134	\$40,000,000 Primary	Same as Policy Period
	Ironshore Canada LTD	C446158518	\$40,000,000 xs \$40,000,000	Same as Policy Period

The "Followed Policy" means the policy in the Schedule with an "\*" at the beginning of its row.

**Conditions:** The Insurer shall issue the final, executed excess representations and warranties insurance policy contemplated by this **Agreement** and the **Draft Policy** (the "**Policy**"), and coverage thereunder shall be, subject to (and only to) the satisfaction or waiver of the following conditions; provided that, for certainty, such coverage shall be effective as of the date of Inception; and provided further that, without limitation, issuance of the Policy shall be deemed acknowledgment by the Insurer that such conditions have been satisfied or waived:

- (a) The **Insurer** shall have received an amount equal to 10% of the **Premium**
- (b) The **Insurer** shall have received the remaining 90% of the **Premium**.
- (c) All of the conditions and subjectivities set forth in the binder agreements and conditional policies issued by the **Underlying Insurers** have been satisfied or waived.
- (d) The **Insurer** shall have received copies of all the documents required to be delivered to the **Underlying Insurers** pursuant to their binder agreements and conditional policies, as applicable.
- (e) The **Underlying Policies** shall have been conditionally bound by the **Underlying Insurers**, and the **Insurer** shall have received the form of **Underlying Policies** bound and related binder agreements (including all attachments and exhibits to such documents).
- (f) The **Insurer** shall have received the final, issued **Underlying Policies** (including all attachments and exhibits thereto and documents delivered in connection therewith).
- (g) Except as consented to by the **Insurer**, neither the **Underlying Policies** nor the binder agreements related thereto shall have been terminated, cancelled, amended, modified, changed or waived in a manner reasonably expected to actually prejudice the **Insurer** and for which the **Insurer** has not provided its prior written consent (not to be unreasonably withheld, delayed or conditioned).
- (h) The **Insurer** shall have received the terms, conditions and pricing of any excess capacity representations and warranties insurance providing insurance coverage above **the Limit of Liability** provided in the **Draft Policy**.

If:

- (i) the condition set forth in paragraph (a) above is not satisfied on or before the date that is 5 days after the inception of the **Policy Period**;
- (ii) the condition set forth in paragraph (b) above is not satisfied on or before the date that is 30 days after the Closing Date (as defined per the **Followed Policy**);
- (iii) any of the conditions set forth in paragraphs (c) or (g) above fails to be satisfied at any time prior to issuance of the **Policy**;
- (iv) the condition set forth in paragraph (d) above is not satisfied on or before the date that is 60 days after the Closing Date (as defined per the **Followed Policy Period**), or if later, on such relevant date required for delivery thereof; or
- (v) any of the conditions set forth in paragraphs (e) and/or (h) above is not satisfied on or before 11:59 p.m. E.T. on the Effective Date;
- (vi) the condition set forth in paragraph (f) of above is not satisfied prior to issuance of the **Policy**;

then the **Insurer** shall be entitled to terminate this **Agreement** by fifteen (15) days' written notice to the **Policyholder**, during which fifteen-day period the **Policyholder** shall have the right to cure any such failure.

If this **Agreement** is so terminated (a) this **Agreement** shall be void *ab initio* and have no force or effect and the **Insurer** shall have no obligation or liability hereunder or in connection herewith and (b)(1) if the insureds have paid the entire amount of the **Premium**, 90% of the **Premium** shall be refunded to the insureds and the remaining 10% shall be kept by the **Insurer** as a termination fee, (2) if the insureds have only paid the initial 10% of the **Premium**, the insureds shall have no obligation to pay the remaining 90% of the **Premium** and the **Insurer** shall be entitled to keep such 10% of the **Premium** as a termination fee or (3) if the insureds have not paid any portion of the **Premium**, the insureds shall pay to the **Insurer** within 15 days of termination a termination fee of 10% of the **Premium** by wire transfer in accordance with wire transfer instructions provided by the **Insurer**. The **Policyholder** shall deliver a notice to the **Insurer** as soon as reasonably practicable after any insured becomes aware that the Acquisition Agreement (as defined per the **Followed Policy**) has been terminated. For

the avoidance of doubt and notwithstanding anything to the contrary herein, the rights and obligations relating to the payment or retention (as applicable) of the termination fee set forth in clauses (b)(1) and (b)(2) of this paragraph shall survive any such termination.

**Amendments:** This **Agreement** may be amended or modified, in whole or in part, only by a duly authorized agreement in writing executed by the parties hereto and which makes reference to this **Agreement**.

**Entire Agreement:** This **Agreement** constitutes the entire agreement and understanding concerning the subject matter of this **Agreement** and supersedes the terms and conditions of any prior oral or written agreements, discussions or other communications entered into between the Insurer and/or its affiliates (including their respective representatives), on the one hand, and the Insureds and/or their respective affiliates (including their respective representatives), on the other hand, concerning the subject matter of this **Agreement**.

**Counterparts:** This **Agreement** may be executed and delivered by the parties hereto (including by facsimile transmission or other electronic transmission) in counterparts, each of which when executed shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same agreement.

**Effectiveness of Agreement:** This Agreement is effective as of the Effective Date. Notwithstanding anything to the contrary herein, including without limitation the Insurer's signature below, if this Agreement is not signed by the **Policyholder** and returned to the **Insurer** by 11:59 p.m. E.T. on the Effective Date, then the offer provided in this **Agreement** shall automatically terminate and expire, whereupon this **Agreement** shall be void *ab initio* and have no force or effect, and the **Insurer** shall have no obligation or liability hereunder or in connection herewith.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed as of the Effective Date.

AIG Insurance Company of Canada

Moby GP Canada Corporate acting on behalf of  
Moby Canada Limited Partnership



By: \_\_\_\_\_  
Name: Lynn Oldfield  
Title: Authorized Representative

By: \_\_\_\_\_  
Name: John Knowlton  
Title: President


By: \_\_\_\_\_  
Name: Jennifer Guerard  
Title: Director

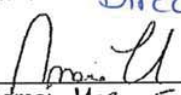
IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date.

AIG Insurance Company of Canada

By: \_\_\_\_\_  
Name:  
Title: Authorized Representative

Moby GP Canada Corporation acting on behalf  
of Moby Canada Limited Partnership

By:   
Name: Steven Zucchet  
Title: Director

By:   
Name: MARCO FONTANA  
Title: DIRECTOR

**Exhibit A**

**Draft Excess Representations and Warranties Insurance Policy**  
[Attached]



AIG DRAFT 8-7-2018



**AIG INSURANCE COMPANY OF CANADA**

A Member Company of AIG.  
120 Bremner Boulevard, Suite 2200  
Toronto, Ontario, Canada M5J 0A8

**POLICY NUMBER: 17712134**

**EXCESS REPRESENTATIONS AND WARRANTIES INSURANCE POLICY**

**NOTICES: DEPENDING ON THE TERMS, CONDITIONS AND EXCLUSIONS OF THE FOLLOWED POLICY, THIS POLICY (1) MAY ONLY PROVIDE COVERAGE FOR LOSS FROM CLAIMS FIRST MADE OR FIRST MADE AND REPORTED DURING ITS POLICY PERIOD OR WITHIN THE THIRTY (30) DAY PERIOD IMMEDIATELY FOLLOWING THE EXPIRY DATE; (2) MAY HAVE ITS LIMITS OF LIABILITY REDUCED BY THE PAYMENT OF DEFENSE COSTS AND/OR CLAIMS EXPENSES; AND (3) MAY NOT IMPOSE A DUTY TO DEFEND ON THE INSURER. PLEASE READ THE FOLLOWED POLICY AND THIS POLICY CAREFULLY AND DISCUSS THE COVERAGE PROVIDED THEREUNDER AND HEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.**

"\$" or "dollar" means the lawful currency of the United States.

**DECLARATIONS**

**Policyholder:** Moby Canada Limited Partnership  
**Policyholder Address:** c/o OMERS Infrastructure Management Inc.  
100 Adelaide St W, 21st Floor Reception  
Toronto, ON M5H 0E2  
Canada  
Attention: Steven Zucchet, Managing Director  
Facsimile: (416) 361-6075  
E-mail: szucchet@omers.com

**Policy Period:** From August 8, 2018 ("Inception") until [\_\_\_\_\_] <sup>1</sup> (the "Expiry Date").

**Limit of Liability:** \$20,000,000, in the aggregate.  
**Total Underlying Limits:** \$80,000,000, in the aggregate.

**Insurer:** AIG Insurance Company of Canada  
**Insurer Address:** 120 Bremner Boulevard, Suite 2200  
Toronto, Ontario, Canada M5J 0A8

**Premium:** \$237,987  
*provided, however, that if the Interim Period is greater than 180 days, the premium will increase to \$273,685.*

**Brokerage Commission:** The brokerage commission is NIL.

**Taxes:** The **Premium** is exclusive of any applicable sales tax and any other applicable

<sup>1</sup> The date that is the six-year anniversary of the Closing Date.

tax, fee or surcharge. It is the **Policyholder's** responsibility to pay any applicable sales tax and any other applicable tax, fee or surcharge.

**Insurance Broker:** EgR Inc.  
600, De La Gauchetière O., 6th floor, Montreal, Quebec, H3B 4L2

**Claims Address:**  
e-mail: [FINANCIALCLAIMS@AIG.CA](mailto:FINANCIALCLAIMS@AIG.CA)  
Mail: AIG Insurance Company of Canada  
Claims Department- Financial Lines  
120 Bremner Boulevard, Suite 2200  
Toronto, M5J OA8

With a copy sent simultaneously to:

AIG Specialty Insurance Company  
c/o AIG Financial Lines Claims  
P.O. Box 25947  
Shawnee Mission, KS 66225

**SCHEDULE OF UNDERLYING COVERAGE**

	<b>Underlying Insurer</b>	<b>Underlying Policy</b>	<b>Underlying Limit</b>	<b>Underlying Policy Period</b>
*	AIG Insurance Company of Canada	17712134	\$40,000,000 Primary	Same as Policy Period
	Ironshore Canada LTD	C446158518	\$40,000,000 xs \$40,000,000	Same as Policy Period

The **Policy Period** incepts as of 12:01 A.M. on the date of Inception and expires at 11:59 P.M. on the last day of the Policy Period at the **Policyholder Address**. Terms with "**Bold**" typeface are used in this policy with the meanings and values ascribed to them above; however, subject to the Changes clause, the "**Followed Policy**" means the policy in the Schedule with an "\*" at the beginning of its row.

**AIG DRAFT 8-7-2018**

In consideration of the payment of the premium, the **Insurer** and the **Policyholder** agree as follows:

INSURING AGREEMENT	<p>The <b>Insurer</b> agrees to provide insurance coverage to the <b>Insureds</b> in accordance with the terms and conditions of this policy. This policy provides coverage in accordance with and subject to the same terms, conditions and limitations of the <b>Followed Policy</b>, as modified by and subject to the terms, conditions and limitations of this policy. Any capitalized terms used but not defined herein shall have the meaning set forth in the Followed Policy.</p> <p>The <b>Insurer's</b> coverage obligations under this policy attach to the <b>Insurer</b> only after the <b>Insureds</b> have suffered Losses equal to or exceeding the <b>Total Underlying Limits</b> and covered under the <b>Underlying Policies</b> (irrespective of whether any portion thereof has been (or ever is) paid by or on behalf of the <b>Insurers</b> under the <b>Underlying Policies</b>), including (i) the <b>Insureds</b> having paid or incurred part or all of such covered amounts or (ii) the <b>Insureds</b> having (a) entered into a settlement in accordance with the provisions of the <b>Followed Policy</b> and, if applicable, this Policy, obligating it to pay such covered amounts, or (b) been held in a final, non-appealable court or arbitral order to be obligated to pay such covered amounts that fully exhausted the <b>Total Underlying Limits</b>. This policy shall continue in force as primary insurance only upon the exhaustion of the <b>Total Underlying Limits</b> by reason of such Losses and satisfaction of any applicable retention. This policy shall recognize erosion of an <b>Underlying Limit</b> of an <b>Underlying Policy</b> through payments by others of covered amounts under that <b>Underlying Policy</b>, including the <b>Insurer</b> thereunder. The risk of uncollectability of any part of the <b>Total Underlying Limits</b>, for any reason, is expressly retained by the <b>Policyholder</b> and any insureds, and is not insured under this policy or assumed by the <b>Insurer</b>.</p>
LIMIT OF LIABILITY	<p>The <b>Limit of Liability</b> is the aggregate limit of the <b>Insurer's</b> liability for all coverage under this policy.</p>
NOTICES	<p>Where the <b>Followed Policy</b> requires or permits a Claim Notice to be delivered to the insurer under such policy, the <b>Policyholder</b> has the same obligations and rights to notify the <b>Insurer</b> under this policy, except that with respect to this policy, any notice to the <b>Insurer</b> must be directed as follows: (i) for claims-related matters, by mail or e-mail to the <b>Claims Address</b>; and (ii) for all other notices, by mail to the <b>Insurer Address</b>. Any failure to comply with the immediately preceding sentence shall not relieve the <b>Insurer</b> of its obligations hereunder, except and only to the extent that the <b>Insurer</b> is actually prejudiced thereby; provided, however, that in no event may a Claim Notice be delivered to the <b>Insurer</b> later than thirty days following the end of the Policy Period, except as set forth in Section 5(a) of the Followed Policy. The burden of proving any such actual prejudice shall be on the <b>Insurer</b>. All notices given to the <b>Insureds</b> shall be delivered to the Named Insured at its mailing address set forth in Item A of the Declarations with a copy sent to the Managing Director, Legal, at the same address set forth in Item 1 of the Declarations.</p>
RIGHTS	<p>The <b>Insurer</b> shall have the same rights, privileges and protections afforded to the <b>Underlying Insurer</b> of the <b>Followed Policy</b> in accordance with and subject to the terms, conditions and limitations of the <b>Followed Policy</b>. The <b>Insurer</b> shall also have the right, in its sole discretion and at its sole expense, but not the obligation, to effectively associate with the <b>Insureds</b> in the defense and settlement of any claim that would reasonably be expected to result in a <b>Loss</b> (including in aggregate any other claim under the <b>Followed Policy</b>) to exceed 50% of the <b>Total Underlying Limits</b>. The <b>Policyholder</b> and any insureds shall provide the <b>Insurer</b> with such information, assistance and cooperation as the <b>Insurer</b> may reasonably request. Subject to the other terms and conditions in the Followed Policy and this Policy, the <b>Insureds</b> shall not knowingly and intentionally waive any rights in a manner that would reasonably be expected to actually prejudice any subrogation or assignment right set forth in Section 8(b) and 8(d) of the Followed Policy, with the <b>Insurer</b> bearing the burden of proving any such actual prejudice. For the avoidance of doubt, to the extent that the <b>Policyholder</b> fails to take an action required or requested under this policy because it is prohibited from taking such action, or cannot on its own cause the <b>Underlying Insurer</b> to take such action, under the <b>Followed Policy</b>, the <b>Policyholder</b> shall not be in breach of this policy for failure to take such action.</p>
RELIANCE	<p>In issuing this Policy the <b>Insurer</b> is entitled to rely, to the same extent as the <b>Underlying Insurer</b>, upon the completeness and accuracy of the No Claims Declarations, which shall be deemed attached hereto and made a part hereof.</p>
CHANGES	<p>If, subsequent to the issuance of the <b>Followed Policy</b>, the terms, conditions or limitations of an <b>Underlying Policy</b> are modified in any material respect, the <b>Policyholder</b> must notify the <b>Insurer</b> in writing, as soon as practicable, of such modification. If any changes to the <b>Followed Policy</b>: (i) expand</p>

coverage, (ii) change the policyholder name or address, or (iii) modify the Premium, this policy shall not follow those changes unless the **Insurer** reflects its agreement to do so in a written endorsement to this policy; provided, however, that any failure by **Insurer** to provide any such endorsement shall relieve the **Insurer** of its obligations hereunder solely to the extent that the Insurer is actually prejudiced thereby. The burden of proving any such actual prejudice shall be on the **Insurer**.

SERVICE OF  
SUIT

Subject to any provision in the **Followed Policy** requiring or allowing for arbitration, in the event of failure of the **Insurer** to pay any amount claimed to be due hereunder, the **Insurer** and the **Policyholder**, will submit to the jurisdiction of a court of competent jurisdiction of a court in the Province of Ontario, located in the City of Toronto. Nothing in this Clause constitutes or should be understood to constitute a waiver of the **Insurer's** rights to commence or remove an action to a federal court located in the Province of Ontario as permitted by the laws of Canada or of any province in Canada. The law governing the construction, validity and performance of this policy, and the process for resolving any disputes between the Insurer and the Insureds arising under or in connection with this policy, shall be governed by the relevant provisions of the Followed Policy. It is further agreed that service of process in such suit may be made upon General Counsel, AIG Insurance Company of Canada, 120 Bremner Boulevard, Suite 2200, Toronto, Ontario, Canada M5J 0A8, or his or her representative, and that in any suit or arbitration instituted against the **Insurer** upon this contract of insurance, the **Insurer** will abide by the final decision of such court (or of any appellate court in the event of any appeal). Nothing in this Clause, however, shall affect the right of any party to serve legal process by any other means permitted by law.

IN WITNESS WHEREOF, the **Insurer** has caused this policy to be signed below by its President and Chief Executive Officer.

---

PRESIDENT & CEO

**CUSTOMER ADVISORY  
REGARDING THE ENFORCEMENT OF  
ECONOMIC EMBARGOES AND TRADE SANCTIONS**

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This Trade Sanction Advisory is part of **AIG Insurance Company of Canada** comprehensive compliance program and is meant to serve as a reminder of the existing applicable legal requirements with respect to Trade Sanctions.

Your rights as a policyholder and payments to you, any insured or claimant, for loss under this policy may be affected by the administration and enforcement of economic embargoes and trade sanctions applicable to you, any insured, claimant and/or to the insurer and their respective controlling entities (hereinafter "Trade Sanctions").

**WHAT IS AN ECONOMIC EMBARGO AND/OR TRADE SANCTION**

Trade Sanctions involve the imposition by a country of legal measures to restrict or prohibit trade, services or other economic activity with a target country, entity or individual. For example, the Parliament of Canada has enacted legislation authorizing the imposition of Trade Sanctions through the *United Nations Act*, the *Special Economic Measures Act* and some provisions of the *Export and Import Permits Act*.

Depending upon the identity, domicile, place of incorporation or nationality of the policyholder, insured, claimant, insurer, or the parent company and ultimate controlling entity of the policyholder, insured, claimant or insurer, or the country where the claim arises, Trade Sanctions of foreign countries, including the United States of America, may be applicable. The application of sanctions could necessitate the seizure or freezing of property, including but not limited to the payment of a claim.

Existing Trade Sanctions can be amended, and new Trade Sanctions can be imposed, at any time.

**OBLIGATIONS PLACED ON US AS A RESULT OF TRADE SANCTIONS**

If we determine that you or any insured, additional insured, loss payee, or claimant are on a prohibited list or are connected to a sanctioned country, entity or individual, or a prohibited activity, as designated by the relevant Trade Sanction, we may be required to comply with the requirements of the applicable Trade Sanction, which by way of example, may include blocking or "freezing" property and payment of any funds and the reporting of such occurrences to the relevant authorities within the prescribed time periods, if any.

**POTENTIAL ACTIONS BY US**

Depending upon the requirements of the relevant Trade Sanction:

1. *We may be required to immediately cancel your coverage effective on the day that we determine that we have transacted business with an individual or entity associated with your policy on a prohibited list or connected to a sanctioned country as described in the relevant Trade Sanction.*
2. *If we cancel your coverage, you may not receive a return premium unless permitted pursuant to the relevant Trade Sanction. All blocked or frozen funds will be placed in an interest bearing blocked account established on the books of a financial institution.*
3. *We may not pay a claim, accept premium or exchange monies or assets of any kind to or with individuals, entities or companies (including a bank) on a prohibited list or connected to, or carrying on business in, a sanctioned country as designated by the relevant Trade Sanction. Furthermore, we may not defend or provide any other benefits under your policy to individuals, entities or companies on a prohibited list or connected to, or carrying on business in, a sanctioned country as designated by the relevant Trade Sanction.*

**AVIS À LA CLIENTÈLE  
CONCERNANT L'APPLICATION DES  
EMBARGOS ÉCONOMIQUES ET DES SANCTIONS COMMERCIALES**

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Le présent avis concernant les sanctions commerciales fait partie du programme intégré de conformité de Compagnie d'Assurance AIG du Canada et vise à rappeler les exigences juridiques actuelles applicables quant aux sanctions commerciales.

Vos droits à titre de titulaire de police et les paiements qui sont dus à vous, à un assuré ou à un demandeur, à la suite d'un sinistre aux termes de la présente police, peuvent être touchés par l'administration et l'application d'embargos économiques et de sanctions commerciales qui sont applicables contre vous ou contre un assuré, un demandeur ou l'assureur et leurs entités contrôlantes (ci-après appelées les « sanctions commerciales »).

**DÉFINITION D'UN EMBARGO ÉCONOMIQUE OU D'UNE SANCTION COMMERCIALE**

Un pays impose des sanctions commerciales lorsqu'il prend des mesures juridiques pour restreindre ou interdire le commerce, les services ou d'autres activités économiques avec un pays, une entité ou une personne en particulier. Par exemple, le Parlement du Canada a adopté une législation permettant l'imposition de sanctions commerciales en vertu de la *Loi sur les Nations Unies*, de la *Loi sur les mesures économiques spéciales* et de certaines dispositions de la *Loi sur les licences d'exportation et d'importation*.

Selon l'identité, le domicile, le lieu de constitution ou la nationalité du titulaire de police, de l'assuré, du demandeur, de l'assureur ou de la société mère et de l'entité contrôlante finale du titulaire de police, de l'assuré, du demandeur ou de l'assureur, ou selon le pays où le sinistre a eu lieu, des sanctions commerciales imposées par des pays étrangers, notamment les États-Unis d'Amérique, peuvent s'appliquer. L'application de sanctions pourrait nécessiter la saisie ou le gel d'un bien, notamment de l'indemnité d'assurance.

Les sanctions commerciales actuelles peuvent être modifiées et de nouvelles sanctions commerciales peuvent être imposées à tout moment.

**OBLIGATIONS NOUS INCOMBANT EN RAISON DE SANCTIONS COMMERCIALES**

Si vous ou un assuré, un assuré supplémentaire, un bénéficiaire ou un demandeur êtes sur une liste d'interdiction ou êtes liés à un pays, à une entité ou à une personne faisant l'objet d'une sanction ou à une activité interdite, visé par la sanction commerciale pertinente, nous pourrions devoir nous conformer aux exigences de la sanction commerciale applicable, qui, par exemple, peut inclure le blocage ou le gel d'un bien ou du paiement de fonds et la déclaration de cette mesure aux autorités compétentes dans les délais prescrits, le cas échéant.

