IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

BIT DIGITAL USA, INC.,	)	
	)	
Plaintiff and	)	
Counterclaim-Defendant,	)	
v.	)	**C.A. No. N24C-05-306 PRW**
	)	**CCLD**
BLOCKFUSION USA, INC.,	)	
	)	
Defendant and	)	
Counterclaim-Plaintiff.	)	

Submitted: June 12, 2026
Decided: August 14, 2026

Upon Bit Digital USA, Inc.'s Motion for Partial Dismissal,
GRANTED in part and DENIED in part.

MEMORANDUM OPINION AND ORDER

Jennifer R. Hoover, Esquire, Noelle B. Torrice, Esquire, BENESCH FRIEDLANDER COPLAN & ARONOFF LLP, Wilmington, Delaware, Ashwin Ram, Esquire, Thomas M. O'Connell, Esquire, BUCHALTER LLP, Los Angeles, California, Roger L. Scott, Esquire (*argued*), BUCHALTER LLP, Irvine, California, *Attorneys for Bit Digital USA, Inc.*

Richard Rollo, Esquire, Travis S. Hunter, Esquire (*argued*), Gabriela Z. Monasterio, Esquire, Andrew L. Rosen, Esquire, RICHARDS, LAYTON & FINGER, P.A., Wilmington, Delaware, *Attorneys for Blockfusion USA, Inc.*

WALLACE, J.

I. BACKGROUND AND PROCEDURAL HISTORY[1]

This action arises from a dispute over a Mining Services Agreement (the "MSA") between Plaintiff Bit Digital USA, Inc. and Defendant Blockfusion USA, Inc. Blockfusion operates data centers that service digital asset mining operations.[2] Bit Digital is a large-scale digital asset mining company.[3]

In broad terms, digital asset mining involves the use of specialized computer hardware to perform complex computational functions that support blockchain networks.[4] Operators profit through the generation of digital assets, such as Bitcoin, called "mining."[5] Because these operations require substantial electrical power, profitability may depend upon scale and efficient energy usage.[6]

On August 25, 2021, Bit Digital and Blockfusion entered into the MSA.[7] Under the Agreement, Blockfusion was to procure, install, and maintain infrastructure necessary to operate mining equipment supplied by Bit Digital.[8] Bit

---

1 For the purpose of analyzing this motion to dismiss, the following facts are drawn from the Blockfusion's Counterclaims. *See Windsor I, LLC v. CW Capital Asset Mgmt. LLC*, 238 A.3d 863, 873 (Del. 2020) ("In most cases, when the Superior Court considers a 12(b)(6) motion, it limits analysis to the 'universe of facts' within the complaint and any attached documents.").

2 Blockfusion's Countercl., ¶ 13 (D.I. 23).

3 *Id.* ¶ 12.

4 *See generally* Blockfusion's Countercl.; 2nd Amend. Compl. Ex. 1 (D.I. 61) [hereinafter "MSA"].

5 *See generally* Blockfusion's Countercl.; MSA.

6 *See generally* Blockfusion's Countercl.; MSA.

7 MSA, at 1.

8 *Id*.

Digital, in turn, agreed to provide miners for the operation of the facility and advance $3.75 million to support the buildout.[9] Blockfusion's compensation was tied to the performance of the mining operation and calculated based upon mining revenue, subject to contractual adjustments.[10] The cost of energy associated with the operation was borne by Bit Digital.[11]

The buildout of the operation was to occur in four "Pod Installations"—Bit Digital would provide new miners in each phase, and as each phase began, the corresponding MWh load allocation for the project would increase.[12] In the MSA, Bit Digital promised to provide mining equipment that "[would be] in good operating condition, fit for use, . . . and satisfies the specifications for such [Bit Digital] Mining Equipment in" each phase of the operation.[13]

On May 10, 2022, a fire occurred at the Blockfusion facility, forcing operations offline until September 8, 2022.[14] During the shutdown, Bit Digital began transferring miners from Blockfusion's facilities to those of a competitor.[15]

---

9 *Id.* §§ 6, 1.1, 15.4(ii).

10 *Id.* § 4.

11 *Id.* § 3.

12 *Id.* § 1.1; *id.* at Ex. B–E; *see also id.* at 13–14 ("First Pod Mining Equipment"; "Second Pod Mining Equipment"; "Third Pod Mining Equipment"; and "Fourth Pod Mining Equipment").

