

## MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT (“MOA”) is effective on July 6, 2023 (the “Effective Date”) and is entered into by and between, on the one hand, the West Virginia Department of Economic Development (the “WVDED”), the West Virginia Department of Commerce (“Commerce”), (collectively, the “State Departments”), and, on the other hand, Mountaineer GigaSystem, LLC (“Mountaineer”), a subsidiary of Fidelis New Energy, LLC, 109 N. Post Oak Lane, Suite 140, Houston, TX 77024 (“Fidelis”). WVDED, Commerce, and Mountaineer each are a “Party” to this MOA. Collectively they are referred to herein as the “Parties.”

### RECITALS

WHEREAS, it is the public policy of the State of West Virginia (the “State”) to encourage, promote, and support economic development projects that facilitate job creation, the growth of industry and commerce, employment opportunities for the State’s citizens and residents, the alleviation of conditions of unemployment and underemployment, the stabilization and promotion of the State’s economy, and the creation of new tax bases and sources of revenue;

WHEREAS, the State Departments are authorized and empowered by law to promote economic development in the State, and the WVDED in particular is authorized and empowered by law to assist with financing economic development projects in the manner described herein;

WHEREAS, Fidelis is an energy transition company focused on decarbonization through infrastructure development and investments in renewable fuels, low or negative carbon intensity products, and carbon capture and sequestration using a portfolio of technologies that address climate and energy security challenges;

WHEREAS, Mountaineer is a subsidiary of Fidelis that is developing and constructing the Project identified below;

WHEREAS, Mountaineer will be the borrower of the Performance-Based Loan that is the subject of this MOA;

WHEREAS, Mountaineer subsidiaries have acquired the option and right to purchase four contiguous properties totaling more than 1,000 acres in the North Point Pleasant area of Mason County, West Virginia (the “NPP Site”) for developing and constructing the primary hydrogen production facility, biomass power plant and related carbon capture equipment that will represent a large portion of Phase 1 of the Mountaineer GigaSystem™ (hereinafter, the “Project”);

WHEREAS, Fidelis and Mountaineer have represented to the State Departments that the Project is projected to be a \$2 billion investment in clean, carbon-negative energy and products production, to be comprised of, among other things, a hydrogen production facility that will produce 640 Metric Tons Per Day (“MTPD”) of hydrogen; a 75-Megawatt biomass power plant; carbon capture equipment; a supporting carbon sequestration pipeline and wells; and supporting local infrastructure for barge and train offloading and for administration and warehousing needs;

WHEREAS, the goal in developing, financing, constructing, and operating the Project is to deliver clean hydrogen power to industrial and business users—such as chemical producers, transportation companies, power providers, and data center operators—that are interested in decarbonizing and co-locating on the NPP Site or in the region;

WHEREAS, Fidelis, Mountaineer, and the State Departments envision the Project serving as an anchor to the Appalachian Region Clean Hydrogen Hub by providing, in West Virginia, a world-scale, ratable source of carbon negative hydrogen power;

WHEREAS, the Project is designed to be fueled by, among other things, substantial natural gas produced from the region and biomass harvested from State properties and elsewhere in the region;

WHEREAS, Mountaineer desires to utilize pore spaces primarily underlying State Forests, Wildlife Management Areas (“WMAs”), and other Commerce, State owned properties, and private properties potentially, for the carbon capture and sequestration (“CCS”) component of the Project;

WHEREAS, the CCS component of the Project envisions the development of interconnecting pipelines, wells, and infrastructure to establish an underground warehouse (the “Warehouse”) for the safe and secure sequestration of carbon dioxide produced at the NPP Site, to be located beneath the aforementioned State properties and to provide the State with substantial royalties;

WHEREAS, Fidelis and Mountaineer estimate that the Project will create 125 permanent jobs in Point Pleasant and over 5,500 construction jobs during its construction phase;

WHEREAS, Fidelis and Mountaineer forecast that, following completion of Phase 1 and the subsequent addition of phases that are being evaluated and may be developed and constructed on the NPP Site, an expanded Project ultimately could create new annual revenue to the State totaling approximately \$105 million as a result of, among other things, employment and severance tax income, public property lease income, and CCS royalties;

WHEREAS, Fidelis has identified other potential sites in the country for developing and constructing the Project;