**MESURES ÉVENTUELLES DE NOTRE PART**

Selon les exigences de la sanction commerciale pertinente :

- 1. Nous pourrions être tenus de résilier immédiatement votre couverture, avec prise d'effet le jour où nous estimons que nous avons fait affaires avec une personne ou une entité associée à votre police qui se trouve sur une liste d'interdiction ou liée à un pays visé par la sanction commerciale pertinente.*
- 2. Si nous résilions votre couverture, vous ne recevrez peut-être pas un remboursement de prime si la sanction commerciale applicable ne le permet pas. Tous les fonds bloqués ou gelés seront placés dans un compte bloqué portant intérêt ouvert auprès d'une institution financière.*
- 3. Il est possible que nous ne puissions pas régler un sinistre, accepter une prime ou échanger de l'argent ou des biens de quelque sorte que ce soit lorsque la personne, l'entité ou la société intéressée (y compris une banque) se trouve sur une liste d'interdiction, est liée à un pays sanctionné ou exerce des activités dans un pays visé par la sanction commerciale pertinente. De plus, il pourrait nous être impossible de défendre ou d'indemniser par ailleurs aux termes de votre police des personnes, des entités ou des sociétés qui se trouvent sur une liste d'interdiction, sont liées à un pays sanctionné ou exercent des activités dans un pays visé par la sanction commerciale pertinente.*

**CUSTOMER ADVISORY  
REGARDING THE ENFORCEMENT OF  
ECONOMIC EMBARGOES AND TRADE SANCTIONS**

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This Trade Sanction Advisory is part of **AIG Insurance Company of Canada** comprehensive compliance program and is meant to serve as a reminder of the existing applicable legal requirements with respect to Trade Sanctions.

Your rights as a policyholder and payments to you, any insured or claimant, for loss under this policy may be affected by the administration and enforcement of economic embargoes and trade sanctions applicable to you, any insured, claimant and/or to the insurer and their respective controlling entities (hereinafter "Trade Sanctions").

**WHAT IS AN ECONOMIC EMBARGO AND/OR TRADE SANCTION**

Trade Sanctions involve the imposition by a country of legal measures to restrict or prohibit trade, services or other economic activity with a target country, entity or individual. For example, the Parliament of Canada has enacted legislation authorizing the imposition of Trade Sanctions through the *United Nations Act*, the *Special Economic Measures Act* and some provisions of the *Export and Import Permits Act*.

Depending upon the identity, domicile, place of incorporation or nationality of the policyholder, insured, claimant, insurer, or the parent company and ultimate controlling entity of the policyholder, insured, claimant or insurer, or the country where the claim arises, Trade Sanctions of foreign countries, including the United States of America, may be applicable. The application of sanctions could necessitate the seizure or freezing of property, including but not limited to the payment of a claim.

Existing Trade Sanctions can be amended, and new Trade Sanctions can be imposed, at any time.

**OBLIGATIONS PLACED ON US AS A RESULT OF TRADE SANCTIONS**

If we determine that you or any insured, additional insured, loss payee, or claimant are on a prohibited list or are connected to a sanctioned country, entity or individual, or a prohibited activity, as designated by the relevant Trade Sanction, we may be required to comply with the requirements of the applicable Trade Sanction, which by way of example, may include blocking or "freezing" property and payment of any funds and the reporting of such occurrences to the relevant authorities within the prescribed time periods, if any.

**POTENTIAL ACTIONS BY US**

Depending upon the requirements of the relevant Trade Sanction:

1. *We may be required to immediately cancel your coverage effective on the day that we determine that we have transacted business with an individual or entity associated with your policy on a prohibited list or connected to a sanctioned country as described in the relevant Trade Sanction.*
2. *If we cancel your coverage, you may not receive a return premium unless permitted pursuant to the relevant Trade Sanction. All blocked or frozen funds will be placed in an interest bearing blocked account established on the books of a financial institution.*
3. *We may not pay a claim, accept premium or exchange monies or assets of any kind to or with individuals, entities or companies (including a bank) on a prohibited list or connected to, or carrying on business in, a sanctioned country as designated by the relevant Trade Sanction. Furthermore, we may not defend or provide any other benefits under your policy to individuals, entities or companies on a prohibited list or connected to, or carrying on business in, a sanctioned country as designated by the relevant Trade Sanction.*

**AVIS À LA CLIENTÈLE  
CONCERNANT L'APPLICATION DES  
EMBARGOS ÉCONOMIQUES ET DES SANCTIONS COMMERCIALES**

---

Le présent avis concernant les sanctions commerciales fait partie du programme intégré de conformité de Compagnie d'Assurance AIG du Canada et vise à rappeler les exigences juridiques actuelles applicables quant aux sanctions commerciales.

Vos droits à titre de titulaire de police et les paiements qui sont dus à vous, à un assuré ou à un demandeur, à la suite d'un sinistre aux termes de la présente police, peuvent être touchés par l'administration et l'application d'embargos économiques et de sanctions commerciales qui sont applicables contre vous ou contre un assuré, un demandeur ou l'assureur et leurs entités contrôlantes (ci-après appelées les « sanctions commerciales »).

**DÉFINITION D'UN EMBARGO ÉCONOMIQUE OU D'UNE SANCTION COMMERCIALE**

Un pays impose des sanctions commerciales lorsqu'il prend des mesures juridiques pour restreindre ou interdire le commerce, les services ou d'autres activités économiques avec un pays, une entité ou une personne en particulier. Par exemple, le Parlement du Canada a adopté une législation permettant l'imposition de sanctions commerciales en vertu de la *Loi sur les Nations Unies*, de la *Loi sur les mesures économiques spéciales* et de certaines dispositions de la *Loi sur les licences d'exportation et d'importation*.

Selon l'identité, le domicile, le lieu de constitution ou la nationalité du titulaire de police, de l'assuré, du demandeur, de l'assureur ou de la société mère et de l'entité contrôlante finale du titulaire de police, de l'assuré, du demandeur ou de l'assureur, ou selon le pays où le sinistre a eu lieu, des sanctions commerciales imposées par des pays étrangers, notamment les États-Unis d'Amérique, peuvent s'appliquer. L'application de sanctions pourrait nécessiter la saisie ou le gel d'un bien, notamment de l'indemnité d'assurance.

Les sanctions commerciales actuelles peuvent être modifiées et de nouvelles sanctions commerciales peuvent être imposées à tout moment.

**OBLIGATIONS NOUS INCOMBANT EN RAISON DE SANCTIONS COMMERCIALES**

Si vous ou un assuré, un assuré supplémentaire, un bénéficiaire ou un demandeur êtes sur une liste d'interdiction ou êtes liés à un pays, à une entité ou à une personne faisant l'objet d'une sanction ou à une activité interdite, visé par la sanction commerciale pertinente, nous pourrions devoir nous conformer aux exigences de la sanction commerciale applicable, qui, par exemple, peut inclure le blocage ou le gel d'un bien ou du paiement de fonds et la déclaration de cette mesure aux autorités compétentes dans les délais prescrits, le cas échéant.

**MESURES ÉVENTUELLES DE NOTRE PART**

Selon les exigences de la sanction commerciale pertinente :

- 1. Nous pourrions être tenus de résilier immédiatement votre couverture, avec prise d'effet le jour où nous estimons que nous avons fait affaires avec une personne ou une entité associée à votre police qui se trouve sur une liste d'interdiction ou liée à un pays visé par la sanction commerciale pertinente.*
- 2. Si nous résilions votre couverture, vous ne recevrez peut-être pas un remboursement de prime si la sanction commerciale applicable ne le permet pas. Tous les fonds bloqués ou gelés seront placés dans un compte bloqué portant intérêt ouvert auprès d'une institution financière.*
- 3. Il est possible que nous ne puissions pas régler un sinistre, accepter une prime ou échanger de l'argent ou des biens de quelque sorte que ce soit lorsque la personne, l'entité ou la société intéressée (y compris une banque) se trouve sur une liste d'interdiction, est liée à un pays sanctionné ou exerce des activités dans un pays visé par la sanction commerciale pertinente. De plus, il pourrait nous être impossible de défendre ou d'indemniser par ailleurs aux termes de votre police des personnes, des entités ou des sociétés qui se trouvent sur une liste d'interdiction, sont liées à un pays sanctionné ou exercent des activités dans un pays visé par la sanction commerciale pertinente.*



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**ENTITY OWNERSHIP INSURANCE POLICY**

**THIS INSURANCE IS ARRANGED BY DUAL ASSET UNDERWRITING, ACTING ON BEHALF OF FIDELIS UNDERWRITING LIMITED (THE "INSURER"). THIS IS A CLAIMS MADE POLICY; PLEASE READ THE POLICY CAREFULLY. SUBJECT TO THE TERMS AND CONDITIONS OF THIS POLICY, COVER IS LIMITED TO LOSS THAT THE INSURED REPORTS TO THE INSURER IN ACCORDANCE WITH THE TERMS OF THIS POLICY. AMOUNTS INCURRED AS AUTHORIZED EXPENSES FALL WITHIN THE DEFINITION OF LOSS AND SHALL REDUCE THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS.**

**DECLARATIONS**

- ITEM 1. INSURED:**  
Moby Canada Limited Partnership  
c/o OMERS Infrastructure Management Inc.  
100 Adelaide St W, 21st Floor Reception  
Toronto, ON M5H 0E2  
Canada  
Attention: Steven Zucchet, Managing Director  
Facsimile: (416) 361-6075  
E-mail: [szucchet@omers.com](mailto:szucchet@omers.com)
- ITEM 2. AGREEMENT:**  
The agreement for the sale and purchase of the Purchased Assets entered into between the Seller, the Seller Parent Guarantors and the Insured dated August 8, 2018.
- ITEM 3. POLICY PERIOD:**  
Commencement Date: 00:01am on August 8, 2018  
Expiration Date: the date that is six years from the Closing Date
- ITEM 4. LIMIT OF LIABILITY:**  
USD 1,666,577,846 in the aggregate for the Policy Period
- ITEM 5. DEDUCTIBLE**  
USD 100,000,000 in the aggregate for the Policy Period
- ITEM 6. PREMIUM:**  
USD 2,062,390 (0.124% of Policy Limit)
- ITEM 7. BROKER COMMISSION**  
The broker commission is NIL
- ITEM 8. BROKER**  
Atlantic Global Risk LLC  
230 Park Avenue, 4<sup>th</sup> Floor

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New York  
NY 10169

**ITEM 9. TAXES**

The Premium is exclusive of any applicable sales tax and any other applicable tax, fee or surcharge. It is the Insureds' responsibility to pay any applicable sales tax and any other applicable tax, fee or surcharge.

USD 164,991.21 (8% of the Premium for Ontario)

**APPENDIX A Signing No Claims Declaration**

**APPENDIX B Closing No Claims Declaration**

**APPENDIX C Form of Endorsement**



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**ATLANTIC**

Policy Number: 00-37229918J0

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Policy:

- **Actual Knowledge** means with respect to a particular fact, event or condition, that any Person had an actual conscious awareness of such fact, event or condition; provided that, for purposes of determining whether a Person had Actual Knowledge of the existence of an Insured Event, such Person shall also have an actual conscious awareness that the underlying fact, event or condition constitutes an Insured Event. For the avoidance of doubt Actual Knowledge shall not, in any case, include any imputed or constructive knowledge, any knowledge of any outside advisors or agents or any duty or obligation of inquiry. The Insurer shall bear the burden of proving that any such Person had Actual Knowledge of any underlying fact, event and condition and any Insured Event.
- **Affiliate** means as to any Person, any Person which directly or indirectly controls, is controlled by, or is under common control with such Person. For purposes of this definition, "control" of a Person shall mean the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by ownership of voting securities, by contract or otherwise;
- **Agreement** means the agreement stated in Item 2 of the Declarations;
- **Agreement Closing Conditions** means Section 6.1, Section 6.2 and Section 6.3 of the Agreement;
- **Atlantic** means Atlantic Global Risk LLC whose registered address is at 230 Park Avenue, 4<sup>th</sup> Floor, New York, NY 10169;
- **Authorized Expenses** means fees, costs, expenses and other amounts, which the Insured incurs or which are incurred on behalf of Insured (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) in investigating, settling, adjusting, defending, pursuing and/or appealing: (i) the interest of the Insured in respect of a Third Party Claim; or (ii) a claim against any third party in connection with or arising from an Insured Event, and in particular shall include the fees of the Insured's Legal Representative, accountants', consultants', experts' and other professional fees, costs and expenses, including consultants', experts' and accountants' fees, costs and expenses. These fees and expenses must always be reasonably incurred and the Insurer must approve them in writing before they are incurred (such approval not to be unreasonably withheld, conditioned or delayed);
- **Business Day** means any day other than a Saturday or Sunday or any day on which banks in (i) the State of New York or (ii) Toronto, Ontario Canada are authorized or required to close;
- **Claim** means any claim brought by the Insured under this Policy;
- **Closing** means closing in accordance with Section 2.3 of the Agreement;



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- **Closing No Claims Declaration** means the closing no claims declaration in the form annexed at Appendix B of this Policy signed by an authorized representative of the Insured, that person having made reasonable inquiries of the Team Members, and dated as at the Closing Date;
- **Closing Date** means the date of Closing;
- **Commencement Date** means the date this Policy commences, which is stated in Item 3 of the Declarations;
- **Company** means Puget Holdings LLC, a Delaware limited liability company;
- **Company Interests** means the Class A Interests of the Company;
- **Contract** means any written or oral agreement, contract, subcontract, lease, license, sublicense or other legally binding commitment or undertaking;
- **Court** means a court of law in any country, which has the power to make a final legal ruling, which affects the Agreement, the Insured, the Policy and/or any Group Member;
- **Declarations** means the “Declarations” set out at the beginning of this Policy;
- **Deductible** means the aggregate deductible amount stated in Item 5 of the Declarations;
- **Disclosure Schedules** means the ‘Disclosure Schedules’ as defined in the Agreement;
- **DUAL Asset Underwriting** means DUAL Asset Underwriting Limited, company registered number 8494511, acting on behalf of the Insurer. DUAL Asset Underwriting is an Appointed Representative of DUAL Corporate Risks Limited;
- **Due Diligence Report** means the following reports: i) ‘Project Hamilton’ Legal Due Diligence Report prepared by Latham & Watkins and dated February 1, 2018, and ii) Project Hamilton Due Diligence Report prepared by Torys and dated May 11, 2018.
- **Endorsement** means the endorsement in the form annexed at Appendix C of this Policy signed by or on behalf of the Insured and the Insurer;
- **Equity Interests** means shares, partnership interests, limited liability company interests or any other equity interest in any Person;
- **Finance Party** means any bank(s) and/or holders of debt securities and/or financial institution(s) and/or hedge counterparties and/or any other person lending money or making other banking facilities available to the Insured or any Affiliate of the Insured in connection with the acquisition of the Company, if applicable, and/or any financing and/or refinancing and/or syndication of the debt of the Insured or its Affiliates or any financiers who provide funds on or in connection with any subsequent financing and/or refinancing and/or syndication of such funding or any Person from time to time appointed by any financier to act as security trustee on behalf of such financier;



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- **Final Judgment** means a judgment of a Court or arbitrator that cannot legally be appealed further or for which the time set for appeals has expired;
- **Governmental Authority** means any nation or government, any state, province or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administration functions of or pertaining to government, or any government authority, agency, department, board, tribunal, commission, court, judicial or arbitral body or instrumentality of the United States, any foreign government, any state of the United States, or any municipality or other political subdivision thereof or of any other government in any jurisdiction;
- **Group** means, collectively, the Company and its Subsidiaries;
- **Group Member** means any member of the Group;
- **Insured** means the Person named in Item 1 of the Declarations;
- **Insured Event** means any of the insured events set out in Clause 4 (“Insured Events”) of this Policy;
- **Insurer** means Fidelis Underwriting Limited, a company incorporated under the laws of England and Wales with company number 09753615 and whose registered address is at The Leadenhall Building, 34th Floor, 122 Leadenhall Street, London EC3V 4AB;
- **Intentional Fraud** has the same meaning attributed so such term in the Agreement;
- **Interim Event** means any Insured Event that is caused by any fact, matter or circumstance that first occurred after the Commencement Date, but prior to the Closing Date and of which any Team Member has Actual Knowledge on or prior to the Closing Date;
- **Law** means any statute, law, ordinance, writ, treaty, constitutions, rulings, regulation, rule, code, injunction, judgment, decree or order, enforceable guidance or directive of any Governmental Authority;
- **Legal Representative** means the Person who the Insurer, having discussed its selection with the Insured and such Person is acceptable to Insured, appoints to represent the Insured to (i) protect its interests in respect of a Third Party Claim; or (ii) pursue a claim against any Person (save for a Group Member) in connection with an Insured Event;
- **Liens** means any lien, encumbrance, charge, mortgage, pledge, security interest, condition, hypothecation, claim, adverse claim, right of first refusal, option, personal right, preemption right, ownership title retention right, any other security interest or any other restriction of any kind;
- **Limit of Liability** means the amount stated in Item 4 of the Declarations;
- **LLC Agreement** means the Second Amended and Restated Limited Liability Company Agreement of the Company, dated as of May 28, 2009, as amended by the First Amendment thereto, dated as of October 30, 2017;

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- **Loan Agreement** means the Second Amended and Restated Senior Secured Loan Agreement, dated as of January 20, 2015, by and between Puget Intermediate Holdings Inc., as the borrower therein, and Seller, as the lender therein;
- **Loss** has the meaning attributed to it in Clause 3 (Calculating Loss) of this Policy;
- **No Claims Declarations** means the Signing No Claims Declaration and the Closing No Claims Declaration;
- **Notification of Circumstance** has the meaning given to it in Clause 6.1 of this Policy;
- **Person** means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity;
- **Policy** means this 'Entity Ownership' policy, including all appendices;
- **Policy Period** means the period of time stated in Item 3 of the Declarations (all dates inclusive);
- **Premium** means the amount payable to the Insurer for the Policy, as stated in Item 6 of the Declarations, in accordance with Clause 6.6.2 of this Policy;
- **Purchased Assets** means the Purchased Interests and Purchased Loan;
- **Purchased Interests** means 23.8872% of the issued and outstanding Company Interests;
- **Purchased Loan** means the Loan Agreement with respect to the Pro Rata Portion of the Loan (as defined in the Loan Agreement) owing at the Closing to Seller thereunder;
- **Representations & Warranties Insurance Policy** means the representations and warranties policies in relation to the Agreement provided by AIG Insurance Company of Canada and Ironshore Canada Ltd;
- **Representatives** means, with respect to any Person, such Person's members, partners, trustees, directors, managers, committee members, officers, employees.
- **Right** means any option, warrant, convertible or exchangeable security or other right to subscribe for, purchase or otherwise acquire any Equity Interest or other security of any class, with or without payment of additional consideration in cash or property, either immediately or upon the occurrence of a specified date or a specified event or the satisfaction of any other condition.
- **Seller** means MIP Padua Holdings, L.P., a Delaware limited partnership;
- **Seller Parent Guarantors** means: i) Macquarie Infrastructure Partners Canada, L.P., and ii) Macquarie Infrastructure Partners International, L.P., iii) Macquarie Infrastructure Partners A, L.P., and iv) Macquarie Infrastructure Partners II AIV, L.P.;
- **Signing No Claims Declaration** means the signing no claims declaration in the form annexed at Appendix A of this Policy signed by an authorized representation of the Insured, that person having made reasonable inquiries of the Team Members and dated as at the Commencement Date;



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- **Subsidiaries** or **Subsidiary** means, in relation to any Person, any corporation, partnership, limited liability company, joint venture, trust or other legal entity of which such Person owns (either directly or through or together with another Subsidiary of such Person) either (i) a general partner, managing member or other similar interest, or (ii) fifty percent (50%) or more of the outstanding capital stock or other voting or equity interests of such corporation, partnership, limited liability company, joint venture or other legal entity;
- **Team Members** means Steve Zucchet, Marco Fontana.
- **Third Party Claim** means any demand, claim, notice, complaint, investigation, proceeding, assertion of rights or legal action made against the Insured or any Affiliate of Insured and/or any Group Member by any Person (other than the Insured or any Group Member), arising out of and/or in connection with any of the Insured Events in respect of which the Insured anticipates (acting reasonably) that it will make a Claim ;

## 1.2 Interpretation

- (a) The headings of this Policy do not affect its interpretation.
- (b) Capitalized terms used in this Policy not otherwise defined herein shall have the respective meanings assigned to them in the Agreement.
- (c) No party to this Policy shall have the benefit of any presumption regarding the interpretation or construction of the terms of this Policy based on which party drafted it.
- (d) Words importing the singular include the plural and vice versa, words importing a gender include every gender and references to persons include corporations, partnerships and other unincorporated associations.
- (e) The word “including” or similar expression in this Policy shall be deemed to mean “including without limitation”.
- (f) The word “person(s)”, wherever it appears, means legal or natural person(s) unless otherwise specified.
- (g) References in this Policy to a “Clause” or an “Appendix” shall mean a Clause or an Appendix of or to this Policy unless otherwise stated.
- (h) “USD”, “USD\$” and “\$” all refer to United States dollars.
- (i) This Policy shall be interpreted in accordance with the legislation in force as at the date of this Policy.

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## **2. INSURING PROVISIONS**

### **2.1 Insuring Clause**

Subject to the terms, conditions and limitations of this Policy, the Insurer shall in excess of the Deductible, if applicable, indemnify the Insured and its Affiliates and Representatives for, or pay on its behalf, any Loss arising from any Insured Event(s).

### **2.2 Aggregate Limit of Liability and Authorized Expenses**

The Limit of Liability is the limit of the Insurer's maximum aggregate liability for all Loss under this Policy and Authorized Expenses are part of, not in addition to, the Limit of Liability. The Insurer shall have no obligation to pay Loss after exhaustion of the Limit of Liability.

### **2.3 Deductible**

The Insurer shall only be liable under this Policy once the aggregate amount of Loss exceeds the Deductible, in which case the Insurer shall only be liable for amounts exceeding the Deductible. The Deductible forms part of the Limit of Liability.

The Deductible shall be eroded by: i) Loss for which the Insurer would otherwise be liable under this Policy, but for such Deductible, ii) any amounts recoverable under the Representations & Warranties Insurance Policy (whether in relation to Loss or otherwise), and iii) any amounts that erode the retention under the Representations & Warranties Insurance Policy (whether in relation to Loss or otherwise).

### **2.4 Action against the Seller or Seller Parent Guarantor**

Notwithstanding that the Insured may have a right to claim against the Seller or Seller Parent Guarantor in respect of the subject matter out of which any Loss arises pursuant to the Agreement, the Insured shall not be required to proceed against the Seller or Seller Parent Guarantors at any time, under any circumstances, including prior to: i) delivering a Notification of Circumstance and/or Claim under this Policy; ii) for a Loss to be capable of eroding the Deductible; or iii) recovering Loss from the Insurer.

### **2.5 Proceeds under this Policy and gross up**

If any deduction or withholding is required by law to be made from any payment of Loss made by the Insurer under this Policy or if the Insured or any Group Member is subject to tax in respect of its receipt of such payment of Loss, the Insurer shall increase the amount of the payment (subject always to the Limit of Liability) to the extent necessary to ensure that the net amount received (after taking into account such deduction, withholding or taxation, as applicable) is equal to the amount that it would have received had the payment not been subject to any such deduction, withholding or taxation, as applicable.

### **2.6 No recourse and subrogation**

The Insurer agrees that it will not have any right of action against any Team Members, nor will the Team Members have any liability in their personal capacity in relation to any No Claims Declaration or otherwise under this Policy.

The Insurer shall have no, and hereby waives any, rights of subrogation against: i) the Seller or Seller Parent Guarantors, save in respect of any Loss that arises directly from the Seller's



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or any Seller Parent Guarantor's Intentional Fraud; ii) any Group Member, iii) the Insured or any Affiliate of the Insured; or (iv) any external advisers of the Insured, Seller and/or Group Member, in each case, in connection with such advisers' services in, under and/or in respect of the completion of the transaction evidenced by the Agreement, save in respect of any Loss that arises directly from such advisers' Intentional Fraud.

