IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Dated: April 15, 2026

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Docket Number 2684CV01041

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
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IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Dated: April 15, 2026

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
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IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
Adam S. Gershenson

IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

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IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
Adam S. Gershenson

IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Dated: April 15, 2026

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
Adam S. Gershenson

IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
Adam S. Gershenson

IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
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IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Dated: April 15, 2026

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
Adam S. Gershenson

IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Dated: April 15, 2026

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
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IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Dated: April 15, 2026

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
Adam S. Gershenson

IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
Adam S. Gershenson

IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
Adam S. Gershenson

IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Dated: April 15, 2026

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
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IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Dated: April 15, 2026

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
Adam S. Gershenson

IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
Adam S. Gershenson

IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
Adam S. Gershenson

IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Dated: April 15, 2026

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
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IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Dated: April 15, 2026

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
Adam S. Gershenson

IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
Adam S. Gershenson

IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
Adam S. Gershenson

IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Dated: April 15, 2026

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
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IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Dated: April 15, 2026

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
Adam S. Gershenson

IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
Adam S. Gershenson

IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
Adam S. Gershenson

IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Dated: April 15, 2026

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
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IMMEDIATE REVIEW REQUESTED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT BUSINESS LITIGATION SESSION BLS1 CIVIL ACTION NO. 2684CV01041
VINEYARD WIND 1, LLC, Plaintiff, v. GE RENEWABLES US LLC, Defendant.	**SERVICE VIA EMAIL** kg

GE RENEWABLES US LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Dated: April 15, 2026

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I. INTRODUCTION

The *Turbine Supply Agreement* (the "**TSA**") between Vineyard Wind 1 LLC ("**VW**") and GE Renewables US LLC ("**GER**") provides that GER "shall . . . be entitled to terminate [the TSA] if: [it] . . . does not receive the amount due under a Payment Certificate within thirty [] days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent [] of the Contract Price." TSA § 16.2.1(b) (emphasis added). VW has refused to pay more than $360 million it owes to GER (well in excess of five percent of the Contract Price), and VW is not entitled to those amounts under Sub-Clause 2.4.6. GER is therefore entitled to terminate the TSA.

To evade the consequences of its failure to pay, VW argues GER ***cannot*** terminate because VW has withheld ***disputed*** amounts from GER under ***Sub-Clause 2.4.8***, even though the language emphasized above makes clear that GER ***shall*** be entitled to terminate ***unless*** VW withholds ***undisputed*** amounts under ***Sub-Clause 2.4.6***. VW's arguments contradict the unambiguous terms of the TSA—a heavily negotiated, fully integrated agreement entered into by sophisticated, counseled parties—and therefore fail under bedrock principles of contract interpretation.

As discussed below, VW is trying to hold GER to terms VW gave up at the bargaining table—the very first draft of the TSA, before GER added a single redline. VW, however, is bound by the deal it struck—not the deal it wanted but did not get. VW cannot establish a likelihood of success on the merits of its claim for injunctive relief, and its Motion fails for that reason alone.

The Motion also fails because VW cannot establish irreparable harm. It is hornbook law that a party does not suffer irreparable harm when its alleged injury can be remedied by money damages or is self-inflicted. VW fills its brief with pages of "horribles" that it claims will follow if GER's termination becomes effective. But all VW must do to prevent that alleged parade of

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horribles is ***pay GER***—i.e., reduce the outstanding unpaid amounts below the five percent threshold. If GER's termination turns out to have been wrongful (it is not), then VW will have a claim against GER for damages. It is no argument that VW may not have the money to pay GER; if it were, any party could avoid payment obligations by seeking an injunction. In any event, VW ***can*** pay GER at least some of what it is owed; VW has just purported to draw upon the performance bond that secures GER's obligations under the TSA in the amount of approximately $129 million. In other words, VW is not only refusing to pay GER hundreds of millions of dollars it owes GER but will also take $129 million more from GER through the bond draw-down.

If VW pays, GER stands ready to continue performing under the TSA and SMA. Indeed, GER has already completed the installation of all of the Project's sixty-two wind turbines—fifty-five of which have produced power to the Massachusetts grid. GER has also made clear that it will continue performing through the effective date of termination and perform any obligations that survive termination, including those necessary to ensure the Project's safety.