WHEREAS, to induce Fidelis and Mountaineer to locate the Project in North Point Pleasant, WVDED, on December 15, 2022, designated the NPP Site as a Certified Industrial Business Expansion Development Program District, pursuant to West Virginia Code § 5B-2-21;

WHEREAS, to further induce Fidelis and Mountaineer to locate the Project in North Point Pleasant, WVDED, by letter dated May 24, 2023, proposed to provide business assistance and the economic development package described in this MOA, including but not limited to a forgivable performance-based loan and lease rights to develop pore spaces underlying certain State properties for CCS;

WHEREAS, Fidelis and Mountaineer desire to accept the WVDED’s proposal and, in that connection, the Parties execute this MOA to clarify their respective representations,

requirements, and commitments to facilitate Mountaineer’s final investment decision (“FID”) in the Project.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt, mutuality, and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**1. Commitments of the Parties.**

a. WVDED or its designee will make, provide, and facilitate the forgivable Performance-Based Loan described in this MOA to support the Project in a manner consistent with Mountaineer’s goals and requests to ensure the Project’s success, including but not limited to interfacing with all necessary or requested parties and State entities, facilitating financing opportunities, and supporting workforce development needs.

b. Mountaineer will take such actions as may be reasonably necessary, in its sole discretion, to realize the success of the Project and will use commercially reasonable efforts to fulfill the specific Project Benchmarks (collectively, the “Preconstruction Benchmarks,” “Capital Investment Benchmarks,” and “Employment Benchmarks,” all described below) by or before their corresponding Performance Deadlines (also stated below).

c. Additionally, the Parties will work collaboratively to identify and pursue federal and private grants and loans that governmental entities are eligible to receive as they relate to climate impact initiatives in the State that are mutually beneficial to the State, the Project, and to Fidelis and Mountaineer.

**2. Performance-Based Loan; Use Restriction.**

a. WVDED or its designee will make, provide, and facilitate a forgivable, performance-based loan to Mountaineer of up to \$62,500,000 in support of the Project (the “Performance-Based Loan”).

b. Subject to fulfillment of the requirements set forth in this MOA, the Performance-Based Loan will be made available to Mountaineer in two separate tranches,

i. The “First Tranche,” valued at up to \$25,000,000; and

ii. The “Second Tranche,” valued at up to \$37,500,000.

c. Consistent with Appendix B, the Performance Based Loan funds shall be used for the support and development of the Project in the State of West Virginia.

**3. First Tranche of Performance-Based Loan; Preconstruction Benchmarks and Performance Deadlines; Forgiveness; Penalties.**

a. Fidelis and Mountaineer have represented to the WVDED, and WVDED has engaged in due diligence and has confirmed, that together Fidelis and Mountaineer have invested

more than \$25,000,000 in support of the Project as of the Effective Date of this Agreement (the “Current Investment”).

b. The Current Investment is summarized in the chart that is attached to this MOA as Appendix A.

c. The Current Investment has funded numerous activities and work streams within and without West Virginia that add value to the Project, including but not limited to:

- i. Technology and innovation necessary to bring the Project to scale;
- ii. Real property rights and site selection costs relating to siting the Project in the State;
- iii. Engineering and design work related to the processes and how they can be accomplished in the State; and
- iv. CCS processes, standards, and procedures and how they can be accomplished in the State.

d. WVDED will match the Current Investment and will make available to Mountaineer within thirty (30) days of the Effective Date of this MOA the First Tranche of the Performance-Based Loan in the amount of \$25,000,000.

e. Mountaineer shall utilize the First Tranche of the Performance Based Loan on Preconstruction Activities (described below) that support the Project, including activities relating to interconnecting pipelines and developing related CCS infrastructure to establish the underground Warehouse for the Project’s CCS component.

f. The Parties understand and agree that these Preconstruction Activities will be conducted in a manner that will allow for the underlying assets associated with the development of the Warehouse, and all corresponding studies, documentation, and permits to be transferred to the State, should it be determined that the Warehouse is insufficient to support the Project and Mountaineer elects not to proceed with the full Mountaineer GigaSystem™ project.