In the event of Intentional Fraud, the Insurer shall only be entitled to subrogate against such Person whose conduct has been Intentional Fraud and the Intentional Fraud of any individual Person shall not be imputed to another.

Any Team Member, the Seller, Seller Parent Guarantors and the aforementioned advisers shall be entitled to enforce the provisions of this Clause 2.6.

## **2.7 Policy Period**

The Insurer shall not be liable for Loss unless the respective Notification of Circumstance has been delivered to the Insurer during the Policy Period or within thirty (30) Business Days after the expiration date of the Policy Period.

If a Notification of Circumstance is given, then any subsequent Loss arising out of the facts, matters or circumstances notified shall be deemed reported at the time the Notification of Circumstance was received by the Insurer.

## **3. CALCULATING LOSS**

Loss means:

1. all losses, liabilities, damages, claims, awards, judgements, payments, costs and expenses actually suffered or incurred by the Insured; and
2. any Authorized Expenses to the extent not included in (1) above.
3. Losses shall not include punitive damages except to the extent awarded to a third party in a Third Party Claim.
4. Losses shall include any consequential or indirect damages that are a reasonably foreseeable consequence of the applicable breach, inaccuracy or failure to perform (including, to the extent reasonably foreseeable, diminution of value).

## **4. INSURED EVENTS**

On the Commencement Date and/or the Closing Date:

1. prior to the Closing, the Seller is not, and therefore following the Closing, the Insured is not, the record and/or beneficial owner of the Purchased Interests, free and clear of all Liens, other than: i) Liens arising under the Agreement and/or the LLC Agreement, and/or ii) restrictions on sales of securities under applicable securities Laws;
2. there is a Right of any Person, other than the Insured, to purchase and/or acquire from the Seller the Purchased Interests, other than such Rights: i) as set forth in the LLC Agreement, and/or ii) of the Buyer under the Agreement;

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3. any of the Purchased Interests: i) are not validly issued, ii) are not fully paid (to the extent required by the LLC Agreement), and/or iii) are not non-assessable (except as such non-assessability may be affected by Sections 18-607 and 18-804 of the Delaware Limited Liability Company Act);
4. any of the Purchased Interests were issued to and/or acquired by the Seller in violation of: i) any Law, ii) any Contract, and/or iii) the preemptive rights of any Person;
5. prior to the Closing the Seller does not have, and therefore following the Closing, the Insured does not have, good and/or valid title to the Purchased Loan, free and clear of all Liens, other than Liens arising under the Agreement and/or the Loan Agreement;
6. there is a Right of any Person other than the Insured to purchase and/or acquire from the Seller all and/or any portion of the Loan under the Loan Agreement, other than: i) as set forth in the Loan Agreement, and/or ii) the Buyer's rights under the Agreement.

## **5. EXCLUSIONS**

### **5.1 - General**

Notwithstanding anything else in this Policy or elsewhere, the Insurer shall not be liable for that part of Loss:

1. subject to Section 6.4, resulting from a Third Party Claim brought by any Person to whom the Insured has disclosed the existence of this Policy prior to the initiation of such Third Party Claim, provided that this Clause 5.1(1) shall not apply to: (i) the Seller and its Affiliates; (ii) the any Group Member; (iii) a potential purchaser with whom the Insured is negotiating the sale of any Group Member; (iv) any Finance Party; (v) the advisers of the aforementioned, to whom, in each case, the Insured is entitled to disclose this Policy to and/or (vi) as required by Law or in order to implement or enforce the Insured's rights under this policy;
2. being legal fees, other expenses and/or Authorized Expenses which the Insurer did not authorize in writing before they were incurred (such authorisation not to be unreasonably withheld, conditioned or delayed), unless retrospective approval was obtained (such authorisation not to be unreasonably withheld, conditioned or delayed); or
3. arising from pollution, flooding, contamination, war, invasion, riot, civil commotion and/or revolution;

### **5.2 – Known issues and fraud**

Notwithstanding anything else in this Policy or elsewhere, the Insurer shall not be liable for that part of Loss:

1. arising from any material inaccuracy in any No Claims Declaration, but only to the extent such Loss is directly related to the substantive content of such material inaccuracy which shall be the Insurer's burden to prove;
2. arising from any fact, matter or circumstance disclosed in the Agreement and/or Disclosure Schedules, to the extent reasonably apparent on the face of such disclosure



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that such Loss would reasonably be expected to arise out of such fact, matter or circumstance;

3. arising from a fraudulent Claim made by or on behalf of the Insured;

### **5.3 Closing No Claims Declarations**

If the Closing No Claims Declaration contains details of any Interim Event: (i) the Insurer shall not be entitled to terminate this Policy and this Policy will continue, save that the Insurer shall not be liable to pay any Loss based upon, arising out of, or to the extent Loss is increased by (in which case only to the extent of such increase), any such Interim Event; and (ii) the cover of any Insured Event that is not an Interim Event shall not be impacted upon whatsoever.

### **5.4 Other Insurance Policies**

The Insured shall not be required to seek recovery under the Representations & Warranties Insurance Policy prior to delivering a Notification of Circumstance or recovering Loss under this Policy.

The coverage provided under this Policy shall be excess coverage of any other valid and collectible insurance policy with respect to any Loss. The Insured shall not be obligated to first pursue claims for any Loss against any other insurance policy or other source of recovery prior to being eligible for any payment under this Policy and if there is a dispute as to whether the coverage under this Policy shall be excess of other coverage or if other coverage shall be excess of the coverage under this Policy, the Insured may recover under this Policy.

## **6. CONDITIONS**

### **6.1 Notifying a Claim and mitigation**

The Insured must notify DUAL Asset Underwriting as soon as reasonably practical of the chief executive officer, chief financial officer or general counsel (or the functional equivalent of the foregoing) of the Insured obtaining Actual Knowledge of a fact, matter or circumstance that may reasonably result in any Loss under this Policy (a “**Notification of Circumstance**”) or of an occurrence giving rise to a Claim, provided that any delay in providing a Notification of Circumstance shall not prejudice the liability of the Insurer to the Insured under the Policy.

To make a Claim, contact DUAL Asset Underwriting, by email or in writing at the address shown below.

DUAL Asset Underwriting  
107 Leadenhall Street  
London, EC3A 4AF  
United Kingdom  
Attn: Managing Director

[realestate@dualgroup.com](mailto:realestate@dualgroup.com)

A copy of such notice should be provided to Atlantic at the following address:

Atlantic Global Risk LLC  
230 Park Avenue, 4<sup>th</sup> Floor  
New York, NY, 10169



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Attn: Managing Director

[claims@atlanticgrp.com](mailto:claims@atlanticgrp.com)

If a Claim has been accepted by the Insurer, it is the Insurer's aim (without limiting the Insurer's other obligations hereunder):

- to resolve the fact, matter or circumstance giving rise to the Claim in order to mitigate any Loss; or
- to defend the Insured, at the Insurer's expense, to resolve any Third Party Claim as efficiently as possible.

The Insured shall, and to the extent reasonably practicable and permitted by Law, take reasonable steps to mitigate any Loss or potential Loss. For the avoidance of doubt, nothing in this Clause 6.1 shall require the Insured to forego any legal rights or breach any legal obligation (including any such right or obligation which may arise pursuant to any rule of dispute resolution procedure, or as may arise out of or in connection with the Agreement or any other agreement) or do or not do any other thing where to do or not do so would in any way have a detrimental effect on the respective rights, obligations and interests of the Insured.

For any matter that does not require a Notification of Circumstance under this Policy, but is recoverable under the Representations & Warranties Insurance Policy (and therefore erodes the Deductible under this Policy pursuant to Clause 2.3), the Insured shall keep the Insurer reasonably informed of such matters.

## **6.2 Dealing with Claims and Third Party Claims under this Policy**

In respect of a Third Party Claim, the Insured must not negotiate, admit fault or make any payment, settlement offer or promise of payment, unless it has obtained the Insurer's written permission to do so (such written permission will not be unreasonably withheld, conditioned or unduly delayed). The Insurer has the right to refuse to indemnify the Insured for any payment, settlement offer or promise of payment that does not have the Insurer's prior written permission (provided that such permission was not unreasonably withheld, conditioned or delayed), unless resulting from a Final Judgment; provided that such permission shall not be required (but you shall keep the Insurer informed) if the amount of such payment, settlement offer or promise of payment does not exceed 33 1/3% of the then-available Deductible.

To the extent reasonably permitted by the circumstances, and without placing the Insured under any obligation to contravene any applicable law or regulation or endanger any legal privilege, the Insured shall reasonably co-operate with the Insurer in relation to Claims, including by providing the Insurer with information that is within the Insured's possession, is reasonable to provide, and is relevant to such a Claim. The Insurer has the right to reduce Loss paid to the extent that a material non-co-operation affects its ability to assist the Insured, but only to the extent such non-co-operation actually and materially prejudices the Insurer.

In dealing with any Claim under this Policy arising from a Third Party Claim, the Insurer will choose whether to defend the Insured or pay a cash amount to settle such Third Party Claim. At any time, the Insurer can pay the Insured an amount equal to the applicable Limit of Liability or any lower amount for which the Third Party Claim can, pursuant to a written offer, be settled in full in cash at such time (provided that such offer must include including a full and unconditional release of all Third Party Claims against Insured and its Affiliates and Representatives), after deduction of any money already paid in connection with such Third

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Party Claim. The Insurer shall then give up control of, and have no further liability in connection with such Third Party Claim.

The Insurer may carry out the defense or settlement of any Third Party Claim and subject to Section 2.6: (i) take any reasonable legal action in the name of any Person covered by this Policy; (ii) if necessary, choose a Legal Representative, who will act for the Insured in any legal action provided that the Insurer shall reasonably cooperate with the Insured to transition control of such Third Party Claim to the Insured.

Subject to Clause 6.5, if the Insurer decides to take legal action, they will not be obliged to settle such Third Party Claim until there is a Final Judgment. Whilst the Insurer is taking legal action on behalf of the Insured, if it is reasonably likely that the Insurer will not be successful in such legal action, the Insurer shall have the discretion to agree a reasonable settlement with the Insured sufficient to resolve such Third Party Claim in full and settle the Claim on behalf of the Insured, provided that such settlement is solely for money damages and includes a full and unconditional release of all Third Party Claims against Insured and its Affiliates and Representatives.

For any Claim or Third Party Claim that is recoverable under the Representations & Warranties Insurance Policy, the Insurer acknowledges that the insurance carriers providing such Representations & Warranties Insurance Policy may require conduct of such Claim or Third Party Claim. For as long as Loss arising from the aforementioned Claim or Third Party Claim falls within the Deductible of this Policy, the Insured shall not be required to take any action under this Policy if such action prejudices its rights of recovery under the Representations & Warranties Insurance Policy.

### **6.3 Choice of Law and Jurisdiction and Service of Suit**

The construction, interpretation and meaning of the terms, exclusions, limitations and conditions of this Policy shall be determined in accordance with the laws of the State of Delaware, as applicable to insurance contracts entered into in that State between citizens of that State, and in accordance with the text as it appears in this Policy.

Subject to any provision in this Policy requiring or allowing for arbitration, in the event of failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer and the Insured shall submit to the jurisdiction of the Courts in the Province of Ontario, located in the City of Toronto. Nothing in this Section 6.3 constitutes or should be understood to constitute a waiver of the Insurer's rights to commence or remove an action to a federal court located in the Province of Ontario Canada, as permitted by the laws of Canada. It is further agreed that service of process in such suit may be made upon Clyde & Co Canada LLP, 401 Bay Street, Suite 2500 P.O. Box 25, Toronto, Ontario, M5H 2Y4, Canada, or his or her representative, and that in any suit instituted against the Insurer upon this Policy, the Insurer will abide by the final decision of such court or of any appellate court in the event of any appeal.

It is hereby understood and agreed that all disputes or differences which may arise under this Policy, whether arising before or after termination of this Policy, including any determination of the amount of Loss, shall be referred to and finally resolved by arbitration under the Ontario Arbitration Act, 1991, S.O., 1991, c. 17, and shall be conducted in accordance with its provisions, rules and regulations. The place of the arbitration shall be the City of Toronto in the Province of Ontario. The language of the arbitration shall be English. With regard to any specific arbitration, there shall be three arbitrators. The arbitrators shall be disinterested individuals having knowledge of the legal, corporate or insurance issues relevant to the matters in dispute. The Insurer shall appoint one arbitrator and the Insureds shall appoint one arbitrator. The third arbitrator shall be the chairman and shall be appointed by agreement of

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the two party-appointed arbitrators. The written decision of the arbitrators shall be provided to both parties and shall be binding on them. The arbitrators' award shall not include costs or legal fees or other costs and disbursements. Each party shall bear equally the expenses of the arbitration.

#### **6.4 Inadvertent Breach and Innocent Non-Disclosure**

Without prejudice to Clause 5 of this Policy, the consequences under this Policy of any inadvertent action, inadvertent breach, inadvertent inaction or inadvertent omission taken or made, or failed to be taken or made, in each case, by or on behalf of the Insured, shall not relieve the Insurer of its obligations to pay Loss under this Policy. However, the Insurer shall be entitled to reduce Loss to the extent that such inadvertent action, inadvertent breach, inadvertent inaction or inadvertent omission has actually and materially prejudiced the Insurer.

#### **6.5 Payment of Loss and reimbursement of Authorized Expenses**

When the extent of the Insurer's liability to the Insured under this Policy with respect to any Claim has been finally determined, the Insurer will pay the Insured within thirty (30) Business Days of that determination.

Notwithstanding that any Third Party Claim that may not have been settled or finally determined, if the Insured requests in writing, the Insurer shall, provided that the Deductible has been fully eroded, reimburse the Insured after each calendar month for Authorized Expenses incurred during such calendar month.

#### **6.6 Premium, Taxes & Cancellation**

##### **6.6.1**

This Policy is non-cancellable, and the Premium hereunder is earned fully and non-refundable on the Closing Date.

##### **6.6.2**

The Insurer's obligation under this Policy shall be conditional upon:

1. delivery to DUAL Asset Underwriting within 5 Business Days from the Commencement Date of a PDF copy of the duly executed Signing No Claims Declaration
2. Closing occurring in accordance with the Agreement Closing Conditions without any waiver or amendments to the parties' obligations under those provisions which would reasonably be expected to have an adverse and material impact on the Insurer, unless the Insurer has given its prior written consent (such consent not to be unreasonably withheld, conditioned or delayed);
3. delivery to DUAL Asset Underwriting within 5 Business Days from the Closing Date of a PDF copy of the Closing No Claims Declaration duly executed by or on behalf of the Insured; and
4. delivery to DUAL Asset Underwriting within 20 Business Days from the Closing Date: (i) a PDF copy of the executed Agreement; and (ii) a PDF copy of the executed Disclosure Schedules;
5. payment of 10% of the Premium (including applicable taxes) to the Insurer (or broker in respect of taxes) in cleared funds within: (i) 20 Business Days from the Commencement Date; and (ii) the remaining 90% of the Premium (and applicable taxes) within 20 Business Days from the Closing Date, or such other date as is agreed in writing between the Insured and the Insurer.

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If any conditions in Clauses 6.6.2 (1), (3), (4) or (5) are not fully met, the Insurer shall be entitled to terminate this Policy by written notice to the Insured, provided that the Insured has the opportunity to cure conditions which have not been satisfied within 10 Business Days following receipt of the Insurer's written notice to terminate this Policy. If the Insurer terminates this Policy in accordance with this Clause:

1. the Insurer shall have no liability under this Policy in respect of any Loss or otherwise; and
2. the Insurer shall refund 95% of the Premium (if it has been paid by the Insured to the Insurer) or the Insured shall pay to the Insurer 5% of the Premium.

Should a Loss be discovered after the Commencement Date, but prior to the conditions under this Clause 6.6.2 being met, the Insurer shall not be relieved of its obligations under this Policy, so long as the conditions under this Clause 6.6.2 are met within the respective time periods.

### **6.6.3**

If Closing does not occur, the Insurer, or notwithstanding any other provisions in the Policy, the Insured shall be entitled to terminate and render void ab initio this Policy by written notice to the other party, in which case the Insurer shall have no liability under this Policy in respect of any Loss or otherwise and the Insurer shall refund the Premium (if it has been paid by the Insured to the Insurer).

### **6.7 Finance Party Protection Clause**

Any act, neglect, error, omission or non-compliance with the terms of this Policy by the Insured, which invalidates or vitiates the cover provided by this Policy or would allow a defense as against the payment of a Claim shall not affect the entitlement of any Finance Party to make a Claim under this Policy or otherwise prejudice the interest of any Finance Party under this Policy.

### **6.8 Assignment and Additional Insureds**

The Insured may not assign any of the rights under this Policy without the Insurer's express written permission (such permission not to be unreasonably withheld, conditioned or delayed) save that the Insured may:

1. assign any or all of its interest in this Policy to any Group Member or Affiliate of the Insured;
2. assign any or all of its interest in the proceeds of this Policy to a Finance Party.

### **6.9 Fraud**

If the Insured, or anyone acting on its behalf, makes a Claim under this Policy which is fraudulent and/or supported by a fraudulent statement, the Insurer shall not pay any part of that Claim or any other Claim which has been made under this Policy. In addition, the Insurer shall have the right to:

1. treat this Policy as if it never existed, or at the Insurer's option, terminate this Policy, without returning any Premium that has been paid to the Insurer; and
2. refuse any other benefit under this Policy.

If required by mandatory law, the Insurer may also notify the relevant authorities, so that they may consider criminal proceedings.

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### **6.10 Notices and changes to Policy terms**

Every notice that is given under this Policy must be done so in writing (by email or post) and should include the Policy Number.

To be effective, any change to the terms of this Policy must be in writing and agreed between the Insured and the Insurer and noted by way of an Endorsement in the form attached at Appendix C.

If the Insured gives notice under this Policy, it must send it to DUAL Asset Underwriting at the address shown in Clause 6.1 of this Policy. If the Insurer gives notice, they must send it to the Insured's address shown in Item 1 of the Declarations, with a copy to be sent to:

OMERS Infrastructure Management Inc.  
100 Adelaide St W, 21st Floor Reception  
Toronto, ON M5H 0E2  
Canada  
Attention: Managing Director, Legal  
Facsimile: (416) 361-6075

### **6.11 Sanctions**

The Insurer shall not provide any benefit under this Policy to the extent providing cover, payment of any Claim or Third Party Claim or the provision of any benefit would breach any sanction, prohibition or restriction imposed by law or regulation.

### **6.12 Complaints**

If the Insured wishes to make a complaint, written notice should be provided to DUAL Asset Underwriting at the following address:

Head of Compliance  
DUAL Corporate Risks Limited  
107 Leadenhall Street  
London EC3A 4AF  
By email: [complaints@dualgroup.com](mailto:complaints@dualgroup.com)  
By phone: +44 (0)20 7337 9888

In the first instance, DUAL Asset Underwriting will review the Insured's complaint and endeavour to resolve the matter. DUAL Asset Underwriting will investigate the circumstances regarding the complaint and write to the Insured within four weeks with a response.

### **6.13 Sharing information to prevent fraud**

DUAL Asset Underwriting and the Insurer may share information which they hold and which has been supplied to them in connection with any application for insurance that has been made or any insurance policy which the Insured has with them (including the renewal of any policy), with the Claims and Underwriting Exchange register, run by the Insurance Database Service Limited (IDS Ltd), and other similar databases or fraud prevention agencies established for the same purpose. The aim is to help DUAL Asset Underwriting and the Insurer check information that is given to them and to prevent fraudulent claims. When DUAL Asset Underwriting and the Insurer process the Insured's request for insurance cover, process any



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claims and maintain this Policy during the Period of Insurance, they may search these registers.

**6.14 Dealing with others on the Insured's behalf**

To help the Insured to manage its Policy, DUAL Asset Underwriting and the Insurer will deal with the Insured and/or any other person whom the Insured has nominated and DUAL Asset Underwriting and the Insurer have accepted to be acting for the Insured, if they call DUAL Asset Underwriting and the Insurer on the Insured's behalf in connection with this Policy.

IN WITNESS of which DUAL Asset Underwriting, on behalf of Fidelis Underwriting Limited, has executed this Policy by their duly authorized representatives.



Ian Keith

**Managing Director**  
**DUAL Asset Underwriting**

for and on behalf of **Fidelis Underwriting Limited** (the "Insurer").

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**Appendix A**

**[To be printed and signed by Insured at signing of the Agreement]**

To: DUAL Asset Underwriting Limited

**Policy No.** 00-37229918J0

On behalf of the Insured, in our capacity as authorized representatives of Moby GP Canada Corporation acting on behalf of the Insured, I acknowledge that this Signing No Claims Declaration is required to be provided in relation to Policy Number 00-37229918J0 issued by the Insurer. Capitalized terms in this Signing No Claims Declaration shall have the respective meaning assigned to them in the Policy. As an authorized representative of the Insured, I hereby declare as follows:

1. the Team Members have, collectively, read the provisions of this Policy together with the Due Diligence Reports and Disclosure Schedules;
2. Save as disclosed in the Agreement and/or Disclosure Schedules, I do not have Actual Knowledge of any Insured Event; and
3. so far as I am aware, having made reasonable inquiries of each Team Member, no Team Member has Actual Knowledge of any Insured Event.

Sign Name: \_\_\_\_\_

Print Name: John Knowlton

Title: President

Date: \_\_\_\_\_

Sign Name: \_\_\_\_\_

Print Name: Jennifer Guerard

Title: Director

Date: \_\_\_\_\_

Policy Number: 00-37229918J0

**Appendix B**

**[To be printed and signed by Insured at the Closing Date]**

To: DUAL Asset Underwriting Limited

**Policy No.** 00-37229918J0

On behalf of the Insured, in our capacity as authorized representatives of Moby GP Canada Corporation acting on behalf of the Insured, I acknowledge that this Closing No Claims Declaration is required to be provided in relation to Policy Number 00-37229918J0 issued by the Insurer. Capitalized terms in this Closing No Claims Declaration shall have the respective meaning assigned to them in the Policy. As an authorized representative of the Insured, I hereby declare as follows:

1. I do not have Actual Knowledge of any Interim Event; and
2. so far as I am aware, having made reasonable inquiries of each Team Member, no Team Member has Actual Knowledge of any Interim Event.

Sign Name: \_\_\_\_\_

Print Name: John Knowlton

Title: President

Date: \_\_\_\_\_

Sign Name: \_\_\_\_\_

Print Name: Jennifer Guerard

Title: Director

Date: \_\_\_\_\_



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**Appendix C**  
**Form of Endorsement**

**Date of Issue: [Insert]**

ENDORSEMENT TO POLICY: *[insert policy number]*  
(the “**Endorsement**”)

**A)** The Insurer and the Insured are parties to the Policy dated *[insert date]* with Policy Number *[insert policy number]* (the Policy) (a copy of which is annexed to this Endorsement).

**(B)** The Insurer and the Insured wish to amend the Policy as set out in this Endorsement:

IT IS AGREED **as follows:**

**1. INCORPORATION OF TERMS**

Unless the context otherwise requires or unless explicitly defined in this Endorsement, all words and expressions defined or whose interpretation is provided for in the Policy have the same meanings in this Endorsement.

**2. AMENDMENT TO [DECLARATION 1] AS DETAILED IN THE POLICY**

With effect from the *[insert date]*:

2.1.1 *[Insert amend 1]*

**3. CONTINUITY OF ALL OTHER PROVISIONS OF THE POLICY**

Without prejudice to the terms of paragraph 2 of this Endorsement, all other provisions of the Policy shall remain unaffected.