13 *Id.* § 15.4(ii).

14 Blockfusion's Countercl., ¶ 30.

15 *Id.* ¶ 33.

According to Blockfusion, Bit Digital later sought to replace the removed miners with obsolete equipment, leaving the facility unable to operate at the capacity contemplated by the parties when the MSA was executed.[16]

On September 14, 2022, Blockfusion issued a formal notice of breach.[17] Even so, the parties continued operating under the MSA for approximately another year.[18] Following additional communications, Blockfusion terminated the MSA on August 25, 2023.[19]

The relationship, however, didn't end.[20] After termination, Bit Digital continued using Blockfusion's facilities while transitioning its operations elsewhere.[21] Blockfusion contends the parties reached an agreement outside of the MSA governing this post-termination period under which Bit Digital would continue compensating Blockfusion on terms materially consistent with the MSA.[22] That agreement, it says, was reached through conversations and text communications between Bit Digital and Blockfusion.[23] Thereafter, Blockfusion issued three

---

16 *See generally id.*

17 *Id.* ¶ 39.

18 *Id.* ¶ 40.

19 *Id.*

20 *Id.* ¶ 42.

21 *Id.* ¶¶ 42–43.

22 *Id.* ¶¶ 42–48; *id.* Ex. A.

23 *Id.* ¶¶ 42–48; *id.* Ex. A.

invoices for services rendered during that period.[24] The first two invoices were paid, but the final invoice remains unpaid.[25]

Bit Digital has now filed a Complaint in this Court asserting breach of contract and related claims against Blockfusion.[26] Blockfusion answered and asserted counterclaims for: (Count I) breach of contract under the MSA; (Count II) breach of the implied covenant of good faith and fair dealing; (Count III) breach of contract arising from Bit Digital's continued use of the facility following termination of the MSA; and (Count IV) declaratory judgment.[27] Bit Digital now moves to dismiss Counterclaim Counts II and III.[28]

II. PARTIES' CONTENTIONS

Bit Digital only attacks two of Blockfusion's counterclaims. First, Bit Digital argues that the implied-covenant claim (Count II) isn't permitted because it is both duplicative of the breach-of-contract claim (Count I) and, as a matter of law, there

---

[24] *Id.* ¶¶ 42–48.

[25] *Id*.

[26] D.I. 1. After two amendments, the Operative Complaint brought the following claims against Blockfusion: (Count I) Fraud – Inducement to Enter the MSA; (Count II) Fraud – Invoices; (Count III) Breach of Contract; (Count IV) Breach of Implied Covenant of Good Faith and Fair Dealing; (Count V) Unjust Enrichment; and (Count VI) Accounting. *See generally* 2nd Amend. Compl. Blockfusion filed a motion to dismiss the (Count I–II) Fraud; (Count V) Unjust Enrichment, and (Count VI) Accounting claims. That motion was granted. D.I. 77.

[27] *See generally* Blockfusion's Countercl.

[28] Bit Digital's Mot. Dismiss (D.I. 83).

isn't a contractual gap for the implied covenant to fill.[29] Second, as to the breach of contract following the termination of the MSA claim (Count III), Bit Digital argues that the alleged post-termination agreement is barred by the MSA's no-modification provisions and fails to plead the elements of a valid contract.[30]

Blockfusion responds that the implied-covenant claim (Count II) is properly pled in the alternative to the breach claim and is based on Bit Digital's alleged bad-faith exercise of contractual discretion, namely supplying insufficient and obsolete miners in a manner that deprived Blockfusion of the benefit of its bargain.[31] Blockfusion further argues that the breach-of-contract claim (Count III) is not based on a modification of the MSA but on a separate post-termination agreement under which Blockfusion continued hosting Bit Digital's miners during a transition period while Bit Digital agreed to pay power costs and a performance fee.[32] According to Blockfusion, contemporaneous text messages and Bit Digital's payment of two invoices demonstrate the existence of that separate agreement and are sufficient to state a claim at the pleading stage.[33]

---

29 Bit Digital's Mot. Dismiss 5–9; Reply Br. 2–9 (D.I. 86).

30 Bit Digital's Mot. Dismiss 9–12; Reply Br. 9–16.

31 Blockfusion's Answer 6–12.

32 *Id*. at 12–18.