- i. The present budget for the Preconstruction Activities is incorporated into this MOA at Appendix B.
- ii. WVDED certifies that it has reviewed and pre-approved the planned expenditures listed on Appendix B as directly supporting the Project and creating value for the State.

g. The WVDED will forgive the First Tranche of the Performance-Based Loan on Mountaineer’s fulfillment of the following Preconstruction Activities within the corresponding Performance Deadlines (collectively, the “Preconstruction Benchmarks”):

- i. Within two (2) years of receiving the First Tranche of the Performance-Based Loan, Mountaineer must:

1. Obtain a permit and drill and complete a Class V Stratigraphic Test Well;
  2. Apply for a Class VI Sequestration Well Permit; and
  3. Apply for all required Major Source Air Permits.
- ii. Within three (3) years of receiving the First Tranche of the Performance-Based Loan, Mountaineer must:
1. Receive a Class VI Sequestration Well Permit; and
  2. Receive all required Major Source Air Permits

h. Notwithstanding the foregoing, the Parties acknowledge and agree that Mountaineer's ability to receive the permits identified in Section 3g.ii. may be subject to various contingencies, delays, events, and administrative and governmental determinations that are beyond its control. Accordingly, the applicable 3-year Performance Deadline shall be extended in circumstances where, in the sole discretion of WVDED, or its designee, Mountaineer has taken all actions necessary for its permit applications to be deemed administratively complete and put under full technical review prior to the expiration of the 3-year Performance Deadline. This extension will remain in full force and effect until a final governmental determination is made on the permit applications, including but not limited to the exhaustion of appeal rights by Mountaineer.

i. Upon completion of the Preconstruction Benchmarks, Mountaineer will advise WVDED of such completion, provide documentation of the same, and request in writing WVDED's forgiveness of the First Tranche of the Performance-Based Loan.

- i. WVDED will investigate and confirm Mountaineer's completion of the Preconstruction Benchmarks and will respond to Mountaineer in writing within ten (10) business days either,
  1. Granting forgiveness of the First Tranche of the Performance-Based Loan, or
  2. Notifying Mountaineer that WVDED is unable to confirm completion of the Preconstruction Benchmarks, requesting additional documentation or information to confirm completion, and providing Mountaineer with a reasonable opportunity to respond with such documentation or information.
- ii. The Parties acknowledge and agree that WVDED's grant of forgiveness will not be withheld unreasonably.

j. Notwithstanding the foregoing, in the event Mountaineer fails to fully satisfy the foregoing Preconstruction Benchmarks because: (i) the underground Warehouse is not suitable for the economic capture, delivery, and sequestration of carbon for the Project; (ii) other commercial or technical considerations beyond the control of the Parties that render the Project infeasible; or

(iii) of a force majeure event beyond the control of the Parties renders performance impossible or impracticable, including but not limited to an act of God, natural disaster, epidemic, fire, war, insurrection, terrorism, civil unrest, government order or legislation, embargo or blockade, or national or regional emergency, all First Tranche loan funds expended by that time toward the Project shall be forgiven where the following conditions are met:

- i. Mountaineer shall return the remainder of any unexpended First Tranche loan funds to WVDED or its designee;
- ii. Mountaineer shall take all actions necessary to transfer or cause to be transferred to the appropriate State entities all assets and permits related to the Warehouse;
- iii. Mountaineer shall take any and all actions necessary to return or cause to be returned any and all rights in or to the underground Warehouse and State Department property to the appropriate State Department or entity, as directed by the WVDED, and take all actions necessary to allow ownership of any and all supporting infrastructure to revert to Commerce;
- iv. Mountaineer shall provide evidence of all invested and expended funds, including purchase agreements, vendor invoices, and receipts, and other documentation sufficient and reasonably acceptable to WVDED. WVDED agrees that the invested and expended funds will consist of both direct third-party expenditures as well as allocated costs from Fidelis which include, but are not limited to, project development and engineering, project design, technology selection, permitting, geological evaluation, right-of-way development, project management, contract management, finance, and administration as well as overhead costs (“Fidelis Qualified Allocation”).
- v. Mountaineer shall provide to WVDED or its designee all engineering reports and other work products produced, including, but not limited to, a FidelisH2™ license to utilize Fidelis’ hydrogen production technology in West Virginia without WVDED’s payment of the customary upfront licensing fee, engineering plans and licenses for the CCS equipment, engineering plans for the CCS pipeline, right of way agreements, interconnection agreements, private pore space agreements, seismic acquisition data, test well(s), corresponding geologic data, and any permits received or permits in progress. All information provided to WVDED or its designee by Mountaineer hereunder shall be subject to the confidentiality protections afforded by law and contained in any and all agreements between Mountaineer and third-parties.