**4. GOVERNING LAW**

The construction, interpretation and meaning of the terms, exclusions, limitations and conditions of this Endorsement shall be determined in accordance with the laws of the State of Delaware, as applicable to insurance contracts entered into in that State between citizens of that State, and in accordance with the text as it appears in this Policy. All other provisions of the Policy shall apply *mutatis mutandis* to this Endorsement.

This Endorsement has been entered into on the date appearing at the beginning of this Endorsement.

**In Witness Whereof** the Insurer and the Insured have executed this Endorsement by their duly authorized representatives.

Signed by \_\_\_\_\_

For and on behalf of **DUAL Asset Underwriting**, acting on behalf of **Fidelis Underwriting Limited**

Date:

Signed by \_\_\_\_\_

For and behalf of Moby GP Canada Corporation acting on behalf the Insured

Date:



**EXHIBIT A**

Form of Buyer Parent Commitment Letter

See attached.

*Execution Version*

**August 8, 2018**

From: OMERS Administration Corporation  
900-100 Adelaide Street West  
Toronto, Ontario M5H 0E2  
Canada

To: Moby Canada Limited Partnership  
c/o OMERS Infrastructure Management Inc.  
900-100 Adelaide Street West  
Toronto, Ontario M5H 0E2  
Canada

Dear Sirs/Mesdames:

Re: **Purchase and Sale Agreement (the “PSA”) made and entered into as of August 8, 2018, by and among MIP Padua Holdings, L.P. (f/k/a MIP Padua Holdings, GP) (the “Seller”), and Moby Canada Limited Partnership, a limited partnership formed under the laws of Ontario (the “Buyer”), and the other parties thereto.**

1. OMERS Administration Corporation, for and on behalf of the OMERS pension plans (the “**Sponsor**”), refers to the proposed acquisition by Buyer of the Purchased Assets pursuant to the terms and conditions of the PSA (the “**Transaction**”).
2. The Sponsor shall fund, or cause an affiliate to fund, Buyer, through direct or indirect equity contributions and/or shareholder loans, in immediately available funds, an amount in cash equal to \$1,670,375,175 (the “**Commitment**”), immediately prior to the time that Buyer becomes obligated under the PSA to effect the Closing. The Sponsor’s obligation to fund the Commitment is subject to the satisfaction in full or, in the sole discretion of Buyer, waiver of each of the conditions precedent to the Closing set out in Sections 6.1 and 6.3 of the PSA (other than those conditions that by their nature are to be, can be, and concurrently are satisfied at the Closing).

The Commitment shall be used solely to fund the payment by Buyer of the Purchase Price pursuant to the PSA, and for no other purpose, and the Sponsor shall not under any circumstances be obligated to fund any of the Commitment except in connection with the Closing. The Sponsor’s obligation to fund the Commitment and this Section 2 shall terminate in their entirety and cease to be of any force or effect upon the earlier of (i) the Closing occurring, and (ii) the date the PSA terminates in accordance with its terms (the “**Termination Date**”). Notwithstanding anything herein, in no circumstances shall the Sponsor’s liability under this commitment letter exceed the amount of the Commitment.

3. Notwithstanding anything that may be expressed or implied in this commitment letter, by their acceptance hereof, Buyer and any other party in interest to this commitment letter (including, without limitation, the Seller) acknowledge and

agree that, except in the case of fraud, (i) notwithstanding that the Sponsor is a corporation, no recourse hereunder or under any documents or instruments delivered in connection herewith may be had against any director, officer, agent or employee of the Sponsor (other than Buyer), any affiliate or related party of the Sponsor (other than Buyer), or any direct or indirect director, officer, trustee, employee, partner, affiliate, manager, shareholder, member, stockholder, controlling person, agent or representative of any of the foregoing (other than the Sponsor and Buyer) (any such person or entity, a “**Related Person**”), whether by the enforcement of any judgment or assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, and (ii) no personal liability whatsoever will attach to, be imposed on or otherwise be incurred by Related Persons under this commitment letter or any documents or instruments delivered in connection herewith or with the Transaction for any claim based on, in respect of or by reason of such obligations or by their creation.

4. No person or entity other than Buyer shall be entitled to rely upon this commitment letter; provided, however, that the parties hereto acknowledge and agree that the Seller will be relying on this commitment letter in entering into the PSA with Buyer and that the Seller is an express third party beneficiary of, and shall be entitled to enforce (by specific performance or otherwise) without bond or other security being required, all obligations of the Sponsor in this commitment letter. Each of the parties hereto irrevocably agrees and acknowledges that the rights of the other parties and Seller hereunder are special, unique and of extraordinary character, and that if any party hereto violates or fails or refuses to perform any covenant or agreement made by it herein, the non-breaching parties and Seller, as the case may be, shall be without an adequate remedy at law. Each party hereto agrees that it shall not oppose the granting of an injunction, specific performance or other equitable relief on the basis that (a) the other party or Seller has an adequate remedy at law or (b) an award of specific performance is not an appropriate remedy for any reason at law or in equity, and each party hereto waives any defense thereto, including the defenses of: (i) failure of consideration, (ii) breach of any other provision of this commitment letter and (iii) availability of relief in damages. This commitment letter shall be binding upon and inure solely to the benefit of each party hereto and, except as set forth above, nothing herein, express or implied, is intended or shall confer upon any other person any rights, benefits or remedies whatsoever under or by reason of this commitment letter.
5. Representations of the Sponsor. The Sponsor hereby represents and warrants to Buyer that (a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization; (b) it has all corporate power and authority to execute, deliver and perform this commitment letter; (c) the execution, delivery and performance of this commitment letter by it has been duly and validly authorized and approved by all necessary corporate action by it; (d) this commitment letter has been duly and validly executed and delivered by it and constitutes a valid and legally binding obligation of it, enforceable against it in accordance with the terms of this commitment letter, subject to the Remedies Exception; (e) it has, and will at all times prior to the termination of this commitment letter in accordance with Section 2 of this commitment letter have, sufficient funds to pay the Commitment, and is not aware of any reason why such funds will not be available when required; and (f) all consents, approvals,

authorizations and permits of, filings with, and notifications to, any Governmental Authority necessary for the due execution, delivery and performance of this commitment letter by it have been obtained or made and all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with, any Governmental Authority is required in connection with the execution, delivery or performance of this commitment letter.

6. The rights and obligations of Buyer under this commitment letter shall not be assignable (by operation of law or otherwise) without each of the Sponsor's and the Seller's prior written consent, and the granting of such consent shall be solely in the discretion each of the Sponsor and the Seller. If any such prior written consent is granted, it shall not constitute a waiver by the Sponsor or Seller, as the case may be, of this requirement as to any subsequent assignment. The Sponsor's obligation to fund the Commitment may not be assigned by the Sponsor without the consent of the Seller other than to an affiliate of the Sponsor and, in any event, no assignment by the Sponsor of its obligation to fund the Commitment shall relieve the Sponsor of its obligations hereunder. Any purported assignment of this commitment letter in contravention of this Section 6 shall be null and void. Upon the valid assignment of this commitment letter by the Sponsor pursuant to and in accordance with this Section 6, the assignee shall, by accepting such assignment, be deemed to make the representations and warranties set forth in Section 2 of this commitment letter.
7. All capitalized terms used, but not defined, in this commitment letter shall have the meanings attributed to such terms in the PSA.
8. This commitment letter and its contents are considered confidential and may not be disclosed in any part without the prior written consent of the other parties hereto; provided that the Sponsor and the Seller shall be entitled to disclose this commitment letter and its contents (i) to their respective officers, directors, members, Affiliates, advisors and consultants who, in each case, need to know the terms of this commitment letter in connection with the negotiation or furtherance of the transactions contemplated by the PSA and who are directed to treat this commitment letter as confidential; (ii) where required (x) by any Governmental Authority to be disclosed under applicable law or any applicable listing agreement with, or rules and regulations of, an applicable securities exchange, or in connection with any required regulatory filings relating to the transactions contemplated by the PSA or (y) for purposes of compliance with any bona fide financial reporting obligation (in case of either (x) or (y) the Seller (if applicable), to the extent legally permissible, shall provide the Sponsor with prompt written notice so that the Sponsor may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section 8), (iii) in connection with any litigation to enforce the terms of this commitment letter and (iv) in connection with a routine audit or examination by, or a blanket document request from, a regulatory or self-regulatory authority, bank examiner or auditor.
9. Following the termination of this commitment letter in accordance with and pursuant to Section 2 hereof, this commitment letter and all of the obligations remaining hereunder shall terminate in their entirety and cease to be of any force or effect.



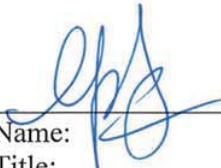
10. This commitment letter may not be amended except by an instrument in writing signed by the Sponsor, Buyer and Seller.
11. This commitment letter, and all claims and causes of action (whether in contract, tort, at law, in equity or otherwise) that may be based upon, arise out of, or relate to this commitment letter, any of the transactions contemplated hereby or the negotiation, execution, performance or enforcement of this commitment letter shall be governed by and construed in accordance with the law of the State of Delaware without giving effect to any choice or conflict of laws provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.
12. Each of the Parties irrevocably submits to the exclusive jurisdiction of (i) state courts of the State of Delaware located in New Castle County and (ii) the United States District Court for the District of the State of Delaware for the purposes of any suit, action or other proceeding arising out of or relating to this commitment letter, the negotiation, execution, performance and enforcement of this commitment letter or any transaction contemplated hereby (and agrees not to commence any action, suit or proceeding relating hereto except in such courts). Each of the Parties further agrees that service of any process, summons, notice or document hand delivered or sent by recognized overnight carrier to such party's respective address set forth on the first page of this commitment letter outside the territorial jurisdiction of the courts referred to in this Section 12 shall be effective service of process for any action, suit or proceeding in the State of Delaware with respect to any matters to which it has submitted to jurisdiction as set forth in the immediately preceding sentence. However, the foregoing shall not limit the right of a party to effect service of process on another party by any other legally available method. Each of the parties irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of or relating to this commitment letter or the transactions contemplated hereby in (i) state courts of the State of Delaware located in New Castle County or (ii) the United States District Court for the District of the State of Delaware, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each party agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.
13. EACH OF THE PARTIES IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER, IN CONNECTION WITH OR RELATING TO THIS COMMITMENT LETTER, ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS COMMITMENT LETTER OR THE ACTIONS OF THE PARTIES IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

14. This commitment letter constitutes the entire agreement between the parties hereto and supersedes all other prior agreements and undertakings, both written and oral, between the parties with respect to the subject matter hereof, including, without limitation, any term sheets, letters of intent, proposals, bids or similar agreements.
15. This commitment letter may be executed and delivered (including by facsimile, email or other electronic transmission (including in .pdf or .tif formats) signature pages) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same instrument.
16. Any term or provision of this commitment letter that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction; provided, however, that this commitment letter may not be enforced without giving effect to the limitation of any amounts payable hereunder as provided hereunder. No party hereto shall assert, and each party shall cause its respective affiliates or related parties not to assert, that this commitment letter or any part hereof is invalid, illegal or unenforceable.
17. The Sponsor hereby waives all claims that it may have against Buyer until the Termination Date.
18. The Sponsor confirms that except as expressly set forth herein there are no conditions precedent or subsequent to its performance of any provision hereof.

***[Remainder of page left intentionally blank.]***

**IN WITNESS WHEREOF**, the undersigned have executed this letter agreement as of the date first set forth above.

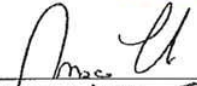
**OMERS Administration Corporation**

by:   
Name: **UPTON JEANS**  
Title: **Senior Vice President,  
Financial Services**

by:   
Name: **Christine A. Sharp**  
Title: **Senior Vice President &  
Associate General Counsel**

**MOBY CANADA LIMITED PARTNERSHIP**, by its general partner,  
**MOBY GP CANADA CORPORATION**


by:   
Name: Steven Zucchet  
Title: Director

by:   
Name: Marco Fontana  
Title: Director

Acknowledged and agreed by;

**MIP Padua Holdings, L.P.**


By: MIP Washington Holdings GP LLC,  
a general partner

By:   
Name: Mark Fay  
Title: Authorized Signatory

By:   
Name: David Handelsmann  
Title: Authorized Signatory

**MIP Padua Holdings, L.P.**

By: MIP II Washington Holdings GP LLC,  
a general partner

By:   
Name: Mark Fay  
Title: Authorized Signatory

By:   
Name: David Handelsmann  
Title: Authorized Signatory

**EXHIBIT B**

Buyer Parent Guarantee

See attached.

*Execution Version*

**LIMITED GUARANTY**

This Limited Guaranty, dated as of August 8, 2018 (this “**Limited Guaranty**”), by OMERS Administration Corporation (the “**Guarantor**”) is made in favor of MIP Padua Holdings, L.P. (f/k/a MIP Padua Holdings, GP) (the “**Guaranteed Party**”) under the Purchase Agreement (as defined below). Capitalized terms used herein but not otherwise defined shall have the respective meanings given to them in the Purchase Agreement.

1. **LIMITED GUARANTY.** To induce the Guaranteed Party to enter into that certain Purchase and Sale Agreement (as amended, restated, supplemented or otherwise modified from time to time, the “**Purchase Agreement**”) of even date herewith by and between Moby Canada Limited Partnership, a limited partnership formed under the laws of Ontario (“**Buyer**”), and the Guaranteed Party, the Guarantor, intending to be legally bound, hereby absolutely, unconditionally and irrevocably guarantees to the Guaranteed Party, pursuant to the terms and subject to the conditions herein, the due and punctual payment, observance, performance and discharge of the payment obligations of Buyer under the Purchase Agreement, including, without limitation, to pay (a) the Buyer Termination Fee pursuant to Section 8.3 of the Purchase Agreement, if and when due, (b) any other amounts, including, without limitation, interest, fees, costs and expenses to be paid by Buyer, that may be owed pursuant to Section 8.3 of the Purchase Agreement, (c) any reimbursement obligations of Buyer that may arise prior to the Closing, (d) any liability of Buyer for any breach by it of the Purchase Agreement prior to the Closing, and (e) any reasonable out-of-pocket fees and expenses incurred by the Guaranteed Party in enforcing its rights hereunder, but only to the extent the Guaranteed Party prevails in such enforcement (the amounts described in the foregoing clauses (a), (b), (c), (d) and (e), collectively, the “**Obligations**”), it being understood and agreed that this Limited Guaranty may not be enforced against the Guarantor without giving effect to the provisions set forth in this Limited Guaranty. Notwithstanding anything to the contrary herein, under no circumstances shall the Obligations exceed \$100,000,000 (One Hundred Million U.S. Dollars). If Buyer fails to discharge its Obligations when due, the Guaranteed Party may at any time and from time to time, at the Guaranteed Party’s option, and so long as Buyer has failed to perform any of its Obligations, take any and all actions available hereunder or under applicable Law to enforce the Guarantor’s obligations hereunder in respect of such Obligations, subject to the terms and conditions of this Limited Guaranty. Notwithstanding anything to the contrary herein, and except as otherwise expressly set forth herein, the Guarantor reserves the right to assert any and all defenses which Buyer may have to payment of the Obligations (including, without limitation, any contained in the Purchase Agreement). The guarantee by the Guarantor of the Obligations under this Limited Guaranty may be enforced for the payment of money only. All payments hereunder shall be made in lawful money of the United States, in immediately available funds. The Guarantor promises and undertakes to make all payments required hereunder free and clear of any deduction, offset, claim or counterclaim of any kind.

2. **NATURE OF LIMITED GUARANTY.** Subject to the express terms and conditions of this Limited Guaranty, the Guarantor’s liability hereunder is absolute, unconditional, irrevocable and continuing irrespective of any modification, amendment or waiver of or any consent to departure from the Purchase Agreement that may be agreed to by Buyer (with the Guarantor’s prior written consent). Without limiting the foregoing, the Guaranteed Party shall not be obligated to file any claim relating to the Obligations in the event that Buyer

becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of the Guaranteed Party to so file shall not affect the Guarantor's obligations hereunder. In the event that any payment to the Guaranteed Party in respect of the Obligations is rescinded or must otherwise be returned for any reason whatsoever (other than as set forth in the last sentence of Section 8), the Guarantor shall remain liable hereunder with respect to the Obligations as if such payment had not been made. This Limited Guaranty is an unconditional guarantee of payment and not of collectability.

3. CHANGES IN OBLIGATIONS, CERTAIN WAIVERS. The Guarantor agrees that the Guaranteed Party may, in its sole discretion, at any time and from time to time, without notice to or further consent of the Guarantor, extend the time of payment of the Obligations, and may also make any agreement with Buyer or with any other Person now or hereafter interested in the transactions contemplated by the Purchase Agreement, for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, or for any modification of the terms thereof or of any agreement between the Guaranteed Party and Buyer or any such other Person without in any way impairing or affecting any obligations of the Guarantor under, or affecting the validity or enforceability of, this Limited Guaranty. The Guarantor agrees that its obligations hereunder shall not be released or discharged, in whole or in part, or otherwise affected by: (a) the failure or delay of the Guaranteed Party to assert any claim or demand or to enforce any right or remedy against Buyer or any other Person now or hereafter interested in the transactions contemplated by the Purchase Agreement or the Buyer Parent Commitment Letter; (b) any change in the time, place or manner of payment of, performance of, renewal or alteration of, any of the Obligations, any escrow arrangement or other security therefor, any liability incurred directly or indirectly in respect thereof, or any agreement entered into by the Sellers on the one hand, and the Buyer, on the other hand, in connection therewith, or any rescission, waiver, compromise, consolidation or other amendment or modification of any of the terms of the Purchase Agreement, the Buyer Parent Commitment Letter or any other agreement evidencing, securing or otherwise executed by Buyer and the Guaranteed Party in connection with the Obligations; (c) the addition, substitution or release of any Person now or hereafter interested in the transactions contemplated by the Purchase Agreement or the Buyer Parent Commitment Letter; (d) any change in the corporate existence, structure or direct or indirect ownership of Buyer, the Guarantor or any other Person now or hereafter liable with respect to the Obligations or otherwise interested in the transactions contemplated by the Purchase Agreement or the Buyer Parent Commitment Letter; (e) any insolvency, bankruptcy, reorganization, moratorium or other similar proceeding affecting Buyer, the Guarantor or any other Person now or hereafter liable with respect to any of the Obligations, or any of their respective assets, or otherwise interested in the transactions contemplated by the Purchase Agreement or the Buyer Parent Commitment Letter; (f) the adequacy of any other means the Guaranteed Party may have of obtaining payment related to any of the Obligations; (g) the value, genuineness, validity, regularity, illegality or enforceability of the Purchase Agreement or any other Transaction Document; (h) any discharge of the Guarantor as a matter of law or equity (other than as a result of payment of the Obligations in accordance with their terms); and (i) the existence of any claim, set off or other right that the Guarantor may have at any time against Buyer, the Guaranteed Party or the Company other than those available to Buyer against the Guaranteed Party under the Purchase Agreement or the Buyer Parent Commitment Letter. To the fullest extent permitted by applicable Law, the Guarantor hereby expressly waives any and all rights or defenses arising by reason of any Law which would otherwise require any election



of remedies by the Guaranteed Party. The Guaranteed Party shall not be required to proceed against Buyer first before proceeding against the Guarantor hereunder, and the Guarantor waives promptness, diligence, notice of the acceptance of this Limited Guaranty and of the Obligations, presentment, demand for payment, notice of non-performance, default, dishonor and protest, notice of the incurrence of the Obligations and all other notices or similar requirements of any kind (except for notices to be provided to Buyer and Buyer's counsel in accordance with Section 9.3 of the Purchase Agreement), all defenses which may be available by virtue of any valuation, stay, moratorium law or other similar Law now or hereafter in effect, any right to require the marshalling of assets of Buyer or any other Person now or hereafter liable with respect to the Obligations or otherwise interested in the transactions contemplated by the Purchase Agreement, and all suretyship defenses generally (other than fraud or intentional misconduct by the Guaranteed Party or any of its Affiliates, defenses to the payment of the Obligations that are available to Buyer under the Purchase Agreement or breach by the Guaranteed Party of this Limited Guaranty). The Guarantor acknowledges that it will receive substantial direct and indirect benefits from the transactions contemplated by the Purchase Agreement and that the waivers set forth in this Limited Guaranty are knowingly made in contemplation of such benefits.

The Guaranteed Party hereby covenants and agrees that it shall not institute, and shall cause its Affiliates not to institute, any proceeding or bring any other claim arising under, or in connection with, this Limited Guaranty, the Purchase Agreement or any other agreement entered into in connection therewith or the transactions contemplated hereby or thereby, against the Guarantor or other Buyer Affiliate (as hereinafter defined), except for (i) actions or claims against the Guarantor for the Obligations under this Limited Guaranty and/or for breaches of the representations and warranties set forth in Section 5 below and/or, subject to Section 8.3 of the Purchase Agreement, the Buyer Parent Commitment Letter, (ii) subject to Section 8.3 of the Purchase Agreement, actions or claims seeking specific enforcement of the Purchase Agreement as contemplated under Section 9.12 of the Purchase Agreement or of the Buyer Parent Commitment Letter. This paragraph shall not prohibit (i) actions or claims against Buyer under the Purchase Agreement or the other Transaction Documents to which Buyer is a party, or (ii) actions or claims under the Confidentiality Agreement against the party thereto.

Nothing set forth in this Limited Guaranty shall confer or give to any Person other than the Guaranteed Party any rights or remedies against any Person, including, without limitation, the Guarantor, except as expressly set forth herein (including, without limitation, Section 9 below). Notwithstanding anything to the contrary contained in this Limited Guaranty, the Guaranteed Party hereby agrees that to the extent Buyer is relieved for any reason from its obligations under the Purchase Agreement pursuant to the terms thereof that correspond to the Obligations hereunder, the Guarantor shall be similarly relieved of the Obligations under this Limited Guaranty to the extent thereof. The Guaranteed Party acknowledges that the Guarantor is agreeing to enter into this Limited Guaranty in reliance on the provisions set forth in this Section 3. This Section 3 shall survive termination of this Limited Guaranty.

The Guarantor hereby covenants and agrees that it shall not institute, directly or indirectly, and shall cause its Affiliates not to institute, any proceeding asserting that this Limited Guaranty is illegal, invalid or unenforceable in accordance with its terms. The Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or may

hereafter acquire against the Guaranteed Party, Buyer or any other Person interested in the transactions contemplated by the Purchase Agreement that arise from the existence, payment, performance or enforcement of the Guarantor's Obligations under or in respect of this Limited Guaranty or any other agreement in connection therewith, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Guaranteed Party against Buyer or such other Person, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from Buyer or such other Person, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right, unless and until all of the Guarantor's Obligations and all other amounts payable under this Limited Guaranty shall have been paid in full in cash. If any amount shall be paid to the Guarantor in violation of the immediately preceding sentence at any time prior to the payment in full in cash of the Guarantor's Obligations, such amount shall be received and held in trust for the benefit of the Guaranteed Party, shall be segregated from other property and funds of the Guarantor and shall forthwith be paid or delivered to the Guaranteed Party in the same form as so received (with any necessary endorsement or assignment) to be credited and applied to the Obligations, in accordance with the terms of the Purchase Agreement, whether matured or unmatured.