VW's claim that GER is the "only" contractor who can complete or service the Project does not change the analysis. It is also wrong. GER itself relies and would continue to rely upon third-party contractors to perform a substantial portion of the work on the Project. VW could use these same contractors or a host of other available companies to complete the remaining work. Indeed, this outcome, far from being irreparable, has already been provided for—GER's own subcontract agreements for the Project expressly permit assignment to VW upon termination. Moreover, many of the tools and processes used to perform this work are either commercially available or can be provided or replicated without unique dependency on GER. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, GER stands ready and willing to provide them to VW or its contractors.

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Finally, the balance of the equities favors GER. VW seeks the extraordinary remedy of an injunction not to preserve the status quo but to compel GER to continue performing ***without pay***—potentially for ***years***—pending an arbitration on the merits. That is not equity; it is a forced extension of credit that the Parties expressly negotiated against. GER, by contrast, has complied with the TSA: it provided notice, afforded VW and its lenders an opportunity to cure, and invoked a contractual right that was central to the Parties' agreed risk allocation. VW's request would rewrite the TSA by stripping GER of its termination right and making payment optional. Courts do not grant injunctive relief to rescue sophisticated parties from the consequences of their own decisions.

At bottom, VW's "emergency" motion is a bid to gain leverage in a long-term, ongoing commercial dispute between the Parties. Having chosen not to pay, VW now asks this Court to force GER to continue performing while the Parties arbitrate who owes what. That is precisely the economic pressure the TSA was designed to prevent. The Court should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. The Vineyard Wind Project

The Vineyard Wind Project is a multi-billion-dollar, first-of-its-kind offshore wind project in U.S. federal waters (the "**Project**"). From the outset, such a project carried risks and uncertainties, including the risk of delay. Case in point, GER was not VW's first contractor on the Project. VW approached GER only after its first contractor failed to meet certain project milestones. Mertens Decl. ¶ 6. The Parties entered the TSA, which governs the design, manufacture, supply, installation, commissioning, and testing of offshore wind turbine generators ("**WTGs**") for the Project, and the *Service & Maintenance Agreement* (the "**SMA**"), which

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governs the service and maintenance of those WTGs, on June 4, 2021. Exs. 1, 2 (TSA, SMA).[1] Since the Project's inception, GER has worked diligently and in good faith to complete the Project. *Id*. ¶ 11. After incurring nearly $2 billion in costs (almost double the approximately $1.3 billion Contract Price), GER has now finished the installation of ***all sixty-two*** WTGs—fifty-five of which have produced power to the Massachusetts grid. *Id*. ¶ 30. For the remaining seven WTGs, only limited work remains until they, too, begin generating power. *Id*. ¶ 37. That remaining work consists primarily of commissioning activities, discrete repair work, and other routine completion activities. *Id*.

B. The TSA's Claim, Payment, and Termination Framework

The Parties spent more than fourteen months negotiating the TSA and ultimately reached a comprehensive agreement that allocated Project-related risk and minimized uncertainty, including by negotiating comprehensive claim, payment, and termination provisions and damages limitations. *Id*. ¶ 6; Ex. 1 (TSA) § 17; Ghinassi Decl. ¶ 6. Specifically, the Parties agreed that, when GER demonstrated it had met certain "Payment Milestones," the Project's engineer (the "**Engineer**") would issue "Payment Certificates" certifying GER's work. Ex. 1 (TSA) § 14.5. GER would then issue invoices based upon those Payment Certificates, which VW was obligated to pay within sixty days, subject to any withholding right VW might have under Sub-Clause 2.4 of the TSA. *Id.* §§ 14.3, 14.4.

Sub-Clause 2.4 provides, in pertinent part, that, "[i]f [VW] considers [itself] to be entitled to any payment" from GER, then (i) VW must provide notice of its claim to GER; (ii) GER must respond to the notice with either "approval" or "disapproval and detailed comments;" and (iii) the

[1] "Exhibits" referenced herein are attached to the *Declaration of Sebastian Mertens* ("**Mertens Decl.**") filed concurrently herewith. "Ghinassi Exhibits" referenced herein are attached to the *Declaration of Floriano Ghinassi* ("**Ghinassi Decl.**") filed concurrently herewith.