#### **4. Second Tranche of Performance-Based Loan; Employment and Capital Investment Benchmarks and Performance Deadlines; Forgiveness; Penalties.**

a. On the condition that Mountaineer meets the Preconstruction Benchmarks and Performance Deadlines set forth in Sections 3g.i. and 3g.ii. of this MOA, WVDED or its designee

will make available to Mountaineer, within thirty (30) days, the Second Tranche of the Performance-Based Loan in the amount of \$37,500,000.

b. Mountaineer will commit the Second Tranche to property acquisition and construction of one ~640 MTPD clean hydrogen production facility, a ~75 MW biomass power plant, carbon capture equipment, a carbon sequestration pipeline and wells, and local infrastructure for barge and train offloading and for administration and warehousing needs.

c. The WVDED will forgive the Second Tranche of the Performance-Based Loan on the fulfillment of the following Employment and Capital Investment Benchmarks within the corresponding Performance Deadlines, within six (6) years of receiving the Second Tranche of the Performance-Based Loan (the “Completion Date”):

- i. Mountaineer will directly employ at the NPP site a minimum of 125 Full-Time Equivalent Employees (as defined below) that on average earn \$110,000 annually in salary/wages, plus benefits (the “Employment Benchmark”).
- ii. Mountaineer, together with any parent(s), subsidiaries, and affiliates, will invest \$2 billion in developing and constructing the Project (the “Capital Investment Benchmark”), which shall include, among other things, all expenditures relating to market selection, scoping, engineering, geologic studies, property acquisition, legal and other professional services, preparation of the Appalachian Regional Clean Hydrogen Hub (ARCH2) application, capital campaign activities and investor relations, permitting and drilling, construction, operations, and payroll.

d. The following procedure will govern the presentment to WVDED and WVDED’s review and confirmation of the fulfillment of the Employment Benchmark and Capital Investment Benchmark:

- i. Mountaineer will present a certified letter to WVDED detailing the number of jobs the Project has created and the average annual earnings per employee. In lieu thereof, Mountaineer may present to WVDED official filings with the Bureau of Labor Statistics, provided such filings contain the same information.
- ii. Mountaineer will present to WVDED an Excel spreadsheet, which may be updated from time to time, summarizing (by brief description and date) the Capital Investments in the Project, which may include the Current Investment amounts previously approved by WVDED (and not subject to reapproval) and any other amounts previously approved by WVDED (and not subject to reapproval).
- iii. WVDED will review and analyze the forgoing information within ten (10) business days of submission and also will review and analyze all revisions and supplements within ten (10) business days. WVDED may request revisions or additional information from Mountaineer to confirm a representation or expenditure, provided that approval shall not be unreasonably withheld and all

amounts previously approved by WVDED shall not be subject to additional review.

- iv. In the event WVDED disputes that a representation or expenditure satisfies the Employment Benchmark or the Capital Expenditure Benchmark, the Executive Director of the Development Office shall discuss the issue with Mountaineer, invite it to present additional information if it so wishes, review and consider such information, and make a final binding determination on whether the representation or expenditure qualifies.

e. When Mountaineer has claimed in writing and WVDED has confirmed that the Employment Benchmark and Capital Expenditure Benchmark have been fulfilled within the Performance Deadlines, and Mountaineer has requested in writing forgiveness of the Second Tranche of the Performance-Based Loan in accordance with this MOA, WVDED or its designee will issue a letter within ten (10) business days confirming the same and forgiving all amounts loaned to Mountaineer in the Second Tranche of the Performance-Based Loan.

f. In the event of failure to satisfy the Employment and Capital Investment Benchmarks as of the Completion Date, Mountaineer will be obligated to repay all Second Tranche loan funds distributed to Mountaineer for the Project on a pro-rata basis, determined by the number of jobs that Mountaineer failed to create.

g. The pro-rata nonperformance amount will be converted to an interest-bearing loan at no more than the prime interest rate plus two percent (2%) with a term of five years from the Completion Date; or Mountaineer may pay the amount due within 30 business days from the Completion Date.

h. The Parties acknowledge and agree that certain, limited circumstances may excuse Mountaineer's obligation to satisfy the Employment and Capital Investment Benchmarks within the Performance Deadlines, including a force majeure event beyond the control of the Parties that renders Mountaineer's performance impossible or impracticable, including but not limited to an act of God, natural disaster, epidemic, fire, war, insurrection, terrorism, civil unrest, government order or legislation, embargo or blockade, or national or regional emergency. In the event Mountaineer's obligation to satisfy the Employment and Capital Investment Benchmarks within the Performance Deadlines is excused, all Second Tranche loan funds expended by that time toward the Project will be forgiven and Mountaineer shall return all Second Tranche loan funds not expended by that time. Alternatively, and in lieu thereof, the Parties may agree in writing to a reasonable extension of the Performance Deadlines in accordance with Section 13 of this MOA.