33 *Id*.

III. STANDARD OF REVIEW

Under Rule 12(b)(6), "the governing pleading standard in Delaware to survive a motion to dismiss is reasonable 'conceivability.'"[34] And under this well-settled Rule 12(b)(6) standard, the Court will:

> (1) accept all well pleaded factual allegations as true, (2) accept even vague allegations as "well pleaded" if they give the opposing party notice of the claim, (3) draw all reasonable inferences in favor of the non-moving party, and (4) [not dismiss the claims] unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances.[35]

The Court does not, however, "accept as true conclusory allegations without any specific supporting factual allegations."[36]

IV. DISCUSSION

The Court addresses Bit Digital's motion to dismiss Counts II and III in turn. *First*, Blockfusion fails to state a claim for breach of the implied covenant of good faith and fair dealing under Count II because it is duplicative of Count I. *Second*, Blockfusion has adequately alleged a post-termination agreement sufficient for

---

[34] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Hldgs. LLC*, 27 A.3d 531, 537 (Del. 2011); *Windsor I, LLC v. CW Capital Asset Mgmt. LLC*, 238 A.3d 863, 871−72 (Del. 2020) (quoting *In re General Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006)) ("The grant of a motion to dismiss is only appropriate when the 'plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof.'"); *see also Cent. Mortg.,* 27 A.3d at 537 n.13 ("Our governing 'conceivability' standard is more akin to 'possibility,' while the federal 'plausibility' standard falls somewhere beyond mere 'possibility' but short of 'probability.'").

[35] *Cent. Mortg.*, 27 A.3d at 535.

[36] *In re General Motors (Hughes) S'holder Litig.*, 897 A.2d at 168 (internal quotes omitted).

Count III to survive dismissal. Resultingly, Bit Digital's Motion to Dismiss is **GRANTED** in part and **DENIED** in part.

A. BLOCKFUSION'S CLAIM FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING IS IMPERMISSIBLY DUPLICATIVE OF ITS BREACH-OF-CONTRACT CLAIM.

"To state a claim for breach of an implied covenant, a claimant must allege: (1) a specific implied contractual obligation; (2) a breach of that obligation; and (3) resulting damage."[37] Blockfusion alleges that the MSA contemplated that Bit Digital would provide functional, non-obsolete mining equipment sufficient for Pod Installation load capacity and that the MSA contains no express provision to that effect.[38] Blockfusion further alleges that Bit Digital breached its implied obligations by providing insufficient, obsolete, and unprofitable miners, which resulted in damages to Blockfusion.[39]

"The proposition that implied covenants of good faith and fair dealing underlie a contractual relationship, is not a concept strange to Delaware law."[40] "[T]he Delaware Supreme Court has made clear that the implied covenant of good

---

[37] *Brightstar Corp. v. PCS Wireless, LLC*, 2019 WL 3714917, at *11 (Del. Super. Ct. Aug. 7, 2019).

[38] *See generally* Blockfusion's Countercl.

[39] *See generally id*.

[40] *Merrill v. Crothall-Am., Inc.*, 606 A.2d 96, 101 (Del. 1992) (citing *Blish v. Thompson Automatic Arms Corp.*, 64 A.2d 581, 597 (Del. 1948)); *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 442 (Del. 2005); *Brightstar*, 2019 WL 3714917, at *11.

faith and fair dealing restrains a party's exercise of discretion under an agreement."[41] The covenant "requires a party in a contractual relationship to refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits' of the bargain."[42] Even so, the express contract is what controls.[43] As a matter of law in Delaware, "[t]o maintain an implied covenant claim, the factual allegations underlying the implied covenant claim must differ from those underlying an accompanying breach-of-contract claim."[44] "[A]n implied covenant can't be used to re-write the agreement"[45] or "to circumvent the parties' bargain, or to create a free-floating duty unattached to the underlying legal document."[46] The Court can't supply "protections that, in hindsight, would have made the contract a better deal."[47]

---

41 *Am. Healthcase Admin. Serv., Inc. v. Aizen*, 285 A.3d 461, 479 (Del. Ch. 2022).

