

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and among (a) the City of Niagara Falls, New York and Corey Baskerville in his official capacity as the Director of the Department of Code (collectively, the “City”); (b) U.S. Data Technologies Group, Ltd. and U.S. Data Mining Group, Inc. d/b/a U.S. Bitcoin (collectively, “US Bitcoin”); and (c) 2747 Buffalo Avenue, LLC (the “Owner”) (the City, US Bitcoin, and the Owner each hereafter may be referred to as a “Party” and collectively may be referred to as the “Parties”).

### RECITALS

WHEREAS, the City commenced an action against US Bitcoin and the Owner relating to alleged zoning violations and a public nuisance relating to US Bitcoin’s operations at the Owner’s property, located at 2747 Buffalo Avenue, Niagara Falls, New York 14303 (the “Property”), captioned as *City of Niagara Falls, et al v. U.S. Data Technologies Group, Ltd., et al*, Niagara County Supreme Court, Index No.: E178623/2022 (hereafter, the “Enforcement Action”).

WHEREAS, in the Enforcement Action, the City obtained a temporary restraining order (“TRO”) against US Bitcoin, and thereafter moved for an order of contempt against US Bitcoin relating to the TRO.

WHEREAS, US Bitcoin and the Owner moved to vacate the TRO, moved to dismiss the City’s Enforcement Action, and opposed the City’s motion for contempt, however, the Court denied the motion to vacate and the motion to dismiss, and granted the City’s motion for contempt against US Bitcoin.

WHEREAS, US Bitcoin and the Owner have moved to reargue all three of those motions, and the Court has reserved decision on all three motions to reargue.

WHEREAS, the Court ordered a hearing on the City’s request for a preliminary injunction.

WHEREAS, US Bitcoin separately commenced a declaratory judgment action, and an article 78 action, against the City, relating to the City’s amendment to its Zoning Code, which are each captioned as *U.S. Data Technologies Group, Ltd., et al v. City of Niagara Falls, et al*, Niagara County Supreme Court Index No.: E178922/2023 (the “Article 78 Action”) and E179005/2023 (the “DJ Action”).

WHEREAS, the City moved to dismiss the Article 78 Action and the DJ Action, and the Court has not rendered any decision on either of those motions to dismiss.

WHEREAS, the Parties desire to settle any and all claims or disputes of whatever nature as between them related to or arising from the Enforcement Action, the Article 78 Action, the DJ Action, and US Bitcoin’s operations at the Property.

WHEREAS, the Parties have reached agreement on certain “material terms” of a settlement as set forth below.

## AGREEMENT

NOW, THEREFORE, it is hereby stipulated and agreed by and between the undersigned parties upon the foregoing recitals (which are incorporated into and made a part of this Agreement) and in consideration of the promises, mutual covenants, and agreements set forth herein, and other good and valuable consideration, the sufficiency of which is acknowledged:

1. US Bitcoin shall ensure that its operations at the Property do not produce sound levels which result in an independent expert measurement of sound at the north face of the north fence line of the Property (along Buffalo Avenue) which exceed 65dBA, which the Parties agree will be in compliance with the High Energy Usage Overlay District,” § 1319.5, *et seq.* of the City’s Zoning Code (herein the “HEUOD”). US Bitcoin’s applications discussed herein will include requests for variances, if necessary, for any other provisions of the HEUOD.

2. By March 30, 2023, US Bitcoin shall submit complete applications for all permits, variances, and approvals necessary for US Bitcoin’s operations at the Property to become fully compliant with the HEUOD. The City shall support and affirmatively speak in favor of all of US Bitcoin’s applications before all boards and/or councils reviewing any such applications.

3. The City shall cap all of the fees to be paid to the City by US Bitcoin in connection with any and all applications at no more than one hundred thousand dollars (\$100,000.00), based on the previously submitted Site Plan. A fifty thousand dollar (\$50,000.00) non-refundable payment shall be paid upon execution of this Agreement. The Parties agree that all other fees in connection with US Bitcoin’s applications shall be paid by US Bitcoin to the City within fifteen (15) days after the date when the final approval for all of US Bitcoin’s applications is granted (hereafter, the date the final approval is received shall be referred to as the “Effective Date”).

4. The City shall schedule public hearings for any of US Bitcoin’s applications that require hearings for the earliest available date(s), subject to the required sequencing of Planning Board and/or City Council meetings relating to those applications.

5. US Bitcoin shall be allowed to, and shall, complete construction of a noise-dampening wall at the Property for the purpose of maintaining the standard of sound from its operations as set forth in paragraph 1 above and shall submit as-built plans for that wall to the City for approval as part of the permits, variances, or approvals provided for in paragraph 2 above, the fees for which are included in the paragraph 3 payment.

6. Within thirty (30) days of executing this Agreement, the Parties shall jointly select a third-party to act as the “Independent Monitor” for the purpose of monitoring sound levels as per paragraph 1 above. with the costs of the Independent Monitor’s services to be paid by US Bitcoin.

7. Within thirty (30) days of the Effective Date, US Bitcoin shall reimburse the City for attorneys’ fees and costs incurred in connection with the Enforcement Action, the Article 78 Action, and the DJ Action, in the amount of one hundred eighty thousand dollars (\$180,000.00).

8. Within thirty (30) days of the Effective Date, US Bitcoin shall pay to the City a “compliance fee” of one hundred thousand dollars (\$100,000.00), for the purpose of demonstrating US Bitcoin’s commitment to amicably resolve all disputes presently existing between the Parties.