## **5. Commerce Properties.**

a. Commerce, by and through the West Virginia Division of Natural Resources (the "WVDNR"), and with the consent of the Secretary of WVDED, will directly award leases to Mountaineer subsidiaries for the development of pore spaces for CCS under certain State owned or operated properties, pursuant to W. Va. Code § 20-1-22(b); provided, that the leases will afford the WVDNR with a market value or greater royalty.



b. In connection therewith, WVDNR and a Mountaineer subsidiary will enter into a Master Carbon Dioxide Storage and Operating Agreement (the “Operating Agreement”), at market terms, governing the leases and the CCS component of the Project.

c. The Parties understand and agree that all property rights conveyed in connection with the Project shall revert to the appropriate State Department in the event Mountaineer fails to satisfy the Benchmarks and Performance Deadlines set forth in this MOA or any related obligations that may be included in the Operating Agreement.

**6. Full-Time Equivalent Employees.** For purposes of this MOA, a direct employee who receives paid benefits and whose position would require them to work at least 140 hours per month for at least ten (10) consecutive or non-consecutive months per year shall be considered a full-time equivalent employee (“Full-Time Equivalent Employee”). The Full-Time Equivalent Employee definition includes the direct employees of Mountaineer and any W2 employees of a contracted support company who work for the Project. A Full-Time Equivalent Employee does not include independent contractors who work for the Project. In determining whether Mountaineer has substantially achieved the Employment Thresholds, WVDED will give reasonable consideration to the workforce availability in the area of the Project.

**7. Tax Benefits and Workforce Incentives.** The Parties understand and agree that Mountaineer may qualify for various tax credits, incentives, entitlements, exemptions, and assistance under West Virginia law, as determined by their corporate filings with the West Virginia Department of Revenue. Available tax credits may include the Economic Opportunity Credit; the Manufacturing Investment Credit; the Corporate Headquarters Credit; and the local Inventory Tax Credit. The Manufacturing Sales Tax Exemption also may be available to Mountaineer, in addition to various local tax incentives, like the Five-for-Ten Program, the Five-for-Twenty Program, and the tax reduction for air & water pollution abatement equipment directly used in manufacturing. Further, a payment in lieu of taxes (“PILOT”) agreement with Mason County may be available for this Project considering the size of the investment, the number of new jobs the Project is expected to create, and the corresponding earnings that direct employees are anticipated to receive.

With respect to workforce recruitment and training, WVDED will work with Mountaineer to facilitate its understanding of and access to assistance and programs offered by WorkForce West Virginia, the Governor’s Guaranteed Work Force Program, and the WVDED’s own Apprenticeship in Motion program. Mountaineer also will be given the opportunity to offer employment opportunities through the Jobcase employment portal. Finally, Mountaineer will be afforded the opportunity to partner with the Community and Technical College System of West Virginia to develop specialized education and workforce training programs.

**8. Access to Data.** Subject to the limitations of state and federal law, upon the reasonable request of WVDED subject to at least (30) days advance written notice and to Mountaineer’s usual business proprietary, safety and security requirements, Mountaineer will provide WVDED with access to certain data reasonably necessary to verify the level of investment, expenditures, equipment acquisitions, and economic impact of the Project. Such data will include, as applicable to the Project, relevant and nonconfidential West Virginia business tax information, total capital investment in equipment, site development and infrastructure, levels of direct

employment, average salaries or wages, total construction employment of Full-Time Equivalent Employee and related wage data, and any indirect employment data related to the Project. Any such data provided is deemed Confidential Information (as defined below) and may be used by WVDED only for its internal purposes and WVDED agrees that it shall not publicly disclose information provided in employee lists or any other documents unless permitted to do so in accordance with the terms of Section 11, below.