42 *Dunlap*, 878 A.2d at 442 (quoting *Wilgus v. Salt Pond Inv. Co.*, 498 A.2d 151, 159 (Del. Ch. 1985)).

43 *Brightstar*, 2019 WL 3714917, at *11; *see generally GWO Litig. Tr. v. Sprint Sols., Inc.*, 2018 WL 5309477 (Del. Super. Ct. Oct. 25, 2018) (discussing the import of express terms over those of which that are implied).

44 *GWO Litig. Tr.*, 2018 WL 5309477, at *6. The Court agrees that Count I and II are duplicative of one another. The same facts and underlying breach theory are mirrored in both counts. The only difference is Blockfusion's attempt to read in more terms that support its breach-of-contract claim.

45 *Brightstar*, 2019 WL 3714917, at *11 (citing *Nationwide Emerging Managers, LLC v. Northpointe Holdings, LLC*, 112 A.3d 878, 897 (Del. 2015)).

46 *Dunlap*, 878 A.2d at 441 (quoting *Glenfed Fin. Corp., Commercial Fin. Div. v. Penick Corp.*, 647 A.2d 852, 858 (N.J. Super. Ct. App. Div. 1994)) (cleaned up).

47 *Winshall v. Viacom Int'l, Inc.*, 55 A.3d 629, 637 (Del. Ch. 2011); *Winshall v. Viacom Int'l, Inc.*, 76 A.3d 808, 816 (Del. 2013) (same).

For that reason, Delaware courts repeatedly caution that implying a covenant not expressly contracted for is a "cautious enterprise."[48] Courts will imply obligations only "when the contract is truly silent with respect to the matter at hand, and only when the court finds that the expectations of the parties were so fundamental that it is clear that they did not feel a need to negotiate about them."[49] Conversely, where the contract already addresses the subject matter at issue—or where the proposed term is one which sophisticated parties could've reasonably negotiated for themselves—the implied covenant has no role to play.[50]

Here, the MSA expressly addresses the mining equipment Bit Digital was obligated to provide, the requisite condition of that equipment, and the manner in

---

48 *Cincinnati SMSA Ltd. P'ship v. Cincinnati Bell Cellular Sys. Co.*, 708 A.2d 989, 992 (Del. 1998); *Nemec v. Shrader*, 991 A.2d 1120, 1125 (Del. 2010); *Glaxo Grp. Ltd. v. DRIT LP*, 248 A.3d 911, 920 (Del. 2021); *GWO Litig. Tr.*, 2018 WL 5309477, at *5; *Airborne Health, Inc. v. Squid Soap, LP*, 984 A.2d 126, 146 (Del. Ch. 2009).

49 *Allied Capital Corp. v. GC-Sun Holdings, L.P.*, 910 A.2d 1020, 1032–33 (Del. Ch. 2006); *ArchKey Intermediate Holdings Inc. v. Mona*, 302 A.3d 975, 1003 (Del. Ch. 2023); *Nemec v. Shrader*, 991 A.2d 1120, 1125 (Del. 2010) (inferring contractual terms to handle developments or contractual gaps that the asserting party pleads neither party anticipated); *Oxbow Carbon & Minerals Holdings, Inc. v. Crestview-Oxbow Acquisition, LLC*, 202 A.3d 482, 507 (Del. 2019) (quoting *Nationwide Emerging Managers*, 112 A.3d at 897, *as revised* (Mar. 27, 2015)) ("Even where the contract is silent, '[a]n interpreting court cannot use an implied covenant to re-write the agreement between the parties, and should be most chary about implying a contractual protection when the contract could easily have been drafted to expressly provide for it.'") (cleaned up).

50 *Oxbow Carbon & Minerals Holdings, Inc. v. Crestview-Oxbow Acquisition, LLC*, 202 A.3d 482, 508 (Del. 2019) ("However, we reiterate that the implied covenant should not be used as 'an equitable remedy for rebalancing economic interests'—particularly where, as here, the parties are sophisticated business persons or entities."); *Nationwide Emerging Managers*, 112 A.3d at 897 (quoting *Allied Capital*, 910 A.2d at 1035) ("An interpreting court cannot use an implied covenant to re-write the agreement between the parties, and 'should be most chary about implying a contractual protection when the contract could easily have been drafted to expressly provide for it.'").