4. NO WAIVER; CUMULATIVE RIGHTS; AMENDMENTS. No failure on the part of the Guaranteed Party to exercise, and no delay in exercising, any right, remedy or power hereunder or under the Buyer Parent Commitment Letter or the Purchase Agreement shall operate as a waiver thereof, nor shall any single or partial exercise by the Guaranteed Party of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power hereunder. Each and every right, remedy and power hereby granted to the Guaranteed Party or allowed it by applicable Law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by the Guaranteed Party at any time or from time to time. No provision hereof shall be modified, altered or limited except by written instrument expressly referring to this Limited Guaranty and to such provision, and executed by the Guaranteed Party and the Guarantor.

5. REPRESENTATIONS AND WARRANTIES. The Guarantor hereby represents and warrants to the Guaranteed Party that:

(a) (i) it is duly incorporated and in good standing under the Laws of the jurisdiction of its incorporation, (ii) it has all requisite power and authority to execute, deliver and perform this Limited Guaranty and (iii) the execution, delivery and performance of this Limited Guaranty (x) has been duly authorized by all necessary corporate action and no other action is necessary on the part of the Guarantor to authorize this Limited Guaranty and (y) does not contravene any provision of the Guarantor's organizational documents, or any Law or contractual restriction binding on the Guarantor or its assets;

(b) all consents, approvals, authorizations, permits of, filings with and notifications to, any Governmental Authority necessary for the due execution, delivery and performance of this Limited Guaranty by the Guarantor have been obtained or made and all conditions thereof have been duly complied with, and no other action by, and no notice to or filing

with, any Governmental Authority or regulatory body is required in connection with the execution, delivery or performance of this Limited Guaranty;

(c) this Limited Guaranty constitutes a legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, subject to the Remedies Exception; and

(d) the Guarantor has the financial capacity to pay and perform, or cause to be paid or performed, its obligations under this Limited Guaranty, and all funds necessary for the Guarantor to fulfill the Obligations under this Limited Guaranty are and shall be available to the Guarantor for so long as this Limited Guaranty shall remain in effect in accordance with Section 8.

6. NO ASSIGNMENT. Neither the Guarantor nor the Guaranteed Party may assign its rights, interests or obligations hereunder to any other Person (except by operation of law) without the prior written consent of the Guaranteed Party or the Guarantor, as the case may be.

7. NOTICES. Any and all notices, requests, demands or other communications hereunder shall be given by the means specified in the Purchase Agreement (and shall be deemed given as specified therein) as follows:

If to the Guarantor, to it at:

OMERS Administration Corporation  
c/o OMERS Infrastructure Management Inc.  
900-100 Adelaide Street West  
Toronto, Ontario M5H 0E2  
Attention: Managing Director, Legal  
Facsimile: (416) 361-6075

and with a copy (which shall not constitute notice for the purposes of this Limited Guaranty) to:

Torys LLP  
79 Wellington Street West, Suite 3000  
Toronto, Ontario M5K 1N2  
Attention: Krista Hill  
Facsimile: 416.865.7380  
Email: khill@torys.com

If to the Guaranteed Party, to it at:

MIP Padua Holdings, L.P.  
Level 15, 125 West 55th Street  
New York, New York 10019  
Attention: Christopher Leslie

Facsimile: (212) 231-1828  
E-mail: [chris.leslie@macquarie.com](mailto:chris.leslie@macquarie.com)

with a copy (which shall not constitute notice for the purposes of this Limited Guaranty) to:

[MFGMIRALEGALNOTICES@macquarie.com](mailto:MFGMIRALEGALNOTICES@macquarie.com)

and

Latham & Watkins LLP  
885 Third Avenue  
New York, New York 10022  
Attention: Thomas W. Christopher  
Facsimile: (212) 751-4864  
Email: [Thomas.Christopher@lw.com](mailto:Thomas.Christopher@lw.com)

8. CONTINUING LIMITED GUARANTY. This Limited Guaranty may not be revoked or terminated and shall remain in full force and effect and shall be binding on the Guarantor, its successors and permitted assigns until all of the Obligations have been indefeasibly paid, observed, performed or satisfied in full. Notwithstanding the foregoing, this Limited Guaranty shall terminate and the Guarantor shall have no further obligations under this Limited Guaranty as of the earlier of (a) the Closing and (b) the date that is sixty (60) days after any termination of the Purchase Agreement in accordance with its terms, except that if any claim to enforce the payment of the Obligations is made by the Guaranteed Party to or against Buyer or the Guarantor prior to such date, the expiration of this Limited Guaranty shall be automatically extended until the date immediately following the date upon which such claim is finally satisfied or otherwise resolved by agreement of the parties thereto or by a final, non-appealable judgment of a court of competent jurisdiction (subject to Section 11). Notwithstanding the foregoing, in the event that the Guaranteed Party, or any of its Affiliates expressly asserts in writing in any litigation or other legal or arbitration proceeding that any of the other provisions of this Limited Guaranty are illegal, invalid or unenforceable in whole or in part, or asserts in writing in any litigation or other legal or arbitration proceeding any theory of liability against the Guarantor or any other Buyer Affiliates (as defined below) (other than Buyer under the Purchase Agreement, the Guarantor under this Limited Guaranty or the parties to the Buyer Parent Commitment Letter (in their capacity thereunder) under the Buyer Parent Commitment Letter) with respect to the transactions contemplated by the Purchase Agreement, then (i) the obligations of the Guarantor under this Limited Guaranty shall terminate *ab initio* and be null and void, (ii) if the Guarantor has previously made any payments under this Limited Guaranty, it shall be entitled to receive the amount of all such payments from the Guaranteed Party and (iii) neither the Guarantor nor any other Buyer Affiliates shall have any liability to the Guaranteed Party with respect to the transactions contemplated by the Purchase Agreement or under this Limited Guaranty.

9. NO RECOURSE. Notwithstanding anything to the contrary in this Limited Guaranty, and notwithstanding the fact that the Guarantor may be a corporation, partnership or limited liability company, by its acceptance of the benefits of this Limited Guaranty, the Guaranteed Party acknowledges and agrees that, (a) it has no right of recovery

against, and no personal liability shall attach to, the former, current or future stockholders, directors, officers, trustees, employees, agents, Affiliates, members, managers, owners, general or limited partners or assignees of the Guarantor (other than Buyer) or Buyer (other than the Guarantor) or any former, current or future stockholder, director, officer, trustee, employee, general or limited partner, member, manager, Affiliate, agent or representative of any of the foregoing (other than under the Confidentiality Agreement, Buyer under the Purchase Agreement or the other Transaction Documents to which it is a party, and the Guarantor hereunder and under the Buyer Parent Commitment Letter) (collectively, the “**Buyer Affiliates**”), through Buyer or otherwise, whether by or through attempted piercing of the corporate veil, by or through a claim by or on behalf of Buyer against any such Buyer Affiliate, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any applicable Law, or otherwise, except for the Guaranteed Party’s right to recover from Buyer or the Guarantor (but not any other Buyer Affiliate (including, without limitation, any general partner, managing member or other controlling party)) under and to the extent provided in the Purchase Agreement, this Limited Guaranty, the Confidentiality Agreement or the Buyer Parent Commitment Letter and the limitations described herein and (b) other than with respect to any recourse against the Guarantor and the other Buyer Affiliates pursuant the Buyer Parent Commitment Letter, recourse against the Guarantor under this Limited Guaranty shall be the sole and exclusive remedy of the Guaranteed Party and all of its Affiliates against the Guarantor and the other Buyer Affiliates (other than Buyer) in respect of any payment liabilities or payment obligations arising under, or in connection with, the Purchase Agreement or the transactions contemplated thereby (provided, that, following the Closing, this Section 9 shall not in any way limit claims by the Guaranteed Party for indemnification or other post-Closing obligations contemplated by the Purchase Agreement or the other Transaction Documents). Nothing set forth in this Limited Guaranty shall affect or be construed to affect or limit any liability of Buyer to the Guaranteed Party or shall confer or give or shall be construed to confer or give to any Person other than the Guaranteed Party (including, without limitation, any Person acting in a representative capacity) any rights or remedies against any Person other than the Guarantor as expressly set forth herein.

10. CONFIDENTIAL TREATMENT. This Limited Guaranty shall be treated as confidential and is being provided to the Guaranteed Party solely in connection with the execution and delivery of the Purchase Agreement and may not be used, circulated, quoted or otherwise referred to in any document (other than the Purchase Agreement), except (a) with the prior written consent of the Guarantor, (b) as disclosed to the Guaranteed Party’s Affiliates and the Guaranteed Party’s and its Affiliates’ respective officers, directors, members, Affiliates, advisors and consultants who, in each case, need to know the terms of this Limited Guaranty in connection with the negotiation or furtherance of the transactions contemplated by the Purchase Agreement and who are directed to treat this Limited Guaranty as confidential or (c)(i) as otherwise required by any Governmental Authority to be disclosed under applicable Law or any applicable listing agreement with, or rules and regulations of, an applicable securities exchange, or in connection with any required regulatory filings relating to the transactions contemplated by the Purchase Agreement, (ii) for purposes of compliance with any bona fide financial reporting obligation (in case of either (i) or (ii) the Guaranteed Party, to the extent legally permissible, shall provide the Sponsor with prompt written notice so that the Sponsor may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section 10) or (iii) in connection with a routine audit or examination by, or a blanket document request from, a regulatory or self-regulatory authority, bank examiner or auditor. Notwithstanding the

foregoing, nothing in this Section 10 shall restrict the Company, the Sellers, the Sellers' Representative or any of their respective Affiliates and their respective advisors from disclosing any information regarding this Limited Guaranty to a court or tribunal (including, without limitation, in any pleadings or filings therewith) in connection with any action brought by such person to enforce the Purchase Agreement or by the Guaranteed Party to enforce this Limited Guaranty, each in accordance with their terms.

11. GOVERNING LAW. This Limited Guaranty, and all claims and causes of action (whether in contract, tort, at law, in equity or otherwise) that may be based upon, arise out of, or relate to this Limited Guaranty, any of the transactions contemplated hereby or the negotiation, execution, performance or enforcement of this Limited Guaranty shall be governed by and construed in accordance with the law of the State of Delaware without giving effect to any choice or conflict of laws provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

12. CONSENT TO JURISDICTION. Each of the parties irrevocably submits to the exclusive jurisdiction of (i) state courts of the State of Delaware located in New Castle County and (ii) the United States District Court for the District of the State of Delaware for the purposes of any suit, action or other proceeding arising out of or relating to this Limited Guaranty, the negotiation, execution, performance and enforcement of this Limited Guaranty or any transaction contemplated hereby (and agrees not to commence any action, suit or proceeding relating hereto except in such courts). Each of the Parties further agrees that service of any process, summons, notice or document hand delivered or sent by recognized overnight carrier to such party's respective address set forth in Section 7 of this Limited Guaranty outside the territorial jurisdiction of the courts referred to in this Section 12 shall be effective service of process for any action, suit or proceeding in the State of Delaware with respect to any matters to which it has submitted to jurisdiction as set forth in the immediately preceding sentence. However, the foregoing shall not limit the right of a party to effect service of process on another party by any other legally available method. Each of the parties irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of or relating to this Limited Guaranty or the transactions contemplated hereby in (i) state courts of the State of Delaware located in New Castle County or (ii) the United States District Court for the District of the State of Delaware, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each party agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.

13. WAIVER OF JURY TRIAL. EACH OF THE PARTIES IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER, IN CONNECTION WITH OR RELATING TO THIS LIMITED GUARANTY, ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS LIMITED GUARANTY OR THE ACTIONS OF THE PARTIES

IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT  
HEREOF.

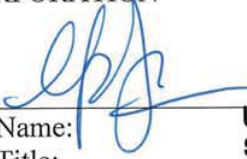
14. ENTIRE AGREEMENT. Together with the Purchase Agreement and any other agreement entered into in connection therewith, including, without limitation, the Buyer Parent Commitment Letter and the Confidentiality Agreement, this Limited Guaranty contains the complete agreement among the parties hereto and supersedes any prior understandings, agreements or representations by or between such parties, whether written or oral, or any prior course of dealing among them, which may have related to the subject matter hereof in any way.


15. COUNTERPARTS. This Limited Guaranty may be executed in multiple counterparts (including, without limitation, by means of facsimile, email or other electronic transmission (including, without limitation, in .pdf or .tif formats) signature pages), all of which, taken together, shall constitute one and the same Agreement.

*[The remainder of this page is left blank intentionally.]*

IN WITNESS WHEREOF, the Guarantor has caused this Limited Guaranty to be executed and delivered as of the date first written above by its officer thereunto duly authorized.

OMERS ADMINISTRATION  
CORPORATION

By:   
Name: **UPTON JEANS**  
Title: **Senior Vice President  
Financial Services**

By:   
Name: **Christine A. Sharp**  
Title: **Senior Vice President  
Associate General Counsel**


[SIGNATURE PAGE TO LIMITED GUARANTY]



IN WITNESS WHEREOF, the Guaranteed Party has caused this Limited Guaranty to be executed and delivered as of the date first written above by its officer thereunto duly authorized.

MIP PADUA HOLDINGS, L.P.


By: MIP Washington Holdings GP LLC,  
a general partner

By:   
Name: Mark Fay  
Title: Authorized Signatory

By:   
Name: David Handelsmann  
Title: Authorized Signatory

MIP PADUA HOLDINGS, L.P.

By: MIP II Washington Holdings GP LLC,  
a general partner

By:   
Name: Mark Fay  
Title: Authorized Signatory

By:   
Name: David Handelsmann  
Title: Authorized Signatory

**EXHIBIT C**

Form of Assignment and Assumption Agreement

See attached.

## **FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Agreement”) is entered into as of [●], by and between MIP Padua Holdings, L.P., a Delaware limited partnership (“Seller”), and Moby Canada Limited Partnership, an Ontario limited partnership (“Buyer”). The parties to this Agreement shall be individually referred to as a “Party” and collectively referred to as the “Parties.” All capitalized terms used but not defined herein shall have the meanings given to them in the Purchase Agreement (as defined below).

### **RECITALS**

WHEREAS, as of the date hereof, Seller owns 43.8882% of the issued and outstanding Class A Interests (the “Company Interests”) of Puget Holdings LLC, a Delaware limited liability company (the “Company”);

WHEREAS, Seller is party to that certain Second Amended and Restated Senior Secured Loan Agreement, dated as of January 20, 2015, by and between Puget Intermediate Holdings Inc., as the borrower therein, and Seller, as the lender therein (the “Loan Agreement”); and

WHEREAS, Seller and Buyer have entered into that certain Purchase and Sale Agreement, dated as of August 8, 2018 (the “Purchase Agreement”), pursuant to which, among other things, Seller has agreed to sell, grant, convey, assign, transfer and deliver to Buyer, and Buyer has agreed to purchase, acquire, assume and accept from Seller, (a) all of Seller’s right, title and interest in and to (i) 23.8872% of the issued and outstanding Company Interests (the “Purchased Interests”) and (ii) the Loan Agreement with respect to the Pro Rata Portion of the Loan (as defined in the Loan Agreement) owing at the Closing to Seller thereunder (the “Purchased Loan”) (clauses (i) and (ii), collectively, the “Purchased Assets”), and (b) all the obligations, liabilities, covenants, duties and agreements arising out of, under or relating to, the Purchased Assets from and after the Closing, in each case, upon the terms and subject to the conditions set forth in the Purchase Agreement.

### **AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

1. Assignment and Assumption. In accordance with the terms of the Purchase Agreement, (a) Seller hereby sells, grants, conveys, assigns, transfers and delivers to Buyer, free and clear of any and all Liens (other than Liens arising under the LLC Agreement or the Loan Agreement, as the case may be, and restrictions on sales of securities under applicable securities Laws), (i) all of Seller’s right, title and interest in and to the Purchased Assets and (ii) all of the obligations, liabilities, covenants, duties and agreements arising out of, under or relating to, the Purchased Assets, and (b) Buyer hereby accepts such sale, grant, conveyance, assignment, transfer and delivery, and assumes and agrees to pay, perform and discharge all of Seller’s obligations, liabilities, covenants, duties and agreements arising out of, under or relating to, the Purchased Assets from and after the Closing. For the avoidance of doubt, Buyer is not assuming any of Seller’s obligations, Liabilities, covenants, duties or agreements arising out of, under or relating to

(i) any action or omission of Seller at or prior to the Closing, (ii) the period prior to the Closing, or (iii) Section 7.04(f) of the LLC Agreement with respect to any of the Required Regulatory Approvals in connection with the transactions contemplated hereby or any Other PSA.

2. Terms of the Purchase Agreement. The Parties acknowledge and agree that the Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.

3. Delivery of LLC Agreement. Buyer acknowledges that Seller has delivered to it a copy of the LLC Agreement (including all exhibits thereto).

4. Amendments. This Agreement may not be amended, supplemented or otherwise modified except in a written instrument executed by each of the Parties.

5. Severability. If any provision of this Agreement or the application of any such provision to any Person or circumstance shall, under applicable Laws, be declared by any court of competent jurisdiction to be invalid, illegal, void or unenforceable in any respect, all other provisions of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it has been held invalid, illegal, void or unenforceable, shall nevertheless remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. Upon such determination that any provision, or the application of any such provision, is invalid, illegal, void or unenforceable under applicable Laws, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable Law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the greatest extent possible. Notwithstanding anything contained herein, under no circumstance shall the obligation of Seller to deliver the Purchased Assets be enforceable absent enforceability of the obligation of Buyer to pay the Purchase Price, and vice versa.

6. Governing Law. This Agreement, and all claims and causes of action (whether in contract, tort, at law in equity or otherwise) that may be based upon, arise out of, or relate to this Agreement, any of the transactions contemplated hereby or the negotiation, execution, performance or enforcement of this Agreement shall be governed by and construed in accordance with the Law of the state of Delaware without giving effect to any choice or conflict of laws provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware.

7. Consent to Jurisdiction; Waiver of Jury Trial.

(a) Each of the Parties irrevocably submits to the exclusive jurisdiction of (i) state courts of the State of Delaware located in New Castle County and (ii) the United States District Court for the District of the State of Delaware for the purposes of any suit, Action or other proceeding arising out of or relating to this Agreement, the negotiation, execution, performance and enforcement of this Agreement or any transaction contemplated hereby (and agrees not to commence any Action, suit or proceeding relating hereto except in such courts). Each of the Parties further agrees that service of any process, summons, notice or document hand delivered or sent by

recognized overnight carrier to such Party's respective address set forth in Section 9.3 of the Purchase Agreement outside the territorial jurisdiction of the courts referred to in this Section 7(a) shall be effective service of process for any Action, suit or proceeding in the State of Delaware with respect to any matters to which it has submitted to jurisdiction as set forth in the immediately preceding sentence. However, the foregoing shall not limit the right of a Party to effect service of process on another Party by any other legally available method. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any Action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in (i) state courts of the State of Delaware located in New Castle County or (ii) the United States District Court for the District of the State of Delaware, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Action, suit or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each Party agrees that a final judgment in any Action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.

(b) EACH OF THE PARTIES IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER, IN CONNECTION WITH OR RELATING TO THIS AGREEMENT, ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE ACTIONS OF THE PARTIES IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

8. Entire Agreement. This Agreement, together with the Purchase Agreement and each of the other Transaction Documents and the Confidentiality Agreement, constitute the entire agreement among the Parties with respect to the subject matter hereof and thereof and supersede any prior understandings, negotiations, agreements, statements or representations among the Parties, the Company Entities or any of their respective Affiliates of any nature, whether written or oral, to the extent they relate in any way to the subject matter hereof or thereof.

9. Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign (by contract, stock sale, operation of Law or otherwise) either this Agreement or any of its rights, interests, or obligations hereunder without the express prior written consent of the other Parties, and any attempted assignment, without such consent, shall be null and void; *provided* that Buyer may assign this Agreement and its rights and obligations hereunder to the extent permitted by the Purchase Agreement.

10. Counterparts. This Agreement may be executed in any number of counterparts (including by telecopy and electronic imaging scans), each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or other electronic method of transmission shall be equally effective as delivery of an original executed counterpart.

11. Further Assurances. The Parties shall each execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

*[Signature pages follow.]*

IN WITNESS WHEREOF, the Parties execute and deliver this Agreement, effective as of the date first above written.

**SELLER:**

MIP PADUA HOLDINGS, L.P.

By: MIP Washington Holdings GP LLC,  
a general partner

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

MIP PADUA HOLDINGS, L.P.

By: MIP II Washington Holdings GP LLC,  
a general partner

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Orange Assignment and Assumption Agreement]*

**BUYER:**

MOBY CANADA LIMITED PARTNERSHIP, by  
its general partner,  
MOBY GP CANADA CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Orange Assignment and Assumption Agreement]*



**EXHIBIT D**

Form of FIRPTA Certificate

See attached.

**FORM OF FIRPTA CERTIFICATE**

Section 1445 of the Internal Revenue Code of 1986, as amended (the “Code”), provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. For United States tax purposes (including Section 1445 of the Code), the owner of a disregarded entity (which has legal title to a United States real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform Moby Canada Limited Partnership, an Ontario limited partnership (the “Transferee”), that withholding of tax is not required upon the transactions contemplated by that certain Purchase and Sale Agreement, dated as of August 8, 2018, by and among the Transferee, and MIP Padua Holdings, L.P., a Delaware limited partnership (the “Transferor”), and the other parties thereto, the undersigned hereby certifies the following on behalf of the Transferor:

1. The Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and the Income Tax Regulations);
2. The Transferor is not a disregarded entity as defined in Treasury Regulations Section 1.1445-2(b)(2)(iii);
3. The Transferor’s United States employer identification number is 26-1273319; and
4. The Transferor’s office address is: 125 West 55th Street, New York, New York 10019.

The Transferor understands that this certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certification and, to the best of my knowledge and belief, it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of the Transferor.

*[Remainder of page intentionally left blank.]*

MIP PADUA HOLDINGS, L.P., a Delaware  
limited partnership

By: MIP Washington Holdings GP LLC,  
a general partner

By: \_\_\_\_\_

Name:

Title:

Date:

By: \_\_\_\_\_

Name:

Title:

Date:

MIP PADUA HOLDINGS, L.P. , a Delaware limited  
partnership

By: MIP II Washington Holdings GP LLC,  
a general partner

By: \_\_\_\_\_

Name:

Title:

Date:

By: \_\_\_\_\_

Name:

Title:

Date:

[Signature Page to Orange FIRPTA Certificate]

**EXHIBIT E**

Form of Joinder Agreement

See attached.

## **FORM OF JOINDER AGREEMENT**

This JOINDER AGREEMENT (this “Agreement”) is entered into as of August 8, 2018, by and among (i) Padua MG Holdings LLC, a Delaware limited liability company (the “Additional Seller”), (ii) MIP Padua Holdings, L.P., a Delaware limited partnership (“Seller”), and (iii) Moby Canada Limited Partnership, an Ontario limited partnership (“Buyer”). The parties to this Agreement are individually referred to as a “Party” and collectively referred to as the “Parties.” Capitalized terms used but not defined herein shall have the meanings set forth in that certain Purchase and Sale Agreement, dated as of August 8, 2018 (the “Agreement Date”), by and among Buyer, Seller and the other parties thereto, a copy of which has been provided to the Additional Seller (as such agreement may be amended, restated, supplemented or otherwise modified from time to time, the “Purchase Agreement”).