**9. Notice.** All notices which are permitted or required in this MOA will be in writing and deemed valid and received if delivered personally; by registered or certified mail, return receipt requested; or by special carrier (such as Federal Express or UPS), with signature required, to the State Departments or to Mountaineer as follows, unless otherwise agreed by the Parties in a signed writing:

**West Virginia Department of Economic Development**

Attn: Michael Graney, Executive Director, West Virginia Development Office  
1900 Kanawha Blvd. East  
Capitol Complex, Building 3 – Suite 600  
Charleston, West Virginia 25305  
Email: [michael.r.graney@wv.gov](mailto:michael.r.graney@wv.gov)

**West Virginia Department of Commerce**

Attn: Cabinet Secretary James Bailey  
1900 Kanawha Blvd. East  
Capitol Complex, Building 3 – Suite 600  
Charleston, West Virginia 25305  
Email: [James.m.bailey@wv.gov](mailto:James.m.bailey@wv.gov)

**Mountaineer GigaSystem, LLC**

Attn: Mike McGown  
109 N. Post Oak Lane, Suite 140  
Houston, Texas 77024  
Email: [mike@fidelisinfra.com](mailto:mike@fidelisinfra.com)

**With a copy to:**

Thomas A. Heywood and Peter G. Markham  
Bowles Rice LLP  
600 Quarrier Street  
Charleston, WV 25301  
[theywood@bowlesrice.com](mailto:theywood@bowlesrice.com)  
[pmarkham@bowlesrice.com](mailto:pmarkham@bowlesrice.com)

**10. Further Assurances.** Each of the Parties hereto shall, from time to time at the request of the other party, without any additional consideration, furnish the other Party such further information or assurances, execute and deliver such additional documents, instruments and conveyances, and take such other actions and do such other things, as may be reasonably necessary in the opinion of counsel to the requesting party to carry out the provisions of this MOA.

**11. Confidentiality.** The Parties will maintain all documentations and communications, either in writing or orally, provided to the receiving Party related to the Project as confidential, including the fact that communications are taking place or may take place (hereinafter referred to collectively as “Confidential Information”). Notwithstanding the foregoing, it shall not be a breach of this MOA for a Party to disclose the other’s Confidential Information if required to do so by law or if such disclosing Party is compelled to disclose by a court of competent jurisdiction or by rule or order of a governmental body or agency, or any national securities exchange, provided such disclosing Party first provides prompt written notice of such request to disclose and seeks appropriate protective remedy against disclosure. Further, the Party seeking to disclose such Confidential Information must seek all available safeguards against widespread dissemination prior to such disclosure. Each Party agrees to promptly notify the other in writing of any misappropriation or misuse by any person or agency of a Party’s Confidential Information which is known or reasonably should have been known. In addition, a Party may disclose the terms of this MOA to legal and financial representatives and advisors that are bound either by non-disclosure agreements preventing disclosure to any other Party, or by an equivalent ethical and professional obligation of confidentiality.

**12. Authority.** WVDED represents and warrants that it is the proper agency or instrumentality of the State of West Virginia to commit the Economic Development Financial Assistance set forth herein, and that the Executive Director of the Development Office in the WVDED is vested with the full legal authority and is duly authorized to execute this MOA on behalf of WVDED and the State of West Virginia. The Cabinet Secretary of Commerce is vested with fully legal authority and are duly authorized to execute this MOA on behalf of Commerce.

**13. Amendments or Modifications.** This MOA may only be amended or modified by a signed writing executed by authorized representatives of the Parties. In view of the complexity of the Project, it is the express understanding and agreement of the Parties that Mountaineer may request amendments or modifications of this MOA in circumstances where it is at risk of not meeting any Benchmark or Performance Deadline stated herein but has substantially performed its contractual obligations in seeking to develop and construct the Project. The Parties agree that the State Departments will not unreasonably withhold consent to reasonably amend or modify this MOA in such circumstances, as a completed Project has substantial value to all Parties.

**14. Assignment.** The Parties agree that this MOA may be assigned to a wholly owned subsidiary or affiliate of Mountaineer or for the benefit of creditors.

**15. Multiple Counterparts.** This MOA may be executed in two or more counterparts, each of which shall be deemed an original. Facsimile or electronically scanned signatures are deemed to be originals.

**16. Severability.** If any provision of this MOA shall for any reason be held illegal, invalid, or unenforceable, then the other provisions of this MOA shall not be rendered invalid or otherwise affected thereby and shall continue in full force and effect to the maximum extent permitted by applicable law.