which the equipment would be identified and installed. Most notably, Section 15.4(ii) contains an express representation, warranty, and covenant regarding the equipment Bit Digital would deliver:

> [Bit Digital's] Mining Equipment is in good operating condition, **fit for use**, free of viruses, worms, time bombs, Trojan horses or other harmful, malicious or destructive code, and satisfies the specifications for such [Bit Digital] Mining Equipment in Exhibits B, C, D and E (in each case, as such exhibits are provided to Service Provider pursuant to Section 1 of this Agreement) when delivered to [Blockfusion.][51]

These requirements set forth in the MSA speak directly to the contracted-for condition and functionality of the equipment, encompassing the expectations of the parties.

Section 1.1 of the Agreement describes four separate installations of mining equipment—the First, Second, Third, and Fourth Pod Mining Equipment.[52] Rather than defining those installations by reference to specific miner models, the Agreement defines each one principally by the amount of mining load power to be provided.[53] For example, the MSA defines "First Pod Mining Equipment" as:

> [T]he servers and power supplies provided by Customer to produce the Mining Power as will be set forth in the form of Exhibit B, which shall be 5.0 MWHrs of load power.[54]

---

[51] MSA § 15.4(ii) (emphasis added).

[52] *Id.* § 1.1.1–.4 (discussing the First through Fourth Pod Installations).

[53] *Id*. at 13–14 ("First Pod Mining Equipment"; "Second Pod Mining Equipment"; "Third Pod Mining Equipment"; and "Fourth Pod Mining Equipment").

[54] *Id*. at 13 ("First Pod Mining Equipment"). The other definitions are the same but for the MWHrs of load power. *See id*. at 13–14 ("First Pod Mining Equipment"; "Second Pod Mining

The Agreement contains similar definitions for the remaining pod installations, each tied to a specified amount of load power.[55] Consistent with that framework, the exhibits identify the miner types associated with each pod while also specifying the required load power.[56] Exhibit B, for example, provides:

> The First Pod Mining Equipment specified in the chart below is provided by [Bit Digital] to [Blockfusion] for the provision of the Services. [Bit Digital] **may provide alternative mining equipment in its sole discretion, so long as the condition and total MWHrs of load power remains the same or similar.** [Blockfusion] is solely responsible for providing all ancillary equipment necessary to operate the Mining Equipment within the Premises, excluding any hashboards, controller boards, case assemblies, fans, and power units for the First Pod Mining Equipment.[57]

Read together, these provisions establish and encompass the parties' negotiated requirements for the condition of the mining equipment. The MSA required Bit Digital to provide equipment that was in good operating condition, fit for use, and compliant with the specifications in the applicable exhibits. Those exhibits defined the equipment principally by reference to load power and expressly permitted Bit Digital to substitute alternative equipment, provided that the equipment's condition and total load power remained the same or similar. The MSA

Equipment"; "Third Pod Mining Equipment"; and "Fourth Pod Mining Equipment").

55 *Id.* Ex. B–E.

56 *Id.* § 1.1.

57 *Id.* Ex. B; *see also id.* at Ex. C–E.

is rife with requirements for the condition of the miners.[58] And there is nary a gap for an implied covenant to fill.

The Court need not presently determine the full reach of those provisions or whether they were breached. Here, what matters is that the Agreement addresses the required condition of the miners through several interlocking provisions defining what equipment Bit Digital was required to deliver. This is precisely why the implied-covenant claim (Count II) is duplicative of this count: Count I itself treats the alleged deficiencies in the miners as implicating the MSA's express requirements. Count II relies on the same equipment, the same alleged deficiencies, and the same resulting harm as Count I because the contract discusses *those very issues*. Count II does not identify an overlooked obligation; it seeks to imply additional content into a subject the parties already reduced to writing.

Blockfusion's implied-covenant claim therefore cannot survive. The parties negotiated the required condition of the mining equipment, as well as Bit Digital's discretion to provide substitute equipment. The Court cannot supplement those negotiated terms with additional protections that Blockfusion may now believe would have produced a better bargain.[59]

---

[58] *See, e.g.*, *id*. § 15.4(ii) ("in good operating condition, fit for use"); *id.* at Ex. B ("may provide alternative mining equipment in its sole discretion, so long as the condition and total MWHrs of load power remains the same or similar"); *id.* at 13–14 ("First Pod Mining Equipment"; "Second Pod Mining Equipment"; "Third Pod Mining Equipment"; and "Fourth Pod Mining Equipment").