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Engineer must agree or "determine" the amount, if any, VW is entitled to be paid. Ex. 1 (TSA) §§ 2.4.1-2.4.5. Under Sub-Clause 2.4.6, "[a]ny undisputed amount to which the Engineer determines [VW] is entitled . . . may be withheld from any payments that would otherwise be due to [GER] . . . or claimed from [GER] as a debt for which payment will be due" fourteen days after issuance of the Engineer's determination. *Id.* § 2.4.6. And, under Sub-Clause 2.4.8, "[a]ny amount which [VW] is entitled to be paid by [GER], as agreed between the Parties or determined by the Engineer . . . pursuant to [the TSA] shall either (a) be paid within thirty [] days after [GER] receives an invoice . . . from [VW] in respect of such amount or (b) may be withheld from any payments that would otherwise be due to [GER]." *Id.* § 2.4.8.

Contrary to VW's argument, GER did not write VW a blank check to withhold unlimited disputed amounts from GER. *Cf.* Mot. at 12. Rather, the TSA's termination clause prevents VW from withholding unlimited disputed amounts from payments due to GER. Specifically, the Parties agreed that

> [GER] shall[,] subject to the Direct Agreement[,] be entitled to terminate the [TSA] if: . . . [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment ***(except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6)*** and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price[.]

Ex. 1 (TSA) § 16.2.1(b) (emphasis added). In other words, the Parties agreed that GER may terminate the TSA if (i) GER has not received the amount due under a Payment Certificate within thirty days after the Due Date for Payment; (ii) "except for when" VW is entitled to "undisputed amounts" under Sub-Clause 2.4.6; and (iii) the amount due exceeds five percent of the Contract Price (approximately $65.6 million). *Id*. Thus, VW can withhold disputed amounts only if they are under five percent of the Contract Price. If VW withholds more, as it has, GER can terminate.

The very first draft of the TSA (which appears to have been authored by VW's declarant Ignacio Iglesias) contemplated allowing VW to withhold "[a]ny amounts to which the Engineer

determine[d] that [VW was] entitled" and prohibiting GER from terminating so long as VW was entitled to such amounts, Ghinassi Decl. ¶ 9 (citing Ghinassi Ex. 1)—the exact interpretation VW advances in this lawsuit. But GER recognized that as a significant and unacceptable commercial imbalance in favor of VW, especially because the Engineer empowered to make crucial determinations was directly appointed by VW. *Id.* ¶ 10. Accordingly, GER proposed revisions that prohibited VW from withholding any amounts (disputed or undisputed) and gave GER a broad right to terminate the TSA if it did not receive amounts due (in excess of five percent of the Contract Price) within thirty days after the Due Date for Payment. *Id*. ¶ 10 (citing Ghinassi Ex. 2). The Parties exchanged numerous drafts over several months as they worked towards a compromise. *Id*. ¶¶ 11-16 (citing Ghinassi Exs. 3-5). About a year after the Parties' negotiations began, the Parties landed on what would become the final terms of Sub-Clauses 2.4.6, 2.4.8, and 16.2.1(b)—allowing VW to withhold undisputed amounts and allowing VW to withhold disputed amounts, ***but only up to five percent of the Contract Price***, at which point GER could terminate the TSA and, by extension, the SMA. *Id.* ¶¶ 17-19 (citing Ghinassi Exs. 6-7); Ex. 2 (SMA) § 15.8.1.

In refusing to pay GER, VW acts as if the Parties signed VW's first draft of the TSA. Ignoring the Parties' fourteen months of negotiations, VW has continued to insist that it is entitled to withhold unlimited disputed amounts from payments due to GER without triggering GER's termination right. *E.g.*, Ex. 8. VW is now withholding more than $360 million in disputed amounts from GER. Ex. 9-13 (Default Notices).

C. VW Ignores the TSA's Plain Terms and Negotiation History to Avoid Paying GER for Nearly Two Years

On July 13, 2024, one of the wind-turbine blades that GER's affiliate had manufactured and installed ("**Blade 17**") broke and collapsed into the waters of Nantucket (the "**Blade Event**").