### **RECITALS**

WHEREAS, as of the date hereof, Additional Seller owns 0.1000% of the issued and outstanding Class A Interests of the Company (the “Additional Interests”);

WHEREAS, Additional Seller is party to the Second Amended and Restated Senior Secured Loan Agreement, dated as of January 20, 2015, by and between PIH, as the borrower therein, and Additional Seller, as the lender therein (the “Additional Loan Agreement”);

WHEREAS, Additional Seller intends to sell, grant, convey, assign, transfer and deliver to Buyer, and Buyer intends to purchase, acquire, assume and accept from Additional Seller, (a) all of Additional Seller’s right, title and interest in and to (i) the Pro Rata Portion of the Additional Interests and (ii) the Additional Loan Agreement with respect to the Pro Rata Portion of the Loan (as defined in the Additional Loan Agreement) owing at the Closing to Additional Seller thereunder (clauses (i) and (ii), collectively, the “Additional Purchased Assets”), and (b) all of the obligations, liabilities, covenants, duties and agreements arising out of, under or relating to, the Additional Purchased Assets from and after the Closing, in each case, upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, the Additional Seller has received and reviewed a copy of the Purchase Agreement; and

WHEREAS, by executing this Agreement Additional Seller shall become a party to the Purchase Agreement and shall have approved the Purchase Agreement and any ancillary agreements entered into in connection therewith, to the extent applicable to Seller thereunder, and each of the transactions contemplated thereby, as if the Additional Seller had executed the Purchase Agreement on the Agreement Date.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises herein made, and in consideration of the representations and warranties herein contained, and for other good and valuable consideration the adequacy of which is hereby acknowledged, the Parties, intending to become legally bound, hereby agree as follows:

ARTICLE I.  
JOINDER; PURCHASE AGREEMENT OBLIGATIONS

By execution and delivery of this Agreement:

Section 1.1 Upon the terms and subject to the conditions of this Agreement and the Purchase Agreement applicable to Seller and the Purchased Assets (which shall be applied *mutatis mutandis* to Additional Seller and the Additional Purchased Assets), Additional Seller shall sell, grant, convey, assign, transfer and deliver to Buyer, and Buyer hereby agrees to purchase, acquire, assume and accept from Additional Seller, free and clear of any and all Liens (other than Liens arising under the LLC Agreement or the Loan Agreement, as the case may be, and restrictions on sales of securities under applicable securities Laws) (i) all of Additional Seller's right, title and interest in and to the Additional Purchased Assets and (ii) all of the obligations, liabilities, covenants, duties and agreements arising out of, under or relating to, the Additional Purchased Assets from and after the Closing, for an amount equal to the Purchase Price (calculated pursuant to and in accordance with the Purchase Agreement), divided by (i) 23.88717940 and then multiplied by (ii) 0.05442739772; *provided* that, for the avoidance of doubt, Buyer is not assuming any of the Additional Seller's obligations, Liabilities, covenants, duties or agreements arising out of, under or relating to (i) any action or omission of Additional Seller at or prior to the Closing, (ii) the period prior to the Closing, or (iii) Section 7.04(f) of the LLC Agreement with respect to any of the Required Regulatory Approvals in connection with the transactions contemplated hereby or any Other PSA.

Section 1.2 Subject to Section 1.3, effective as of the date hereof, the Additional Seller hereby agrees to join and agrees to comply with and to be bound by, the terms of the Purchase Agreement applicable to Seller and the Purchased Assets (which shall be applied *mutatis mutandis* to Additional Seller and the Additional Purchased Assets), including, without limitation: (i) on a several and not joint basis and, where applicable, solely with respect to Additional Seller and not with respect to Seller, those representations and warranties set forth in Article III of the Purchase Agreement, (ii) the conditions set forth in Article VI of the Purchase Agreement to the consummation of the transactions contemplated hereby and thereby, (iii) on a several and not joint basis, the indemnification obligations forth in Article VII of the Purchase Agreement, (iv) the releases and limitations on liability in the Purchase Agreement (both for the benefit of Buyer and the benefit of Seller); (v) the covenants and agreements in the Purchase Agreement, in each case that are applicable to Seller and the Purchased Assets, as if Additional Seller had executed the Purchase Agreement on the Agreement Date. For purposes of this Agreement and the Purchase Agreement, "Knowledge" means, with respect to Additional Seller, the actual knowledge of any individual set forth on Schedule I attached hereto.

Section 1.3 Additional Seller shall not be responsible for the breach by Seller of any of the representations, warranties or covenants made by Seller with respect to itself (and Seller shall not be responsible for the breach by Additional Seller of any of the representations, warranties or covenants made by Additional Seller with respect to itself), and each of Seller and Additional Seller shall only be severally and not jointly responsible for its Pro Rata Share (as defined below) of any indemnifiable Damages for the breach of any of the representations, warranties or covenants (or parts thereof) made by Seller and Additional Seller with respect to any of the Company Entities. Further, each of Seller and Additional Seller shall only be severally and not jointly responsible for,

without right of reimbursement from Buyer, its Pro Rata Share of all Transaction Expenses incurred by any of the Company Entities to be borne by Seller pursuant to Sections 9.10 (b) and (c) of the Purchase Agreement whether or not the transactions contemplated by the Purchase Agreement and this Agreement are consummated. “Pro Rata Share,” with respect to Seller and Additional Seller, means the ratio that (x) the number of Class A Units being acquired by Buyer from Seller or Additional Seller, as the case may be, bears to (y) the total number of Class A Units being acquired by Buyer from both Seller and Additional Seller. Notwithstanding anything to the contrary herein, each of Seller and Additional Seller shall only be severally and not jointly liable for its Pro Rata Share of any liability arising from or in connection with this Agreement or the Purchase Agreement (*provided*, that each of Seller and Additional Seller shall be solely responsible for any breach of any representation or warranty made by it herein or therein with respect to itself and any breach or non-performance of any covenant of itself herein or therein).

Section 1.4 For the avoidance of doubt, the Seller Parent Guarantee shall not cover, nor be deemed to cover, any of the obligations of Additional Seller under this Agreement (or the Purchase Agreement).

Section 1.5 Under no circumstance shall Buyer be required to consummate the transactions contemplated by this Agreement unless the transactions contemplated by the Purchase Agreement are being consummated simultaneously.

## ARTICLE II. MISCELLANEOUS.

Section 2.1 Generally. The provisions in Article IX (other than Section 9.3) of the Purchase Agreement shall be applied *mutatis mutandis* to Additional Seller and the Additional Purchased Assets.

Section 2.2 Notices. All notices and other communications required or permitted to be given by any provision of this Agreement (or in connection with the matters contemplated hereby) shall be in writing and mailed (certified or registered mail, postage prepaid, return receipt requested) or sent by hand, electronic mail, overnight courier or facsimile transmission (with acknowledgment received), charges prepaid and addressed to the intended recipient as follows, or to such other addresses or numbers as may be specified by a Party from time to time by like notice to the other Parties:

If to Additional Seller:           L7 50 Martin Place  
  Sydney NSW 2000  
  Attention: Daniel Walmsley  
  Facsimile: (212) 231-1828  
  E-mail:    daniel.walmsley@macquarie.com

  Level 15, 125 West 55th Street  
  New York, New York 10019  
  Attention: David Handelsmann  
  Facsimile: (212) 231-1828  
  Email:     david.handelsmann@macquarie.com

with a copy to:                   Latham & Watkins LLP  
  885 Third Avenue  
  New York, New York 10022  
  Attention: Thomas W. Christopher  
  Facsimile: (212) 751-4864  
  E-mail:    thomas.christopher@lw.com

if to Seller or Buyer, to its address set forth in the Purchase Agreement.

All notices and other communications given in accordance with the provisions of this Agreement shall be deemed to have been given and received when delivered by hand or transmitted by electronic mail or facsimile (with acknowledgment received), three (3) Business Days after the same are sent by certified or registered mail, postage prepaid, return receipt requested or one (1) Business Day after the same are sent by a reliable overnight courier service, with acknowledgment of receipt.

*[Remainder of this page intentionally left blank]*



IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed as of the date first above written.

**ADDITIONAL SELLER:**

PADUA MG HOLDINGS LLC

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Orange Joinder Agreement]*

**BUYER:**

MOBY CANADA LIMITED PARTNERSHIP, by  
its general partner,  
MOBY GP CANADA CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Orange Joinder Agreement]*

ACKNOWLEDGED AND AGREED  
AS OF THE DATE FIRST WRITTEN ABOVE:

**SELLER:**

MIP PADUA HOLDINGS, L.P.

By: MIP Washington Holdings GP LLC,  
a general partner

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

MIP PADUA HOLDINGS, L.P.

By: MIP II Washington Holdings GP LLC,  
a general partner

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Orange Joinder Agreement]*

**SCHEDULE I**

Knowledge of Additional Seller

1. Karl Kuchel
2. Christopher Leslie
3. Andrew Chapman

*Execution Version*

**BUYER DISCLOSURE SCHEDULE**  
**TO**  
**PURCHASE AND SALE AGREEMENT**

by and among

MIP PADUA HOLDINGS, L.P.,

as Seller,

MOBY CANADA LIMITED PARTNERSHIP,

as Buyer,

MACQUARIE INFRASTRUCTURE PARTNERS CANADA, L.P.,  
(solely with respect to Section 5.15 and Section 9.12 thereof),

MACQUARIE INFRASTRUCTURE PARTNERS INTERNATIONAL, L.P.,  
(solely with respect to Section 5.15 and Section 9.12 thereof),

MACQUARIE INFRASTRUCTURE PARTNERS A, L.P.,  
(solely with respect to Section 5.15 and Section 9.12 thereof),

and

MACQUARIE INFRASTRUCTURE PARTNERS II AIV, L.P.,  
(solely with respect to Section 5.15 and Section 9.12 thereof)

Dated as of August 8, 2018

### **BUYER DISCLOSURE SCHEDULE**

Capitalized terms used herein and not otherwise defined have the meanings given to those terms in the Purchase and Sale Agreement (the “Agreement”), dated as of August 8, 2018, by and among (i) MIP Padua Holdings, L.P., a Delaware limited partnership (“Seller”), (ii) Moby Canada Limited Partnership, an Ontario limited partnership (“Buyer”), by its general partner Moby GP Canada Corporation (“Buyer GP”), and (iii) solely with respect to Section 5.15 and Section 9.12 thereof and not for purposes of any other article, section or provision thereof, Macquarie Infrastructure Partners Canada, L.P., an Ontario limited partnership, Macquarie Infrastructure Partners International, L.P., a Delaware limited partnership, Macquarie Infrastructure Partners A, L.P., a Delaware limited partnership and Macquarie Infrastructure Partners II AIV, L.P., a Delaware limited partnership.

This disclosure schedule (the “Buyer Disclosure Schedule”) is furnished by Buyer to Seller pursuant to the Agreement and is subject to the terms thereof. The headings contained in this Buyer Disclosure Schedule are for reference purposes only and shall not affect in any way the meaning or interpretation of this Buyer Disclosure Schedule.

Except as expressly provided in the Agreement, neither this Buyer Disclosure Schedule nor any disclosure made in or by virtue of this Buyer Disclosure Schedule shall constitute or imply any representation, warranty, covenant, assurance or undertaking by Buyer, nor shall any such disclosure be deemed to expand any representation, warranty, covenant, assurance or undertaking by Buyer in the Agreement. Any reference to a contract, statement, plan, report or other document or item of any kind (“Disclosure Item”) in this Buyer Disclosure Schedule shall be deemed a full disclosure of all of the terms of such Disclosure Item and it shall not be necessary to identify or reference specific provisions of such Disclosure Items in order to make a full disclosure for purposes of this Buyer Disclosure Schedule. This Buyer Disclosure Schedule may include Disclosure Items or other matters which Buyer is not required to disclose under the Agreement and disclosure of such Disclosure Items or matters in this Buyer Disclosure Schedule shall not affect (directly or indirectly) the interpretation of the Agreement or the scope of the disclosure obligations thereunder. Without limiting the foregoing, the disclosure of any Disclosure Item or other matter in this Buyer Disclosure Schedule shall not (i) be deemed to constitute an acknowledgement that such Disclosure Item or matter is required to be disclosed herein or is material to a representation, warranty, covenant or condition set forth in the Agreement, (ii) be used as a basis for interpreting the terms “material,” “materially,” “materiality,” “Material Adverse Effect” or any word or phrase of similar import, (iii) does not mean that such Disclosure Item or matter would, with any other Disclosure Item or matter, have or be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect and (iv) be used as a basis for interpreting the term “ordinary course” or any word or phrase of similar import. Any disclosure in this Buyer Disclosure Schedule relating to one section or subsection shall also apply to other sections and subsections to the extent that it is reasonably apparent that such disclosure would also be relevant to, apply to or qualify such other sections and subsections, notwithstanding the omission of a reference or cross-reference thereto. Nothing in this Buyer Disclosure Schedule constitutes an admission of any liability or obligation of Buyer or any of its respective Affiliates, in each case to any Person that is not party to the Agreement, nor an admission against Buyer’s or any of its respective Affiliates’ interests to such third Person.

**Section 1.1(b)**  
**Buyer's Knowledge**

1. Steven Zucchet
2. Marco Fontana

**Section 4.4**  
**Governmental Consents**

1. Any additional antitrust/competition approvals of or from any Governmental Authority as any Party may reasonably determine is required to be obtained in connection with the transactions contemplated by this Agreement and of which such Party notifies in writing the other Party.



*Execution Version*

**SELLER DISCLOSURE SCHEDULE**  
**TO**  
**PURCHASE AND SALE AGREEMENT**

by and among

MIP PADUA HOLDINGS, L.P.,

as Seller,

MOBY CANADA LIMITED PARTNERSHIP,

as Buyer,

MACQUARIE INFRASTRUCTURE PARTNERS CANADA, L.P.,  
(solely with respect to Section 5.15 and, solely with respect to Section 5.15(f) thereof, Section  
9.12 thereof),

MACQUARIE INFRASTRUCTURE PARTNERS INTERNATIONAL, L.P.,  
(solely with respect to Section 5.15 and, solely with respect to Section 5.15(f) thereof, Section  
9.12 thereof),

MACQUARIE INFRASTRUCTURE PARTNERS A, L.P.,  
(solely with respect to Section 5.15 and, solely with respect to Section 5.15(f) thereof, Section  
9.12 thereof),

and

MACQUARIE INFRASTRUCTURE PARTNERS II AIV, L.P.,  
(solely with respect to Section 5.15 and, solely with respect to Section 5.15(f) thereof, Section  
9.12 thereof)

Dated as of August 8, 2018

## **SELLER DISCLOSURE SCHEDULE**

Capitalized terms used herein and not otherwise defined have the meanings given to those terms in the Purchase and Sale Agreement (the “Agreement”), dated as of August 8, 2018, by and among (i) MIP Padua Holdings, L.P., a Delaware limited partnership (“Seller”), (ii) Moby Canada Limited Partnership, an Ontario limited partnership (“Buyer”), by its general partner Moby GP Canada Corporation (“Buyer GP”), and (iii) solely with respect to Section 5.15 and, solely with respect to Section 5.15(f) thereof, Section 9.12 thereof and not for purposes of any other article, section or provision thereof, Macquarie Infrastructure Partners Canada, L.P., an Ontario limited partnership, Macquarie Infrastructure Partners International, L.P., a Delaware limited partnership, Macquarie Infrastructure Partners A, L.P., a Delaware limited partnership and Macquarie Infrastructure Partners II AIV, L.P., a Delaware limited partnership.

This disclosure schedule (the “Seller Disclosure Schedule”) is furnished by Seller to Buyer pursuant to the Agreement and is subject to the terms thereof. The headings contained in this Seller Disclosure Schedule are for reference purposes only and shall not affect in any way the meaning or interpretation of this Seller Disclosure Schedule.

Neither this Seller Disclosure Schedule nor any disclosure made in or by virtue of this Seller Disclosure Schedule shall constitute or imply any representation, warranty, covenant, assurance or undertaking by the Seller, except as expressly provided in the Agreement, nor shall any such disclosure be deemed to expand any representation, warranty, covenant, assurance or undertaking by Seller in the Agreement (for the avoidance of doubt, except any disclosure expressly required by the Agreement to be set forth in a section or subsection of this Seller Disclosure Schedule). Any reference to a contract, statement, plan, report or other document or item of any kind (“Disclosure Item”) in this Seller Disclosure Schedule shall be deemed a full disclosure of all of the terms of such Disclosure Item and it shall not be necessary to identify or reference specific provisions of such Disclosure Items in order to make a full disclosure for purposes of this Seller Disclosure Schedule. This Seller Disclosure Schedule may include Disclosure Items or other matters which Seller is not required to disclose under the Agreement and disclosure of such Disclosure Items or matters in this Seller Disclosure Schedule shall not affect (directly or indirectly) the interpretation of the Agreement or the scope of the disclosure obligations thereunder. Without limiting the foregoing, the disclosure of any Disclosure Item or other matter in this Seller Disclosure Schedule shall not (i) be deemed to constitute an acknowledgement that such Disclosure Item or matter is required to be disclosed herein or is material to a representation, warranty, covenant or condition set forth in the Agreement, (ii) be used as a basis for interpreting the terms “material,” “materially,” “materiality,” “Material Adverse Effect” or any word or phrase of similar import, (iii) does not mean that such Disclosure Item or matter would, with any other Disclosure Item or matter, have or be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect and (iv) be used as a basis for interpreting the term “ordinary course” or any word or phrase of similar import. Any disclosure in this Seller Disclosure Schedule relating to one section or subsection shall also apply to other sections and subsections to the extent that it is reasonably apparent that such disclosure would also be relevant to, apply to or qualify such other sections and subsections, notwithstanding the omission of a reference or cross-reference thereto. Nothing in this Seller Disclosure Schedule constitutes an admission of any liability or obligation of Seller or any of its respective Affiliates,

in each case to any Person that is not party to the Agreement, nor an admission against Seller's or any of its respective Affiliates' interests to such third Person.

**Section 1.1(a)**  
**Regulatory Commitments**

ACKNOWLEDGMENTS AND AFFIRMATIONS OF EXISTING COMMITMENTS BY BUYER:

1. Buyer acknowledges and affirms its support for Puget Sound Energy, Inc.'s ("PSE") and the Company's respective commitments that have been made, and approved by the WUTC in the following proceedings, to the extent that those commitments remain applicable as of the transaction closing date.
  - a. Commitments set forth in in Docket U-072375, Attachments A and B to *Order 08, Approving and Adopting Settlement Stipulation; Authorizing Transaction Subject to Conditions* ("**2008 Merger Order**");
  - b. Commitments regarding ring-fencing the non-regulated subsidiary in Docket UG-151663, *Order 10, Final Order Approving and Adopting Settlement Stipulation; Reopening Record and Amending Order 08 in Docket U-072375* ("**LNG Order**"); and
  - c. Commitments regarding Colstrip in Dockets UE-170033 & UG-170034, *Order 08, Approving and Adopting Settlement Stipulation; Resolving Contested Issues; and Authorizing and Requiring Compliance Filing* ("**2017 GRC Order**")

COMMITMENTS BY BUYER:

2. In addition to the acknowledgments and affirmations of Buyer in Part 1 above, Buyer will make the following commitments in connection with Commission approval of the transaction pursuant to which Buyer would acquire 10 percent or more of the equity ownership of the Company (the "**Buyer Proposed Transaction**"):
  - 2.1 Buyer commits to support PSE's goal to reduce its carbon footprint by 50 percent by 2040.
  - 2.2 Buyer commits to support the existing level of corporate contributions and community support in the State of Washington for a period of five years after closing.

COMMITMENTS BY BUYER AND PSE:

3. In addition to the acknowledgments and affirmations of Buyer in Part 1 above and the commitments of Buyer in Part 2 above, Buyer and PSE will update the following commitments in connection with the Buyer Proposed Transaction:
  - 3.1 Buyer and/or Seller will be responsible for the cost of all legal and financial advisory fees, acquisition premium, and transaction costs associated with the Buyer Proposed Transaction, and agrees that there will be no recovery of such costs and fees in rates.

- 3.2 The Buyer Proposed Transaction will not result in reduced access to the necessary books and records that relate to transactions with PSE, or that result in costs that may be allocable to PSE, and the Buyer Proposed Transaction will not be used as a basis to oppose requests for such books and records made by the Commission or by Commission Staff or Public Counsel.
- 3.3 Nothing in the Buyer Proposed Transaction will limit or affect the Commission's rights with respect to inspection of accounts, books papers and documents of PSE pursuant to RCW 80.04.070 or RCW 80.16.030.
- 3.4 Nothing in the Buyer Proposed Transaction will limit or affect the Commission's rights with respect to inspection of accounts, books, papers and documents of the Company pursuant to RCW 80.16.030; provided, that such right to inspection shall be limited to those accounts, books, papers and documents of the Company that pertain to transactions affecting PSE's regulated utility operations.
- 3.5 All existing orders issued by the Commission with respect to PSE or its predecessors, Puget Sound Power & Light Company and Washington Natural Gas Company, will remain in effect, and are not modified or otherwise affected by the Buyer Proposed Transaction or any order of the Commission approving the Buyer Proposed Transaction.

**Section 1.1(b)**  
**Seller's Knowledge**

1. Karl Kuchel
2. Christopher Leslie
3. Andrew Chapman

**Section 1.1(c)**  
**Leakage**

None.

**Section 2.4(a)(ii)**  
**Resignations**

1. Karl Kuchel
2. Christopher Leslie
3. Andrew Chapman



**Section 3.3**  
**Noncontravention**

1. Each item set forth on Schedule E of the Agreement is incorporated by reference as if fully set forth herein

**Section 3.4**  
**Governmental Consents**

1. FERC Approval.
2. WUTC Approval.
3. If required in connection with the transactions contemplated by the Agreement, EU Approval.
4. Any additional antitrust/competition approvals of or from any Governmental Authority as Buyer and Seller may reasonably agree in writing are applicable.

**Section 3.5(c)**  
**Company Interests**

Member	Class A Interests	Investor Percentage
MIP Padua Holdings, L.P.	43,154.3281	43.8882%
Padua MG Holdings LLC	98.3279	0.1000%
CPP Investment Board (USRE II) Inc.	31,039.8310	31.5677%
6860141 CANADA INC. as Trustee for Padua Investment Trust	16,576.1250	16.8580%
PIP2PX (Pad) Ltd.	4,624.7390	4.7034%
PIP2GV (Pad) Ltd.	2,834.5174	2.8827%
<b>Total</b>	<b>98,327.8684</b>	<b>100.0000%</b>

1. Items 1 through 5 set forth in Section 3.8(a) of this Seller Disclosure Schedule are incorporated by reference as if fully set forth herein.
2. Voting Agreement, effective as of February 6, 2009, among Puget Holdings LLC, Puget Intermediate Holdings Inc., Puget Equico LLC and Puget Merger Sub Inc.

**Section 3.5(f)**  
**Subsidiaries**

1. Puget Intermediate Holdings Inc.
2. Puget Equico LLC
3. Puget Energy, Inc.
4. Puget LNG LLC
5. Puget Sound Energy, Inc.
6. Puget Western, Inc.