[59] *Nemec*, 991 A.2d at 1126 ("When conducting this analysis, we must assess the parties'

Nonetheless, in its Answer to this Motion to Dismiss, Blockfusion attempts to recast the dispute as one involving abuse of contractual discretion.[60] It argues that Bit Digital was able to "exploit" gaps in the contract to "sabotage Blockfusion's performance."[61] But Blockfusion never alleged in Count II—or anywhere else in its Counterclaims—that Bit Digital exercised any contractual discretion in bad faith.[62] And the Court, again, is unable to find a *specific* gap in the MSA which an implied covenant could fill.[63] In essence, Blockfusion's *new* theory appears to be: Bit Digital breached the MSA by providing unprofitable miners; but if the contract did not require Bit Digital to provide profitable miners, then Bit Digital must have supplied unprofitable miners solely to harm Blockfusion.

The Court could reject this argument outright because the theory was not pleaded in the Counterclaims.[64] But given that Blockfusion simply reiterates the

---

reasonable expectations at the time of contracting and not rewrite the contract to appease a party who later wishes to rewrite a contract he now believes to have been a bad deal."); *Nationwide Emerging Managers*, 112 A.3d at 881 ("When a buyer and seller negotiate a detailed contract, Delaware law requires that the contract's express terms be honored, and prevents a party who has after-the-fact regrets from using the implied covenant of good faith and fair dealing to obtain in court what it could not get at the bargaining table.").

[60] *See generally* Blockfusion's Answer.

[61] *Id*. at 10–11.

[62] *See generally* Blockfusion's Countercl.

[63] The MSA expressly granted Bit Digital discretion to provide alternative mining equipment, provided that the equipment satisfied the agreement's required MWHrs load commitment. *See* MSA Ex. B–E.

[64] *Calumet Capital Partners LLC v. Victory Park Capital Advisors, LLC*, 353 A.3d 88, 127–131 (Del. Ch. 2026) ("For purposes of the intent-based version of the implied covenant, a plaintiff must plead and later prove that the defendant acted maliciously and without a justification rationally

same substantive gap-filling argument already rejected with a bad-intent twist, the Court rejects it for the same reason discussed above; the Court cannot rewrite an agreement against its express terms.[65] "A 'bad faith' breach of the agreement's express terms is still a breach of the agreement's express terms."[66] Accordingly, it cannot sustain Count II here.[67]

Count II doesn't survive as a matter of law. Accordingly, the motion to dismiss Count II is **GRANTED**.

B. BLOCKFUSION STATES A REASONABLY CONCEIVABLE CLAIM FOR BREACH OF A POST-TERMINATION AGREEMENT UNDER COUNT III.

Bit Digital's motion to dismiss Count III presents two questions. First, the Court must determine whether the MSA's No-Oral-Modification and Anti-Waiver provisions foreclose, as a matter of law, the separate post-termination agreement alleged by Blockfusion. Second, if those provisions don't bar the claim, the Court must decide whether Blockfusion has adequately pled the existence of an enforceable contract. The Court concludes that dismissal is unwarranted at this stage because Blockfusion has alleged a post-termination agreement that is not necessarily

---

grounded in the contractual relationship."); *cf. Oxbow Carbon & Minerals Holdings*, 202 A.3d at 504 n.93 (discussing the differences between the two theories).

[65] Blockfusion argues that Bit Digital can't supply miners of the lowest quality permitted by the contract. Doing so, it believes, is "bad faith." But such a reading necessarily requires the contract to be read against its express terms. Blockfusion may do what the contract permits it to do.

[66] *Mikkilineni v. PayPal, Inc.*, 2021 WL 2763903, at *10 (Del. Super. Ct. July 1, 2021).

[67] *Calumet Capital Partners*, 353 A.3d at 127–31.

governed by MSA Sections 17.5 and 17.12 and has sufficiently pled the elements of contract formation.

1. Under this Court's 12(b)(6) standard, the MSA's No-Oral-Modification and Anti-Waiver provisions don't foreclose a reasonably conceivable post-termination agreement at the pleading stage.