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Mertens Decl. ¶ 10. Immediately thereafter, GER initiated a comprehensive investigation to determine the cause and engaged a third-party expert to conduct an independent investigation. *Id*. Those analyses determined that the Blade Event was attributable to a specific, localized manufacturing deviation affecting Blade 17. *Id*.[2]

After the Blade Event, GER promptly implemented corrective measures not only to address the manufacturing deviation but also to ensure the integrity and operability of the entire Project. *Id*. ¶ 11. For example, even though the TSA did not require wholesale replacement, as a precautionary risk-mitigation measure, GER removed and replaced blades that had previously been installed (the "**Removed Blades**"). *Id*. GER also continued to work diligently and in good faith to complete the Project, including by continuing to manufacture, install, and deliver blades for the remaining WTGs. *Id*. As a result, the Project is nearly complete. *Id*.

Throughout this period, the Engineer has continued to issue Payment Certificates in accordance with the TSA, and GER has issued VW corresponding invoices. *Id*. ¶ 12-13; Exs. 3-7 (Payment Certificates). But despite GER's performance and the Engineer's certification of GER's work, VW has leveraged the Blade Event to avoid paying GER. Mertens Decl. ¶ 14. Specifically, VW has asserted that it is entitled to "offset" GER's invoices against amounts that VW claims it is owed—a position GER has disputed at every turn. *Id*. ¶ 14-15; Ex. 14 (Dispute Notice Correspondence).[3] Thus far, VW has purported to offset GER's invoices against approximately

[2] The TSA contemplated that such deviations could occur and allocated the associated risks. *See* Ex. 1 (TSA) §§ 1.1.51, 1.1.52, 1.1.53, 11.1-11.14. The deviation that caused Blade Event was a "Defect" under the TSA. *Id.* § 1.1.51. And the TSA expressly provides that (i) GER must "remedy [such] Defects by repair or, in [GER's] discretion, replacement of the Defective component . . . ," *id.* § 11.1.1(b), and (ii) "Clause 11 [Defects Liability] sets forth the exclusive warranties and remedies for all claims based on failure of or Defect in the Works . . . ," *id.* § 11.2.6.

[3] *See* Crozier Decl. Ex. 1, which is attached to the Declaration of Jennifer Crozier filed in support of GER's *Cross-Motion to Compel Arbitration*.

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$308 million that GER allegedly owes VW (including approximately $185.4 million for the Removed Blades, even though every one of them has been replaced). *Id.* ¶ 15.[4] VW's sole basis for withholding such amounts is Sub-Clause 2.4.8 of the TSA. Ex. 8 (Interest and Setoff Updates).

D. GER's Termination Notice and VW's Ability (but Failure) to Cure

On February 27, 2026, GER issued a notice of termination pursuant to Sub-Clause 16.2.1(b) of the TSA (the "**Termination Notice**"). Mertens Decl. ¶ 23; Ex. 15 (Termination Notice). Under the terms of the TSA, VW has a thirty-day cure period, *see* Ex. 1 (TSA) § 16.2.2, followed by a thirty-day cure period for the agent representing VW's lenders (the "**Collateral Agent**"), Ex. 16 (Direct Agreement) § 3(b)(i). Accordingly, and unless VW or the Collateral Agent reduces the unpaid amounts below five percent of the Contract Price, the Agreements will terminate on April 28, 2026 (the "**Termination Effective Date**").

If VW or the Collateral Agent reduces outstanding unpaid amounts below the contractual threshold, the Agreements will remain in full force and effect, Ex. 1 (TSA) § 16.2.2, and GER will continue performing. To date, however, neither VW nor the Collateral Agent has paid these amounts. Mertens Decl. ¶ 36. Instead, and in addition to refusing to pay, VW has elected to draw on—and keep for itself—a $129 million performance bond that GER posted. Mertens Decl. ¶ 27; Ex. 24. Because of VW's and the Collateral Agent's non-payment, the Agreements are set to terminate pursuant to the Parties' agreed-upon contractual terms.

[4] VW paid GER for the Removed Blades. Following the Blade Event, however, the Engineer purported to "rescind" the Payment Certificates corresponding to the Removed Blades, after which VW began offsetting GER's invoices against what it referred to as "wrongfully procured amounts." The Engineer was not entitled to rescind the Payment Certificates, including because, under the TSA, VW's sole remedy for the Defect at issue was repair or replacement. *See supra* at note 2. In addition, the TSA contains other negotiated limits on the damages that VW can recover, which VW's withholdings (and its claim to have unlimited withholding rights) ignore. Each of these issues needs to be arbitrated.