**17. Use of Name.** The State Departments will not issue a press release or other public statement regarding this MOA without the prior consent of Mountaineer.

**18. Governing Law.** This MOA shall be governed by the laws of the State of West Virginia and any dispute arising out of this MOA will be resolved in a West Virginia court having jurisdiction; provided, that in the event of dispute, the Parties first will meet in good faith and attempt to resolve their differences through alternative dispute resolution or otherwise.

**19. Irrevocable.** Upon acceptance by Fidelis, by and through its subsidiary Mountaineer, and execution of the Parties, this MOA will become a legally enforceable contract.

**20. Entire Contract.** This MOA constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, inducements, and conditions of the Parties, express and implied, oral and written, of any nature whatsoever with respect to the subject matter hereof.

[Signature Page to Follow]

**IN WITNESS WHEREOF**, the Parties have caused this MOA to be executed by their duly authorized representatives to be effective as of the Effective Date.


**West Virginia Department of Economic Development**

  
\_\_\_\_\_

Name: Michael Graney  
Its: Executive Director, West Virginia Development Office

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

**West Virginia Department of Commerce**

  
\_\_\_\_\_

Name: James Bailey  
Its: Cabinet Secretary

Date: 7/6/23 \_\_\_\_\_

**Mountaineer GigaSystem, LLC, by its manager, Fidelis New Energy, LLC**

\_\_\_\_\_

Name: Dan Shapiro  
Its: Chief Executive Officer, Fidelis New Energy, LLC

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

**IN WITNESS WHEREOF**, the Parties have caused this MOA to be executed by their duly authorized representatives to be effective as of the Effective Date.

**West Virginia Department of Economic Development**

\_\_\_\_\_

Name: Michael Graney  
Its: Executive Director, West Virginia Development Office

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

**West Virginia Department of Commerce**

\_\_\_\_\_

Name: James Bailey  
Its: Cabinet Secretary

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

**Mountaineer GigaSystem, LLC, by its manager, Fidelis New Energy, LLC**

 \_\_\_\_\_

Name: Dan Shapiro  
Its: Chief Executive Officer, Fidelis New Energy, LLC

Date: July 6, 2023

**APPENDIX A**  
**CURRENT INVESTMENT**

<b>Category</b>	<b>Amount</b>	<b>Approved Documentation</b>
Payroll (PMO, CMO, PDO, PFO, etc.) @ 60%	16,350,576.78	60% of TriNet invoices
Biomass Power Plant Development Expenditures	633,124.53	External invoices
Carbon Capture and Sequestration Development Expenditures	9,380,442.06	External invoices
Hydrogen Generation Development Expenditures	1,153,616.83	External invoices
Hydrogen Plant Engineering	1,450,000.00	Topsoe contract
ARCH2 Class IV Estimates and PDPs	196,200.00	Greenstar BCS invoices
WV Legal Expenditures	142,482.91	Bowles Rice invoices
Technology Patent Legal Work	101,147.00	Jones Walker invoices
WV Land Option Payments	252,834.04	Land Option contracts
	29,660,424.15	

## APPENDIX B

### PRE-CONSTRUCTION ACTIVITY BUDGET

<b>Description</b>	<b>Total</b>
<b>Third Party Expenditures</b>	
Seismic Acquisition	6.0
Class V Stratigraphic Test Well	7.0
Class VI Permitting	1.0
Class VI Permit Support	0.2
Title V Air Permit Engineering	1.0
<b>Total Third Party Expenditures</b>	<b>15.2</b>
<b>Fidelis Qualified Allocation</b>	
Project Management Office	3.6
Carbon Management Office	3.6
Project Development Office	1.2
Project Finance Office	0.6
Overhead FNE US	1.8
<b>Total Fidelis Qualified Allocation</b>	<b>10.8</b>
Contingency	5.0
<b>Total</b>	<b>31.0</b>

For purposes of this MOA, “Fidelis Qualified Allocation” means 50% of Fidelis’ internal resources and expenditures in the areas of project development and engineering, project design, technology selection, permitting, geological evaluation, right-of-way development, project management, contract management, finance and administration to the Project, together with a 20% burden for other overhead costs, or the equivalent of 60% of Fidelis’ total payroll costs. WVDED acknowledges and agrees that the “Fidelis Qualified Allocation” is *per se* reasonable and acceptable where it equals 60% of the total amounts paid to Fidelis’ payroll service provider during the pertinent performance period.