"Delaware is a contractarian state that holds parties' freedom of contract in high regard."[68] "'Unless the contract is voidable due to mistake, fraud, unconscionability, or another invalidating cause, or invalid in whole or in part due to illegality or another violation of public policy, the court must enforce it as drafted by the parties, according to the terms employed[.]'"[69] Accordingly, provisions barring oral modification are generally enforced according to their terms.[70] Upon termination of an agreement, obligations under the contract ordinarily cease.[71]

The MSA contains provisions that prohibit informal modification or

---

[68] *Sunder Energy, LLC v. Jackson*, 332 A.3d 472, 487 (Del. 2024); *ev3, Inc. v. Lesh*, 114 A.3d 527, 530 (Del. 2014), *as revised* (Apr. 30, 2015) (discussing integration clauses "Delaware courts seek to ensure freedom of contract and promote clarity in the law in order to facilitate commerce.").

[69] *Nationwide Emerging Managers*, 112 A.3d at 891 n.42, *as revised* (Mar. 27, 2015) (quoting 11 SAMUEL WILLISTON & RICHARD A. LORD, A TREATISE ON THE LAW OF CONTRACTS § 31.5 (4th ed. 2003)); *Official Comm. of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A.*, 103 A.3d 1010, 1016 (Del. 2014) (same).

[70] *Cont'l Ins. Co. v. Rutledge & Co., Inc.*, 750 A.2d 1219, 1228 (Del. Ch. 2000).

[71] *ev3, Inc.*, 114 A.3d at 537 (explaining that survival is only tied to "the expressly binding provisions" the parties intended to continue); *see also AB Stable VIII LLC v. Maps Hotels & Resorts One LLC*, 2020 WL 7024929, at *103 (Del. Ch. Nov. 30, 2020) *aff'd,* 268 A.3d 198 (Del. 2021) ("Under the common law, termination results in an agreement becoming void, but that fact alone does not eliminate liability for a prior breach."); *Gary v. Beazer Homes USA, Inc.*, 2008 WL 2510635, at *2 (Del. Ch. June 11, 2008) (discussing non-compete clauses).

amendment of the MSA.[72] Bit Digital argues that these sections foreclose Blockfusion's ability to litigate an informal agreement alleged in Count III.[73] According to Bit Digital, any such agreement would constitute an unenforceable modification of the MSA, particularly because the text messages attached to the Counterclaim don't satisfy the MSA's requirements for amendment or modification.[74]

But that isn't what's alleged, here. The MSA's Sections 17.5 and 17.12 govern amendments, modifications, and waivers of the MSA while that agreement remained *operative*.[75] The Counterclaim alleges that, after the MSA terminated, the parties entered into a separate post-termination arrangement under which Bit Digital would continue operating at Blockfusion's facility and pay for power consumption during that period.[76] Such an arrangement could exist independently of the MSA.[77]

---

[72] MSA §§ 17.5, 17.12.

[73] Bit Digital's Mot. Dismiss 9–11.

[74] *Id*. at 9–11.

[75] MSA §§ 17.5, 17.12.

[76] The factual background of Blockfusion's Counterclaim explicitly references the termination of the MSA seven times. *See* Blockfusion's Countercl., ¶¶ 40–44, 45-47.

[77] *In re Coinmint, LLC*, 261 A.3d 867, 896–97 (Del. Ch. 2021) ("Delaware law recognizes the important policy considerations underlying integration and anti-waiver provisions, and enforces both. But when applied to post-contract behavior, these principles do not prohibit the Court's consideration of subsequent promises, communications, or modifications to the express agreement."). Further, a "No-Oral-Modifications" clause can be orally waived by the parties themselves. *CPC Mikawaya Holdings, LLC v. MyMo Intermediate, Inc.*, 2022 WL 2348080, at *13 (Del. Ch. June 29, 2022). The Counterclaim and its exhibits, in the light most favorable to Blockfusion, support a reasonably conceivable waiver by Bit Digital. *See generally* Blockfusion's Countercl.; Blockfusion's Countercl. Ex. A, at 10.