9. Within thirty (30) days of the Effective Date, US Bitcoin shall obtain a bond or other security (herein the “Bond”), in a form acceptable to the City in the principal amount of one hundred thousand dollars (\$100,000.00) and provide proof of the bond to the City’s counsel. The Bond shall serve as security to ensure continued compliance with the above-described and agreed-upon sound levels, as set forth in paragraph 1 above, as confirmed and monitored by the Independent Monitor.

- a. The Parties shall consult with the Independent Monitor for its recommendations relating to, among other things:
  - i. the manner, method, and timing of sound monitoring to be performed at the Property as per paragraph 1 above.;
  - ii. how an “exceedance” of the 65 dBA sound limit is defined (e.g., the protocol for sound measurement including how long does the sound need to be measured as exceeding the 65 dBA sound limit to qualify as a detected exceedance) and how the Independent Monitor will confirm an exceedance (i.e., what if any re-testing is done; how is the source of any exceedance determined; etc.); for absence of doubt, the Independent Monitoring will solely apply to the 65dBA requirement of the HEUOD, and the City’s normal enforcement procedures and US Bitcoin’s full due process rights shall apply to any alleged violation of other HEUOD standards; and
  - iii. US Bitcoin’s opportunity to cure any detected exceedance within the time frame(s) agreed to, which shall be capped at no more than eight (8) hours.
- b. Upon consultation with the Independent Monitor relating to the above-referenced topics, the Parties’ shall collectively enter into a collateral agreement with the Independent Monitor relating to the above-referenced topics and the services to be provided by the Independent Monitor.
- c. Subject to the terms of the collateral agreement with the Independent Monitor, the parties agree that any exceedance of the noise limit that is (a) confirmed by the Independent Monitor and (b) uncured by US Bitcoin within a to-be-determined cure period, shall result in a sound fee in the sum of ten thousand dollars (\$10,000.00) becoming due and payable to the City from US Bitcoin. If US Bitcoin does not tender payment for a confirmed-and-uncured exceedance within ten (10) days of written demand by the City, then the City may enter judgment against US Bitcoin for that exceedance payment, and upon entry of

same, shall be entitled to execute upon the bond to recover the principal amount of the judgment, plus interest, costs, and attorneys' fees. If, and to the extent the City is required to execute upon the bond, US Bitcoin shall ensure the bond is replenished to the full amount of \$100,000.00.

10. Within fifteen (15) days of the Effective Date, the Parties shall execute and file (a) a stipulated order vacating the TRO and contempt order entered by the Court in the Enforcement Action, and (b) stipulations of discontinuance, with prejudice, for the Enforcement Action, the Article 78 Action, and the DJ Action.

11. (a) As of the Effective Date, the Parties, for themselves and their respective past or present parents, subsidiaries, affiliates, related companies, predecessors, successors, assigns, attorneys, agents, servants, staff, members, officials, directors, officers, shareholders, employers, employees, agents, representatives, members, subdivisions, boards, independent contractors, attorneys, and insurers, release and forever discharge one another from any and all manner of actions, cause or causes of action, suits, claims, costs, fees, expenses, debts, demands, accounts, bills, controversies, and liabilities whatsoever, in law or in equity, which against any of the Parties ever had, now have, or which any of them may hereafter have for, upon or by reason of any matter, cause or thing whatsoever, which was or could have been raised in the Enforcement Action, the Article 78 Action or the DJ Action.

(b) Notwithstanding subparagraph (a) above, but subject to the permits, variances, and approvals provided for in paragraph 2 above, nothing in this Agreement shall release Owner or US Bitcoin from compliance with the New York Uniform Building Codes, for future construction at the Property, nor limit the City's enforcement authority over future construction or different uses at the Property

12. This Agreement shall be construed as a whole in accordance with its fair meaning and in accordance with the laws of the State of New York. The terms of this Agreement have been negotiated by the Parties, with advice of counsel, and the language of the Agreement shall not be construed in favor of or against any particular party. The headings used herein are for reference only and shall not affect the construction of this Agreement. Venue for any disputes shall be in the State Supreme Court for the County of Niagara.

13. This Agreement shall be binding on all successors, transferees, assignees, and heirs, including person or entity that acquires the operating assets of US Bitcoin at the Property, by lease, sale, or purchase of the US Bitcoin or any of its affiliates.

14. This Agreement represents the sole and entire agreement between the Parties and supersedes all prior agreements, negotiations, and discussions between the Parties hereto and/or their respective counsel with respect to the Subject Claims, and the Claims alleged in and made by the Litigation.

15. This Agreement may be executed in counterparts and exchanged electronically, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

16. All of the Parties expressly reserve, and do not waive, any of the rights, claims, and/or defenses asserted in the Enforcement Action, the Article 78 Action, and the DJ Action, to the extent that any of the approvals necessary for US Bitcoin's operations as set forth in paragraph 2 are denied by the City's Planning Board or Zoning Board of Appeals or any other subdivision or body of the City. In such event, the Parties agree that the Enforcement Action, the Article 78 Action, and the DJ Action shall be placed back on the active calendar of the Court for further proceedings, and that none of the statements or actions taken by the Parties in connection with consummating (or attempting to consummate) this Agreement shall be used as evidence in any further proceedings.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

**CITY OF NIAGARA FALLS, NEW YORK**

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

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

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

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

**COREY BASKERVILLE,  
in his official capacity as Director of the Department of Code**

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

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

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

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

**U.S. DATA TECHNOLOGIES GROUP, LTD.  
U.S. DATA MINING GROUP, INC.**

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

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

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

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

**2747 BUFFALO AVENUE, LLC**

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

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

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

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