**Section 3.8(a)**  
**Affiliate Contracts**

1. MIP II AIV - Padua Loan VCOC Management Rights Letter Agreement, dated February 6, 2009, from Puget Intermediate Holdings Inc. to Macquarie Infrastructure Partners II AIV, L.P. and MIP II Washington Holdings, L.P.
2. MIP - Padua VCOC Rights Letter Agreement, dated February 6, 2009, from the Company and MIP Padua Holdings, GP to Macquarie Infrastructure Partners A, L.P. and Macquarie Infrastructure Partners International, L.P.
3. MIP - Padua Loan VCOC Management Rights Letter Agreement, dated February 6, 2009, from Puget Intermediate Holdings Inc. to Macquarie Infrastructure Partners A, L.P. and Macquarie Infrastructure Partners International, L.P.
4. MIP II AIV - Padua VCOC Rights Letter Agreement, dated February 6, 2009, from the Company to Macquarie Infrastructure Partners II AIV, L.P. and MIP II Washington Holdings, L.P.
5. Letter Agreement, dated May 2009, from Padua MG Holdings LLC to MIP II Washington Holdings, L.P.
6. Common Interest and Confidentiality Agreement, effective March 29, 2018, among Seller, Padua MG Holdings LLC, Puget Holdings LLC and Puget Sound Energy, Inc.
7. Non-Disclosure Agreement, effective August 2, 2017, among Seller, MIP II Washington Holdings, L.P., Padua MG Holdings LLC and Puget Holdings LLC.
8. Letter Agreement, dated November 15, 2017, among Seller, MIP II Washington Holdings, L.P., Padua MG Holdings LLC and Puget Sound Energy, Inc.

**Section 3.8(b)**  
**Affiliate Contract Payments During the Interim Period**

None.

**Section 5.9**  
**Termination of Affiliate Contracts**

Items 1 through 8 set forth in Section 3.8(a) of this Seller Disclosure Schedule are incorporated by reference as if fully set forth herein.

*Execution Version*

**August 8, 2018**

From: OMERS Administration Corporation  
900-100 Adelaide Street West  
Toronto, Ontario M5H 0E2  
Canada

To: Moby Canada Limited Partnership  
c/o OMERS Infrastructure Management Inc.  
900-100 Adelaide Street West  
Toronto, Ontario M5H 0E2  
Canada

Dear Sirs/Mesdames:

Re: **Purchase and Sale Agreement (the “PSA”) made and entered into as of August 8, 2018, by and among MIP Padua Holdings, L.P. (f/k/a MIP Padua Holdings, GP) (the “Seller”), and Moby Canada Limited Partnership, a limited partnership formed under the laws of Ontario (the “Buyer”), and the other parties thereto.**

1. OMERS Administration Corporation, for and on behalf of the OMERS pension plans (the “**Sponsor**”), refers to the proposed acquisition by Buyer of the Purchased Assets pursuant to the terms and conditions of the PSA (the “**Transaction**”).
2. The Sponsor shall fund, or cause an affiliate to fund, Buyer, through direct or indirect equity contributions and/or shareholder loans, in immediately available funds, an amount in cash equal to \$1,670,375,175 (the “**Commitment**”), immediately prior to the time that Buyer becomes obligated under the PSA to effect the Closing. The Sponsor’s obligation to fund the Commitment is subject to the satisfaction in full or, in the sole discretion of Buyer, waiver of each of the conditions precedent to the Closing set out in Sections 6.1 and 6.3 of the PSA (other than those conditions that by their nature are to be, can be, and concurrently are satisfied at the Closing).

The Commitment shall be used solely to fund the payment by Buyer of the Purchase Price pursuant to the PSA, and for no other purpose, and the Sponsor shall not under any circumstances be obligated to fund any of the Commitment except in connection with the Closing. The Sponsor’s obligation to fund the Commitment and this Section 2 shall terminate in their entirety and cease to be of any force or effect upon the earlier of (i) the Closing occurring, and (ii) the date the PSA terminates in accordance with its terms (the “**Termination Date**”). Notwithstanding anything herein, in no circumstances shall the Sponsor’s liability under this commitment letter exceed the amount of the Commitment.

3. Notwithstanding anything that may be expressed or implied in this commitment letter, by their acceptance hereof, Buyer and any other party in interest to this commitment letter (including, without limitation, the Seller) acknowledge and



agree that, except in the case of fraud, (i) notwithstanding that the Sponsor is a corporation, no recourse hereunder or under any documents or instruments delivered in connection herewith may be had against any director, officer, agent or employee of the Sponsor (other than Buyer), any affiliate or related party of the Sponsor (other than Buyer), or any direct or indirect director, officer, trustee, employee, partner, affiliate, manager, shareholder, member, stockholder, controlling person, agent or representative of any of the foregoing (other than the Sponsor and Buyer) (any such person or entity, a “**Related Person**”), whether by the enforcement of any judgment or assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, and (ii) no personal liability whatsoever will attach to, be imposed on or otherwise be incurred by Related Persons under this commitment letter or any documents or instruments delivered in connection herewith or with the Transaction for any claim based on, in respect of or by reason of such obligations or by their creation.

4. No person or entity other than Buyer shall be entitled to rely upon this commitment letter; provided, however, that the parties hereto acknowledge and agree that the Seller will be relying on this commitment letter in entering into the PSA with Buyer and that the Seller is an express third party beneficiary of, and shall be entitled to enforce (by specific performance or otherwise) without bond or other security being required, all obligations of the Sponsor in this commitment letter. Each of the parties hereto irrevocably agrees and acknowledges that the rights of the other parties and Seller hereunder are special, unique and of extraordinary character, and that if any party hereto violates or fails or refuses to perform any covenant or agreement made by it herein, the non-breaching parties and Seller, as the case may be, shall be without an adequate remedy at law. Each party hereto agrees that it shall not oppose the granting of an injunction, specific performance or other equitable relief on the basis that (a) the other party or Seller has an adequate remedy at law or (b) an award of specific performance is not an appropriate remedy for any reason at law or in equity, and each party hereto waives any defense thereto, including the defenses of: (i) failure of consideration, (ii) breach of any other provision of this commitment letter and (iii) availability of relief in damages. This commitment letter shall be binding upon and inure solely to the benefit of each party hereto and, except as set forth above, nothing herein, express or implied, is intended or shall confer upon any other person any rights, benefits or remedies whatsoever under or by reason of this commitment letter.
5. Representations of the Sponsor. The Sponsor hereby represents and warrants to Buyer that (a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization; (b) it has all corporate power and authority to execute, deliver and perform this commitment letter; (c) the execution, delivery and performance of this commitment letter by it has been duly and validly authorized and approved by all necessary corporate action by it; (d) this commitment letter has been duly and validly executed and delivered by it and constitutes a valid and legally binding obligation of it, enforceable against it in accordance with the terms of this commitment letter, subject to the Remedies Exception; (e) it has, and will at all times prior to the termination of this commitment letter in accordance with Section 2 of this commitment letter have, sufficient funds to pay the Commitment, and is not aware of any reason why such funds will not be available when required; and (f) all consents, approvals,

authorizations and permits of, filings with, and notifications to, any Governmental Authority necessary for the due execution, delivery and performance of this commitment letter by it have been obtained or made and all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with, any Governmental Authority is required in connection with the execution, delivery or performance of this commitment letter.

6. The rights and obligations of Buyer under this commitment letter shall not be assignable (by operation of law or otherwise) without each of the Sponsor's and the Seller's prior written consent, and the granting of such consent shall be solely in the discretion each of the Sponsor and the Seller. If any such prior written consent is granted, it shall not constitute a waiver by the Sponsor or Seller, as the case may be, of this requirement as to any subsequent assignment. The Sponsor's obligation to fund the Commitment may not be assigned by the Sponsor without the consent of the Seller other than to an affiliate of the Sponsor and, in any event, no assignment by the Sponsor of its obligation to fund the Commitment shall relieve the Sponsor of its obligations hereunder. Any purported assignment of this commitment letter in contravention of this Section 6 shall be null and void. Upon the valid assignment of this commitment letter by the Sponsor pursuant to and in accordance with this Section 6, the assignee shall, by accepting such assignment, be deemed to make the representations and warranties set forth in Section 2 of this commitment letter.
7. All capitalized terms used, but not defined, in this commitment letter shall have the meanings attributed to such terms in the PSA.
8. This commitment letter and its contents are considered confidential and may not be disclosed in any part without the prior written consent of the other parties hereto; provided that the Sponsor and the Seller shall be entitled to disclose this commitment letter and its contents (i) to their respective officers, directors, members, Affiliates, advisors and consultants who, in each case, need to know the terms of this commitment letter in connection with the negotiation or furtherance of the transactions contemplated by the PSA and who are directed to treat this commitment letter as confidential; (ii) where required (x) by any Governmental Authority to be disclosed under applicable law or any applicable listing agreement with, or rules and regulations of, an applicable securities exchange, or in connection with any required regulatory filings relating to the transactions contemplated by the PSA or (y) for purposes of compliance with any bona fide financial reporting obligation (in case of either (x) or (y) the Seller (if applicable), to the extent legally permissible, shall provide the Sponsor with prompt written notice so that the Sponsor may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section 8), (iii) in connection with any litigation to enforce the terms of this commitment letter and (iv) in connection with a routine audit or examination by, or a blanket document request from, a regulatory or self-regulatory authority, bank examiner or auditor.
9. Following the termination of this commitment letter in accordance with and pursuant to Section 2 hereof, this commitment letter and all of the obligations remaining hereunder shall terminate in their entirety and cease to be of any force or effect.

10. This commitment letter may not be amended except by an instrument in writing signed by the Sponsor, Buyer and Seller.
11. This commitment letter, and all claims and causes of action (whether in contract, tort, at law, in equity or otherwise) that may be based upon, arise out of, or relate to this commitment letter, any of the transactions contemplated hereby or the negotiation, execution, performance or enforcement of this commitment letter shall be governed by and construed in accordance with the law of the State of Delaware without giving effect to any choice or conflict of laws provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.
12. Each of the Parties irrevocably submits to the exclusive jurisdiction of (i) state courts of the State of Delaware located in New Castle County and (ii) the United States District Court for the District of the State of Delaware for the purposes of any suit, action or other proceeding arising out of or relating to this commitment letter, the negotiation, execution, performance and enforcement of this commitment letter or any transaction contemplated hereby (and agrees not to commence any action, suit or proceeding relating hereto except in such courts). Each of the Parties further agrees that service of any process, summons, notice or document hand delivered or sent by recognized overnight carrier to such party's respective address set forth on the first page of this commitment letter outside the territorial jurisdiction of the courts referred to in this Section 12 shall be effective service of process for any action, suit or proceeding in the State of Delaware with respect to any matters to which it has submitted to jurisdiction as set forth in the immediately preceding sentence. However, the foregoing shall not limit the right of a party to effect service of process on another party by any other legally available method. Each of the parties irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of or relating to this commitment letter or the transactions contemplated hereby in (i) state courts of the State of Delaware located in New Castle County or (ii) the United States District Court for the District of the State of Delaware, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each party agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.
13. EACH OF THE PARTIES IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER, IN CONNECTION WITH OR RELATING TO THIS COMMITMENT LETTER, ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS COMMITMENT LETTER OR THE ACTIONS OF THE PARTIES IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

14. This commitment letter constitutes the entire agreement between the parties hereto and supersedes all other prior agreements and undertakings, both written and oral, between the parties with respect to the subject matter hereof, including, without limitation, any term sheets, letters of intent, proposals, bids or similar agreements.
15. This commitment letter may be executed and delivered (including by facsimile, email or other electronic transmission (including in .pdf or .tif formats) signature pages) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same instrument.
16. Any term or provision of this commitment letter that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction; provided, however, that this commitment letter may not be enforced without giving effect to the limitation of any amounts payable hereunder as provided hereunder. No party hereto shall assert, and each party shall cause its respective affiliates or related parties not to assert, that this commitment letter or any part hereof is invalid, illegal or unenforceable.
17. The Sponsor hereby waives all claims that it may have against Buyer until the Termination Date.
18. The Sponsor confirms that except as expressly set forth herein there are no conditions precedent or subsequent to its performance of any provision hereof.

***[Remainder of page left intentionally blank.]***

**IN WITNESS WHEREOF**, the undersigned have executed this letter agreement as of the date first set forth above.

**OMERS Administration Corporation**

by:   
Name: **UPTON JEANS**  
Title: **Senior Vice President,  
Financial Services**

by:   
Name: **Christine A. Sharp**  
Title: **Senior Vice President &  
Associate General Counsel**

**MOBY CANADA LIMITED PARTNERSHIP**, by its general partner,  
**MOBY GP CANADA CORPORATION**


by:   
Name: Steven Zucchet  
Title: Director

by:   
Name: Marco Fontana  
Title: Director

Acknowledged and agreed by;

**MIP Padua Holdings, L.P.**

By: MIP Washington Holdings GP LLC,  
a general partner

By:   
Name: Mark Fay  
Title: Authorized Signatory

By:   
Name: David Handelsmann  
Title: Authorized Signatory

**MIP Padua Holdings, L.P.**

By: MIP II Washington Holdings GP LLC,  
a general partner

By:   
Name: Mark Fay  
Title: Authorized Signatory

By:   
Name: David Handelsmann  
Title: Authorized Signatory

*Execution Version*

**LIMITED GUARANTY**

This Limited Guaranty, dated as of August 8, 2018 (this “**Limited Guaranty**”), by OMERS Administration Corporation (the “**Guarantor**”) is made in favor of MIP Padua Holdings, L.P. (f/k/a MIP Padua Holdings, GP) (the “**Guaranteed Party**”) under the Purchase Agreement (as defined below). Capitalized terms used herein but not otherwise defined shall have the respective meanings given to them in the Purchase Agreement.

1. **LIMITED GUARANTY.** To induce the Guaranteed Party to enter into that certain Purchase and Sale Agreement (as amended, restated, supplemented or otherwise modified from time to time, the “**Purchase Agreement**”) of even date herewith by and between Moby Canada Limited Partnership, a limited partnership formed under the laws of Ontario (“**Buyer**”), and the Guaranteed Party, the Guarantor, intending to be legally bound, hereby absolutely, unconditionally and irrevocably guarantees to the Guaranteed Party, pursuant to the terms and subject to the conditions herein, the due and punctual payment, observance, performance and discharge of the payment obligations of Buyer under the Purchase Agreement, including, without limitation, to pay (a) the Buyer Termination Fee pursuant to Section 8.3 of the Purchase Agreement, if and when due, (b) any other amounts, including, without limitation, interest, fees, costs and expenses to be paid by Buyer, that may be owed pursuant to Section 8.3 of the Purchase Agreement, (c) any reimbursement obligations of Buyer that may arise prior to the Closing, (d) any liability of Buyer for any breach by it of the Purchase Agreement prior to the Closing, and (e) any reasonable out-of-pocket fees and expenses incurred by the Guaranteed Party in enforcing its rights hereunder, but only to the extent the Guaranteed Party prevails in such enforcement (the amounts described in the foregoing clauses (a), (b), (c), (d) and (e), collectively, the “**Obligations**”), it being understood and agreed that this Limited Guaranty may not be enforced against the Guarantor without giving effect to the provisions set forth in this Limited Guaranty. Notwithstanding anything to the contrary herein, under no circumstances shall the Obligations exceed \$100,000,000 (One Hundred Million U.S. Dollars). If Buyer fails to discharge its Obligations when due, the Guaranteed Party may at any time and from time to time, at the Guaranteed Party’s option, and so long as Buyer has failed to perform any of its Obligations, take any and all actions available hereunder or under applicable Law to enforce the Guarantor’s obligations hereunder in respect of such Obligations, subject to the terms and conditions of this Limited Guaranty. Notwithstanding anything to the contrary herein, and except as otherwise expressly set forth herein, the Guarantor reserves the right to assert any and all defenses which Buyer may have to payment of the Obligations (including, without limitation, any contained in the Purchase Agreement). The guarantee by the Guarantor of the Obligations under this Limited Guaranty may be enforced for the payment of money only. All payments hereunder shall be made in lawful money of the United States, in immediately available funds. The Guarantor promises and undertakes to make all payments required hereunder free and clear of any deduction, offset, claim or counterclaim of any kind.

2. **NATURE OF LIMITED GUARANTY.** Subject to the express terms and conditions of this Limited Guaranty, the Guarantor’s liability hereunder is absolute, unconditional, irrevocable and continuing irrespective of any modification, amendment or waiver of or any consent to departure from the Purchase Agreement that may be agreed to by Buyer (with the Guarantor’s prior written consent). Without limiting the foregoing, the Guaranteed Party shall not be obligated to file any claim relating to the Obligations in the event that Buyer



becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of the Guaranteed Party to so file shall not affect the Guarantor's obligations hereunder. In the event that any payment to the Guaranteed Party in respect of the Obligations is rescinded or must otherwise be returned for any reason whatsoever (other than as set forth in the last sentence of Section 8), the Guarantor shall remain liable hereunder with respect to the Obligations as if such payment had not been made. This Limited Guaranty is an unconditional guarantee of payment and not of collectability.

3. CHANGES IN OBLIGATIONS, CERTAIN WAIVERS. The Guarantor agrees that the Guaranteed Party may, in its sole discretion, at any time and from time to time, without notice to or further consent of the Guarantor, extend the time of payment of the Obligations, and may also make any agreement with Buyer or with any other Person now or hereafter interested in the transactions contemplated by the Purchase Agreement, for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, or for any modification of the terms thereof or of any agreement between the Guaranteed Party and Buyer or any such other Person without in any way impairing or affecting any obligations of the Guarantor under, or affecting the validity or enforceability of, this Limited Guaranty. The Guarantor agrees that its obligations hereunder shall not be released or discharged, in whole or in part, or otherwise affected by: (a) the failure or delay of the Guaranteed Party to assert any claim or demand or to enforce any right or remedy against Buyer or any other Person now or hereafter interested in the transactions contemplated by the Purchase Agreement or the Buyer Parent Commitment Letter; (b) any change in the time, place or manner of payment of, performance of, renewal or alteration of, any of the Obligations, any escrow arrangement or other security therefor, any liability incurred directly or indirectly in respect thereof, or any agreement entered into by the Sellers on the one hand, and the Buyer, on the other hand, in connection therewith, or any rescission, waiver, compromise, consolidation or other amendment or modification of any of the terms of the Purchase Agreement, the Buyer Parent Commitment Letter or any other agreement evidencing, securing or otherwise executed by Buyer and the Guaranteed Party in connection with the Obligations; (c) the addition, substitution or release of any Person now or hereafter interested in the transactions contemplated by the Purchase Agreement or the Buyer Parent Commitment Letter; (d) any change in the corporate existence, structure or direct or indirect ownership of Buyer, the Guarantor or any other Person now or hereafter liable with respect to the Obligations or otherwise interested in the transactions contemplated by the Purchase Agreement or the Buyer Parent Commitment Letter; (e) any insolvency, bankruptcy, reorganization, moratorium or other similar proceeding affecting Buyer, the Guarantor or any other Person now or hereafter liable with respect to any of the Obligations, or any of their respective assets, or otherwise interested in the transactions contemplated by the Purchase Agreement or the Buyer Parent Commitment Letter; (f) the adequacy of any other means the Guaranteed Party may have of obtaining payment related to any of the Obligations; (g) the value, genuineness, validity, regularity, illegality or enforceability of the Purchase Agreement or any other Transaction Document; (h) any discharge of the Guarantor as a matter of law or equity (other than as a result of payment of the Obligations in accordance with their terms); and (i) the existence of any claim, set off or other right that the Guarantor may have at any time against Buyer, the Guaranteed Party or the Company other than those available to Buyer against the Guaranteed Party under the Purchase Agreement or the Buyer Parent Commitment Letter. To the fullest extent permitted by applicable Law, the Guarantor hereby expressly waives any and all rights or defenses arising by reason of any Law which would otherwise require any election

of remedies by the Guaranteed Party. The Guaranteed Party shall not be required to proceed against Buyer first before proceeding against the Guarantor hereunder, and the Guarantor waives promptness, diligence, notice of the acceptance of this Limited Guaranty and of the Obligations, presentment, demand for payment, notice of non-performance, default, dishonor and protest, notice of the incurrence of the Obligations and all other notices or similar requirements of any kind (except for notices to be provided to Buyer and Buyer's counsel in accordance with Section 9.3 of the Purchase Agreement), all defenses which may be available by virtue of any valuation, stay, moratorium law or other similar Law now or hereafter in effect, any right to require the marshalling of assets of Buyer or any other Person now or hereafter liable with respect to the Obligations or otherwise interested in the transactions contemplated by the Purchase Agreement, and all suretyship defenses generally (other than fraud or intentional misconduct by the Guaranteed Party or any of its Affiliates, defenses to the payment of the Obligations that are available to Buyer under the Purchase Agreement or breach by the Guaranteed Party of this Limited Guaranty). The Guarantor acknowledges that it will receive substantial direct and indirect benefits from the transactions contemplated by the Purchase Agreement and that the waivers set forth in this Limited Guaranty are knowingly made in contemplation of such benefits.

The Guaranteed Party hereby covenants and agrees that it shall not institute, and shall cause its Affiliates not to institute, any proceeding or bring any other claim arising under, or in connection with, this Limited Guaranty, the Purchase Agreement or any other agreement entered into in connection therewith or the transactions contemplated hereby or thereby, against the Guarantor or other Buyer Affiliate (as hereinafter defined), except for (i) actions or claims against the Guarantor for the Obligations under this Limited Guaranty and/or for breaches of the representations and warranties set forth in Section 5 below and/or, subject to Section 8.3 of the Purchase Agreement, the Buyer Parent Commitment Letter, (ii) subject to Section 8.3 of the Purchase Agreement, actions or claims seeking specific enforcement of the Purchase Agreement as contemplated under Section 9.12 of the Purchase Agreement or of the Buyer Parent Commitment Letter. This paragraph shall not prohibit (i) actions or claims against Buyer under the Purchase Agreement or the other Transaction Documents to which Buyer is a party, or (ii) actions or claims under the Confidentiality Agreement against the party thereto.

Nothing set forth in this Limited Guaranty shall confer or give to any Person other than the Guaranteed Party any rights or remedies against any Person, including, without limitation, the Guarantor, except as expressly set forth herein (including, without limitation, Section 9 below). Notwithstanding anything to the contrary contained in this Limited Guaranty, the Guaranteed Party hereby agrees that to the extent Buyer is relieved for any reason from its obligations under the Purchase Agreement pursuant to the terms thereof that correspond to the Obligations hereunder, the Guarantor shall be similarly relieved of the Obligations under this Limited Guaranty to the extent thereof. The Guaranteed Party acknowledges that the Guarantor is agreeing to enter into this Limited Guaranty in reliance on the provisions set forth in this Section 3. This Section 3 shall survive termination of this Limited Guaranty.

The Guarantor hereby covenants and agrees that it shall not institute, directly or indirectly, and shall cause its Affiliates not to institute, any proceeding asserting that this Limited Guaranty is illegal, invalid or unenforceable in accordance with its terms. The Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or may

hereafter acquire against the Guaranteed Party, Buyer or any other Person interested in the transactions contemplated by the Purchase Agreement that arise from the existence, payment, performance or enforcement of the Guarantor's Obligations under or in respect of this Limited Guaranty or any other agreement in connection therewith, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Guaranteed Party against Buyer or such other Person, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from Buyer or such other Person, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right, unless and until all of the Guarantor's Obligations and all other amounts payable under this Limited Guaranty shall have been paid in full in cash. If any amount shall be paid to the Guarantor in violation of the immediately preceding sentence at any time prior to the payment in full in cash of the Guarantor's Obligations, such amount shall be received and held in trust for the benefit of the Guaranteed Party, shall be segregated from other property and funds of the Guarantor and shall forthwith be paid or delivered to the Guaranteed Party in the same form as so received (with any necessary endorsement or assignment) to be credited and applied to the Obligations, in accordance with the terms of the Purchase Agreement, whether matured or unmatured.