The Court's role, at this stage, isn't to resolve factual questions. It is entirely possible that facts not reflected in the attached exhibits and to be later uncovered through discovery will establish a record supporting the opposite legal conclusion. But at present, the Court cannot conclude that the alleged arrangement necessarily constitutes an amendment or modification to the MSA itself because the Counterclaim alleges that the parties entered into a subsequent agreement *after* the MSA was terminated. Accordingly, the Court finds that Blockfusion has alleged a reasonably conceivable contractual arrangement after the termination of the MSA, and dismissal of Count III on the basis of Sections 17.5 and 17.12 is therefore unwarranted.

2. Blockfusion adequately pleads contract formation.

"[A] valid contract exists when (1) the parties intended that the contract would bind them, (2) the terms of the contract are sufficiently definite, and (3) the parties exchange legal consideration."[78] "It is basic that overt manifestation of assent—not subjective intent—controls the formation of a contract[.]"[79] Bit Digital contends that the alleged post-termination agreement fails on all three fronts, arguing that Blockfusion has not adequately pleaded consideration, mutual assent, or

---

[78] *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1158 (Del. 2010).

[79] *Indus. Am., Inc. v. Fulton Indus., Inc.*, 285 A.2d 412, 415 (Del. 1971); *Eagle Force Holdings, LLC v. Campbell*, 187 A.3d 1209, 1229 (Del. 2018) (same).

sufficiently definite terms.[80] At this stage of the proceedings, the Court is not persuaded.[81]

Blockfusion alleges that after the MSA was terminated, Bit Digital requested a transition period to facilitate the removal of its miners from Blockfusion's facility.[82] According to the Counterclaim, Blockfusion agreed to continue hosting, powering, and supporting those miners during the removal period, while Bit Digital agreed to pay for the electricity consumed and to continue operating under the parties' existing profit-sharing arrangement.[83] Blockfusion further alleges that Bit Digital in fact paid all but one of the invoices issued during the transition period.[84]

Accepting these allegations as true and drawing all reasonable inferences in Blockfusion's favor, the Counterclaim adequately pleads the existence of a post-termination agreement. The parties' alleged conduct—including Bit Digital's request for continued services and its subsequent payment of invoices—supports a reasonable inference of mutual assent. The alleged terms are sufficiently definite

---

80 Reply Br. 12–16; Bit Digital's Mot. Dismiss 11–12.

81 While Count III of Blockfusion's Counterclaim fails to directly state that a "new contract" was formed, at the motion to dismiss stage, Blockfusion has provided notice to Bit Digital that it is alleging a breach of a new contract separate from the MSA. Count III begins in Paragraph 67 with "Blockfusion and Bit Digital had **an informal agreement** to allow Bit Digital to continue mining . . ." and continues in Paragraph 68, stating "[t]he Parties agreed that Bit Digital would pay for any power that it consumed while its miners were on-site **after the expiration of the MSA**." Blockfusion's Countercl., ¶¶ 67–68 (emphasis added).

82 *See generally* Blockfusion's Countercl., ¶ 43.

83 *Id.* ¶¶ 43–44.

84 *Id.* ¶¶ 45–48.

insofar as the parties purportedly agreed to extend, on an interim basis, the operative economic and service provisions of the MSA while Bit Digital completed the removal of its equipment. And the alleged exchange of continued hosting and operational support in return for payment and continued profit-sharing constitutes consideration.

To be sure, Bit Digital raises substantial questions concerning the existence, scope, and enforceability of the alleged agreement.[85] Discovery may reveal disputes regarding precisely what terms were carried forward from the MSA, whether the parties objectively manifested assent to a new contractual arrangement, whether all material terms were agreed upon, and whether the parties' conduct is more properly characterized as performance or, as Bit Digital alleges, an error on its part.[86] Those issues, however, turn on a developed factual record and are not appropriately resolved on a motion to dismiss.

For present purposes, Blockfusion has reasonably alleged the formation of a post-termination agreement. Accordingly, Bit Digital's motion is **DENIED** as to this count.

V. CONCLUSION

For the foregoing reasons, the Court **GRANTS in part and DENIES in part**

---

[85] Reply Br. 12–16; Bit Digital's Mot. Dismiss 11–12.

[86] Reply Br. 12–16; Bit Digital's Mot. Dismiss 11–12; *see generally* Amed. Compl. (D.I. 61).

the motion to dismiss.

IT IS SO ORDERED.

/s/ Paul R. Wallace

Paul R. Wallace, Judge