4. NO WAIVER; CUMULATIVE RIGHTS; AMENDMENTS. No failure on the part of the Guaranteed Party to exercise, and no delay in exercising, any right, remedy or power hereunder or under the Buyer Parent Commitment Letter or the Purchase Agreement shall operate as a waiver thereof, nor shall any single or partial exercise by the Guaranteed Party of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power hereunder. Each and every right, remedy and power hereby granted to the Guaranteed Party or allowed it by applicable Law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by the Guaranteed Party at any time or from time to time. No provision hereof shall be modified, altered or limited except by written instrument expressly referring to this Limited Guaranty and to such provision, and executed by the Guaranteed Party and the Guarantor.

5. REPRESENTATIONS AND WARRANTIES. The Guarantor hereby represents and warrants to the Guaranteed Party that:

(a) (i) it is duly incorporated and in good standing under the Laws of the jurisdiction of its incorporation, (ii) it has all requisite power and authority to execute, deliver and perform this Limited Guaranty and (iii) the execution, delivery and performance of this Limited Guaranty (x) has been duly authorized by all necessary corporate action and no other action is necessary on the part of the Guarantor to authorize this Limited Guaranty and (y) does not contravene any provision of the Guarantor's organizational documents, or any Law or contractual restriction binding on the Guarantor or its assets;

(b) all consents, approvals, authorizations, permits of, filings with and notifications to, any Governmental Authority necessary for the due execution, delivery and performance of this Limited Guaranty by the Guarantor have been obtained or made and all conditions thereof have been duly complied with, and no other action by, and no notice to or filing

with, any Governmental Authority or regulatory body is required in connection with the execution, delivery or performance of this Limited Guaranty;

(c) this Limited Guaranty constitutes a legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, subject to the Remedies Exception; and

(d) the Guarantor has the financial capacity to pay and perform, or cause to be paid or performed, its obligations under this Limited Guaranty, and all funds necessary for the Guarantor to fulfill the Obligations under this Limited Guaranty are and shall be available to the Guarantor for so long as this Limited Guaranty shall remain in effect in accordance with Section 8.

6. NO ASSIGNMENT. Neither the Guarantor nor the Guaranteed Party may assign its rights, interests or obligations hereunder to any other Person (except by operation of law) without the prior written consent of the Guaranteed Party or the Guarantor, as the case may be.

7. NOTICES. Any and all notices, requests, demands or other communications hereunder shall be given by the means specified in the Purchase Agreement (and shall be deemed given as specified therein) as follows:

If to the Guarantor, to it at:

OMERS Administration Corporation  
c/o OMERS Infrastructure Management Inc.  
900-100 Adelaide Street West  
Toronto, Ontario M5H 0E2  
Attention: Managing Director, Legal  
Facsimile: (416) 361-6075

and with a copy (which shall not constitute notice for the purposes of this Limited Guaranty) to:

Torys LLP  
79 Wellington Street West, Suite 3000  
Toronto, Ontario M5K 1N2  
Attention: Krista Hill  
Facsimile: 416.865.7380  
Email: khill@torys.com

If to the Guaranteed Party, to it at:

MIP Padua Holdings, L.P.  
Level 15, 125 West 55th Street  
New York, New York 10019  
Attention: Christopher Leslie

Facsimile: (212) 231-1828  
E-mail: [chris.leslie@macquarie.com](mailto:chris.leslie@macquarie.com)

with a copy (which shall not constitute notice for the purposes of this Limited Guaranty) to:

[MFGMIRALEGALNOTICES@macquarie.com](mailto:MFGMIRALEGALNOTICES@macquarie.com)

and

Latham & Watkins LLP  
885 Third Avenue  
New York, New York 10022  
Attention: Thomas W. Christopher  
Facsimile: (212) 751-4864  
Email: [Thomas.Christopher@lw.com](mailto:Thomas.Christopher@lw.com)

8. CONTINUING LIMITED GUARANTY. This Limited Guaranty may not be revoked or terminated and shall remain in full force and effect and shall be binding on the Guarantor, its successors and permitted assigns until all of the Obligations have been indefeasibly paid, observed, performed or satisfied in full. Notwithstanding the foregoing, this Limited Guaranty shall terminate and the Guarantor shall have no further obligations under this Limited Guaranty as of the earlier of (a) the Closing and (b) the date that is sixty (60) days after any termination of the Purchase Agreement in accordance with its terms, except that if any claim to enforce the payment of the Obligations is made by the Guaranteed Party to or against Buyer or the Guarantor prior to such date, the expiration of this Limited Guaranty shall be automatically extended until the date immediately following the date upon which such claim is finally satisfied or otherwise resolved by agreement of the parties thereto or by a final, non-appealable judgment of a court of competent jurisdiction (subject to Section 11). Notwithstanding the foregoing, in the event that the Guaranteed Party, or any of its Affiliates expressly asserts in writing in any litigation or other legal or arbitration proceeding that any of the other provisions of this Limited Guaranty are illegal, invalid or unenforceable in whole or in part, or asserts in writing in any litigation or other legal or arbitration proceeding any theory of liability against the Guarantor or any other Buyer Affiliates (as defined below) (other than Buyer under the Purchase Agreement, the Guarantor under this Limited Guaranty or the parties to the Buyer Parent Commitment Letter (in their capacity thereunder) under the Buyer Parent Commitment Letter) with respect to the transactions contemplated by the Purchase Agreement, then (i) the obligations of the Guarantor under this Limited Guaranty shall terminate *ab initio* and be null and void, (ii) if the Guarantor has previously made any payments under this Limited Guaranty, it shall be entitled to receive the amount of all such payments from the Guaranteed Party and (iii) neither the Guarantor nor any other Buyer Affiliates shall have any liability to the Guaranteed Party with respect to the transactions contemplated by the Purchase Agreement or under this Limited Guaranty.

9. NO RECOURSE. Notwithstanding anything to the contrary in this Limited Guaranty, and notwithstanding the fact that the Guarantor may be a corporation, partnership or limited liability company, by its acceptance of the benefits of this Limited Guaranty, the Guaranteed Party acknowledges and agrees that, (a) it has no right of recovery

against, and no personal liability shall attach to, the former, current or future stockholders, directors, officers, trustees, employees, agents, Affiliates, members, managers, owners, general or limited partners or assignees of the Guarantor (other than Buyer) or Buyer (other than the Guarantor) or any former, current or future stockholder, director, officer, trustee, employee, general or limited partner, member, manager, Affiliate, agent or representative of any of the foregoing (other than under the Confidentiality Agreement, Buyer under the Purchase Agreement or the other Transaction Documents to which it is a party, and the Guarantor hereunder and under the Buyer Parent Commitment Letter) (collectively, the “**Buyer Affiliates**”), through Buyer or otherwise, whether by or through attempted piercing of the corporate veil, by or through a claim by or on behalf of Buyer against any such Buyer Affiliate, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any applicable Law, or otherwise, except for the Guaranteed Party’s right to recover from Buyer or the Guarantor (but not any other Buyer Affiliate (including, without limitation, any general partner, managing member or other controlling party)) under and to the extent provided in the Purchase Agreement, this Limited Guaranty, the Confidentiality Agreement or the Buyer Parent Commitment Letter and the limitations described herein and (b) other than with respect to any recourse against the Guarantor and the other Buyer Affiliates pursuant the Buyer Parent Commitment Letter, recourse against the Guarantor under this Limited Guaranty shall be the sole and exclusive remedy of the Guaranteed Party and all of its Affiliates against the Guarantor and the other Buyer Affiliates (other than Buyer) in respect of any payment liabilities or payment obligations arising under, or in connection with, the Purchase Agreement or the transactions contemplated thereby (provided, that, following the Closing, this Section 9 shall not in any way limit claims by the Guaranteed Party for indemnification or other post-Closing obligations contemplated by the Purchase Agreement or the other Transaction Documents). Nothing set forth in this Limited Guaranty shall affect or be construed to affect or limit any liability of Buyer to the Guaranteed Party or shall confer or give or shall be construed to confer or give to any Person other than the Guaranteed Party (including, without limitation, any Person acting in a representative capacity) any rights or remedies against any Person other than the Guarantor as expressly set forth herein.

10. CONFIDENTIAL TREATMENT. This Limited Guaranty shall be treated as confidential and is being provided to the Guaranteed Party solely in connection with the execution and delivery of the Purchase Agreement and may not be used, circulated, quoted or otherwise referred to in any document (other than the Purchase Agreement), except (a) with the prior written consent of the Guarantor, (b) as disclosed to the Guaranteed Party’s Affiliates and the Guaranteed Party’s and its Affiliates’ respective officers, directors, members, Affiliates, advisors and consultants who, in each case, need to know the terms of this Limited Guaranty in connection with the negotiation or furtherance of the transactions contemplated by the Purchase Agreement and who are directed to treat this Limited Guaranty as confidential or (c)(i) as otherwise required by any Governmental Authority to be disclosed under applicable Law or any applicable listing agreement with, or rules and regulations of, an applicable securities exchange, or in connection with any required regulatory filings relating to the transactions contemplated by the Purchase Agreement, (ii) for purposes of compliance with any bona fide financial reporting obligation (in case of either (i) or (ii) the Guaranteed Party, to the extent legally permissible, shall provide the Sponsor with prompt written notice so that the Sponsor may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section 10) or (iii) in connection with a routine audit or examination by, or a blanket document request from, a regulatory or self-regulatory authority, bank examiner or auditor. Notwithstanding the

foregoing, nothing in this Section 10 shall restrict the Company, the Sellers, the Sellers' Representative or any of their respective Affiliates and their respective advisors from disclosing any information regarding this Limited Guaranty to a court or tribunal (including, without limitation, in any pleadings or filings therewith) in connection with any action brought by such person to enforce the Purchase Agreement or by the Guaranteed Party to enforce this Limited Guaranty, each in accordance with their terms.

11. GOVERNING LAW. This Limited Guaranty, and all claims and causes of action (whether in contract, tort, at law, in equity or otherwise) that may be based upon, arise out of, or relate to this Limited Guaranty, any of the transactions contemplated hereby or the negotiation, execution, performance or enforcement of this Limited Guaranty shall be governed by and construed in accordance with the law of the State of Delaware without giving effect to any choice or conflict of laws provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

12. CONSENT TO JURISDICTION. Each of the parties irrevocably submits to the exclusive jurisdiction of (i) state courts of the State of Delaware located in New Castle County and (ii) the United States District Court for the District of the State of Delaware for the purposes of any suit, action or other proceeding arising out of or relating to this Limited Guaranty, the negotiation, execution, performance and enforcement of this Limited Guaranty or any transaction contemplated hereby (and agrees not to commence any action, suit or proceeding relating hereto except in such courts). Each of the Parties further agrees that service of any process, summons, notice or document hand delivered or sent by recognized overnight carrier to such party's respective address set forth in Section 7 of this Limited Guaranty outside the territorial jurisdiction of the courts referred to in this Section 12 shall be effective service of process for any action, suit or proceeding in the State of Delaware with respect to any matters to which it has submitted to jurisdiction as set forth in the immediately preceding sentence. However, the foregoing shall not limit the right of a party to effect service of process on another party by any other legally available method. Each of the parties irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of or relating to this Limited Guaranty or the transactions contemplated hereby in (i) state courts of the State of Delaware located in New Castle County or (ii) the United States District Court for the District of the State of Delaware, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each party agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.

13. WAIVER OF JURY TRIAL. EACH OF THE PARTIES IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER, IN CONNECTION WITH OR RELATING TO THIS LIMITED GUARANTY, ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS LIMITED GUARANTY OR THE ACTIONS OF THE PARTIES

IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT  
HEREOF.

14. ENTIRE AGREEMENT. Together with the Purchase Agreement and any other agreement entered into in connection therewith, including, without limitation, the Buyer Parent Commitment Letter and the Confidentiality Agreement, this Limited Guaranty contains the complete agreement among the parties hereto and supersedes any prior understandings, agreements or representations by or between such parties, whether written or oral, or any prior course of dealing among them, which may have related to the subject matter hereof in any way.

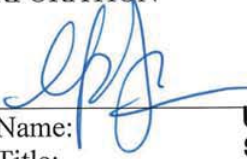
15. COUNTERPARTS. This Limited Guaranty may be executed in multiple counterparts (including, without limitation, by means of facsimile, email or other electronic transmission (including, without limitation, in .pdf or .tif formats) signature pages), all of which, taken together, shall constitute one and the same Agreement.


*[The remainder of this page is left blank intentionally.]*



IN WITNESS WHEREOF, the Guarantor has caused this Limited Guaranty to be executed and delivered as of the date first written above by its officer thereunto duly authorized.

OMERS ADMINISTRATION  
CORPORATION

By:   
Name: **UPTON JEANS**  
Title: **Senior Vice President  
Financial Services**


By:   
Name: **Christine A. Sharp**  
Title: **Senior Vice President  
Associate General Counsel**

[SIGNATURE PAGE TO LIMITED GUARANTY]

IN WITNESS WHEREOF, the Guaranteed Party has caused this Limited Guaranty to be executed and delivered as of the date first written above by its officer thereunto duly authorized.

MIP PADUA HOLDINGS, L.P.


By: MIP Washington Holdings GP LLC,  
a general partner

By:   
Name: Mark Fay  
Title: Authorized Signatory

By:   
Name: David Handelsmann  
Title: Authorized Signatory

MIP PADUA HOLDINGS, L.P.

By: MIP II Washington Holdings GP LLC,  
a general partner

By:   
Name: Mark Fay  
Title: Authorized Signatory

By:   
Name: David Handelsmann  
Title: Authorized Signatory

*Execution Version*

**JOINDER AGREEMENT**

This JOINDER AGREEMENT (this “Agreement”) is entered into as of August 8, 2018, by and among (i) Padua MG Holdings LLC, a Delaware limited liability company (the “Additional Seller”), (ii) MIP Padua Holdings, L.P., a Delaware limited partnership (“Seller”), and (iii) Moby Canada Limited Partnership, an Ontario limited partnership (“Buyer”). The parties to this Agreement are individually referred to as a “Party” and collectively referred to as the “Parties.” Capitalized terms used but not defined herein shall have the meanings set forth in that certain Purchase and Sale Agreement, dated as of August 8, 2018 (the “Agreement Date”), by and among Buyer, Seller and the other parties thereto, a copy of which has been provided to the Additional Seller (as such agreement may be amended, restated, supplemented or otherwise modified from time to time, the “Purchase Agreement”).

**RECITALS**

WHEREAS, as of the date hereof, Additional Seller owns 0.1000% of the issued and outstanding Class A Interests of the Company (the “Additional Interests”);

WHEREAS, Additional Seller is party to the Second Amended and Restated Senior Secured Loan Agreement, dated as of January 20, 2015, by and between PIH, as the borrower therein, and Additional Seller, as the lender therein (the “Additional Loan Agreement”);

WHEREAS, Additional Seller intends to sell, grant, convey, assign, transfer and deliver to Buyer, and Buyer intends to purchase, acquire, assume and accept from Additional Seller, (a) all of Additional Seller’s right, title and interest in and to (i) the Pro Rata Portion of the Additional Interests and (ii) the Additional Loan Agreement with respect to the Pro Rata Portion of the Loan (as defined in the Additional Loan Agreement) owing at the Closing to Additional Seller thereunder (clauses (i) and (ii), collectively, the “Additional Purchased Assets”), and (b) all of the obligations, liabilities, covenants, duties and agreements arising out of, under or relating to, the Additional Purchased Assets from and after the Closing, in each case, upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, the Additional Seller has received and reviewed a copy of the Purchase Agreement; and

WHEREAS, by executing this Agreement Additional Seller shall become a party to the Purchase Agreement and shall have approved the Purchase Agreement and any ancillary agreements entered into in connection therewith, to the extent applicable to Seller thereunder, and each of the transactions contemplated thereby, as if the Additional Seller had executed the Purchase Agreement on the Agreement Date.

**AGREEMENT**

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises herein made, and in consideration of the representations and warranties herein contained, and for other good and valuable consideration the adequacy of which is hereby acknowledged, the Parties, intending to become legally bound, hereby agree as follows:

ARTICLE I.  
JOINDER; PURCHASE AGREEMENT OBLIGATIONS

By execution and delivery of this Agreement:

Section 1.1 Upon the terms and subject to the conditions of this Agreement and the Purchase Agreement applicable to Seller and the Purchased Assets (which shall be applied *mutatis mutandis* to Additional Seller and the Additional Purchased Assets), Additional Seller shall sell, grant, convey, assign, transfer and deliver to Buyer, and Buyer hereby agrees to purchase, acquire, assume and accept from Additional Seller, free and clear of any and all Liens (other than Liens arising under the LLC Agreement or the Loan Agreement, as the case may be, and restrictions on sales of securities under applicable securities Laws) (i) all of Additional Seller's right, title and interest in and to the Additional Purchased Assets and (ii) all of the obligations, liabilities, covenants, duties and agreements arising out of, under or relating to, the Additional Purchased Assets from and after the Closing, for an amount equal to the Purchase Price (calculated pursuant to and in accordance with the Purchase Agreement), divided by (i) 23.88717940 and then multiplied by (ii) 0.05442739772; *provided* that, for the avoidance of doubt, Buyer is not assuming any of the Additional Seller's obligations, Liabilities, covenants, duties or agreements arising out of, under or relating to (i) any action or omission of Additional Seller at or prior to the Closing, (ii) the period prior to the Closing, or (iii) Section 7.04(f) of the LLC Agreement with respect to any of the Required Regulatory Approvals in connection with the transactions contemplated hereby or any Other PSA.

Section 1.2 Subject to ARTICLE I. Section 1.3, effective as of the date hereof, the Additional Seller hereby agrees to join and agrees to comply with and to be bound by, the terms of the Purchase Agreement applicable to Seller and the Purchased Assets (which shall be applied *mutatis mutandis* to Additional Seller and the Additional Purchased Assets), including, without limitation: (i) on a several and not joint basis and, where applicable, solely with respect to Additional Seller and not with respect to Seller, those representations and warranties set forth in Article III of the Purchase Agreement, (ii) the conditions set forth in Article VI of the Purchase Agreement to the consummation of the transactions contemplated hereby and thereby, (iii) on a several and not joint basis, the indemnification obligations forth in Article VII of the Purchase Agreement, (iv) the releases and limitations on liability in the Purchase Agreement (both for the benefit of Buyer and the benefit of Seller); (v) the covenants and agreements in the Purchase Agreement, in each case that are applicable to Seller and the Purchased Assets, as if Additional Seller had executed the Purchase Agreement on the Agreement Date. For purposes of this Agreement and the Purchase Agreement, "Knowledge" means, with respect to Additional Seller, the actual knowledge of any individual set forth on Schedule I attached hereto.

Section 1.3 Additional Seller shall not be responsible for the breach by Seller of any of the representations, warranties or covenants made by Seller with respect to itself (and Seller shall not be responsible for the breach by Additional Seller of any of the representations, warranties or covenants made by Additional Seller with respect to itself), and each of Seller and Additional Seller shall only be severally and not jointly responsible for its Pro Rata Share (as defined below) of any indemnifiable Damages for the breach of any of the representations, warranties or covenants (or parts thereof) made by Seller and Additional Seller with respect to any of the Company Entities. Further, each of Seller and Additional Seller shall only be severally

and not jointly responsible for, without right of reimbursement from Buyer, its Pro Rata Share of all Transaction Expenses incurred by any of the Company Entities to be borne by Seller pursuant to Sections 9.10 (b) and (c) of the Purchase Agreement whether or not the transactions contemplated by the Purchase Agreement and this Agreement are consummated. “Pro Rata Share,” with respect to Seller and Additional Seller, means the ratio that (x) the number of Class A Units being acquired by Buyer from Seller or Additional Seller, as the case may be, bears to (y) the total number of Class A Units being acquired by Buyer from both Seller and Additional Seller. Notwithstanding anything to the contrary herein, each of Seller and Additional Seller shall only be severally and not jointly liable for its Pro Rata Share of any liability arising from or in connection with this Agreement or the Purchase Agreement (*provided*, that each of Seller and Additional Seller shall be solely responsible for any breach of any representation or warranty made by it herein or therein with respect to itself and any breach or non-performance of any covenant of itself herein or therein).

Section 1.4 For the avoidance of doubt, the Seller Parent Guarantee shall not cover, nor be deemed to cover, any of the obligations of Additional Seller under this Agreement (or the Purchase Agreement).

Section 1.5 Under no circumstance shall Buyer be required to consummate the transactions contemplated by this Agreement unless the transactions contemplated by the Purchase Agreement are being consummated simultaneously.

ARTICLE II.  
MISCELLANEOUS.

Section 2.1 Generally. The provisions in Article IX (other than Section 9.3) of the Purchase Agreement shall be applied *mutatis mutandis* to Additional Seller and the Additional Purchased Assets.

Section 2.2 Notices. All notices and other communications required or permitted to be given by any provision of this Agreement (or in connection with the matters contemplated hereby) shall be in writing and mailed (certified or registered mail, postage prepaid, return receipt requested) or sent by hand, electronic mail, overnight courier or facsimile transmission (with acknowledgment received), charges prepaid and addressed to the intended recipient as follows, or to such other addresses or numbers as may be specified by a Party from time to time by like notice to the other Parties:

If to Additional Seller: L7 50 Martin Place  
Sydney NSW 2000  
Attention: Daniel Walmsley  
Facsimile: (212) 231-1828  
E-mail: daniel.walmsley@macquarie.com

Level 15, 125 West 55th Street  
New York, New York 10019  
Attention: David Handelsmann  
Facsimile: (212) 231-1828

Email: david.handelsmann@macquarie.com

with a copy to:

Latham & Watkins LLP  
885 Third Avenue  
New York, New York 10022  
Attention: Thomas W. Christopher  
Facsimile: (212) 751-4864  
E-mail: thomas.christopher@lw.com

if to Seller or Buyer, to its address set forth in the Purchase Agreement.

All notices and other communications given in accordance with the provisions of this Agreement shall be deemed to have been given and received when delivered by hand or transmitted by electronic mail or facsimile (with acknowledgment received), three (3) Business Days after the same are sent by certified or registered mail, postage prepaid, return receipt requested or one (1) Business Day after the same are sent by a reliable overnight courier service, with acknowledgment of receipt.

*[Remainder of this page intentionally left blank]*

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed as of the date first above written.

**ADDITIONAL SELLER:**

PADUA MG HOLDINGS LLC

By:  \_\_\_\_\_

Name: Mark Fay

Title: Authorized Signatory

By:  \_\_\_\_\_

Name: David Handelsmann

Title: Authorized Signatory

**BUYER:**

**MOBY CANADA LIMITED PARTNERSHIP,**  
by its general partner,  
**MOBY GP CANADA CORPORATION**

By:   
Name: Steven Zucchet  
Title: Director

By:   
Name: Marco Fontana  
Title: DIRECTOR




ACKNOWLEDGED AND AGREED  
AS OF THE DATE FIRST WRITTEN ABOVE:

**SELLER:**

MIP PADUA HOLDINGS, L.P.

By: MIP Washington Holdings GP LLC,  
a general partner

By:   
Name: Mark Fay  
Title: Authorized Signatory

By:   
Name: David Handelsmann  
Title: Authorized Signatory

MIP PADUA HOLDINGS, L.P.

By: MIP II Washington Holdings GP LLC,  
a general partner

By:   
Name: Mark Fay  
Title: Authorized Signatory

By:   
Name: David Handelsmann  
Title: Authorized Signatory

**SCHEDULE I**

Knowledge of Additional Seller

1. Karl Kuchel
2. Christopher Leslie
3. Andrew Chapman