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E. GER's Services Are No Longer Required to Complete or Service the Project

On the Termination Effective Date, GER will no longer be necessary to complete, service, or maintain the Project. Mertens Decl. ¶ 37. The activities required to complete the remaining work are services commonly performed in the offshore wind industry by a combination of contractors, subcontractors, and trained technicians; they no longer require specialized vessels but readily obtainable boats and helicopters. *Id*. ¶ 39. Furthermore, many of the required tools, equipment, and processes used to perform this work are either commercially available or can be provided or replicated without any unique dependency on GER. *Id*. ¶ 28. To the extent access to certain GER-developed materials, software, or tools are needed to facilitate completion, service, or maintenance, GER is able and willing to provide reasonable access or transition support to VW or its contractors. *Id*. ¶ 39.

For example, to complete the Project's commissioning activities, GER relies on numerous subcontractors, including Endiprev USA and Ventus Energy—two reputable offshore wind service providers who have developed extensive knowhow and experience with the Project—to complete the works. *Id*. ¶ 38. VW knows this. In the TSA, GER identified over ***160*** key subcontractors who can work on various components of the Project, each of which can be used to finish the Project. Ex. 1 (TSA, Schedule B.12 – List of Key Subcontractors) at 318-24. The Parties explicitly contemplated allowing VW to replace GER, *e.g.*, Ex. 1 (TSA) §§ 4.4.6, 4.4.7, 15.2.5, and GER has agreed to assign those subcontracts to VW, if necessary, Mertens Decl. ¶ 38. GER's subcontract agreements expressly contemplate this outcome: key service providers permit assignment to VW upon termination of GER's service obligations, ensuring continuity of work without disruption. *Id.*

Separate and apart from these entities, numerous other companies, including VW's parent companies and other contractors, have the technical resources to complete, service, and maintain

the Project. *Id*. ¶ 38-39. To the extent GER's specialized tools or plans are required, GER will provide the replacement contractor with such materials. *Id*. ¶ 39. Accordingly, many companies, either alone or in combination, could complete the Project. *Id.*

III. LEGAL STANDARD

The standard for issuance of a temporary restraining order is the same as for a preliminary injunction, *G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, No. 17–0882, 2017 WL 3573659, at *1 (Mass. Super. Ct. July 25, 2017), with both being "extraordinary remed[ies] never awarded as of right," *AM Project Norwood, LLC v. Endicott S. Dev. Corp.*, No. 1784CV02765BLS2, 2019 WL 938901, at *1 (Mass. Super. Ct. Jan. 22, 2019). (citation omitted). Instead, these "significant remed[ies]" should only be granted if the movant "ha[s] made a clear showing of [its] entitlement thereto." *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Accordingly, VW must clearly show "'(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction.'" *Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018). Additionally, where the injunction "requires" a party to take action (a mandatory injunction), courts "impose a higher burden on the movant to justify" the injunction, since such requests should only be granted in the most extraordinary circumstances. *Holick v. Bos. Med. Ctr.*, No. 2184CV1454, 2021 WL 5630802, at *5 (Mass. Super. Ct. Aug. 31, 2021) (collecting cases).

IV. ARGUMENT AND AUTHORITIES[5]

A. VW Cannot Clearly Show It Will Suffer Irreparable Harm Absent an Injunction

The party applying for an injunction bears the burden of "demonstrat[ing that it will suffer] irreparable harm from the" denial of its request. *Bos. Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Bos.*, 491 Mass. 556, 568 (2023). "[I]f the alleged harm can be redressed by . . . money damages at the conclusion of the lawsuit, a preliminary injunction is not warranted." *Footer v. Cylkowski*, No. 052573, 2005 WL 2462010, at *3 (Mass. Super. Ct. Aug. 12, 2005) (citing *Packaging Inds. Grp., Inc., v. Cheney*, 380 Mass. 609, 620-21 (1980)). Further, a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted. *Folan v. Santander Consumer USA Inc.*, No. 1:25-cv-11341-JEK, 2025 WL 1707231, at *7 (D. Mass. June 18, 2025). And "[w]here the moving party has failed to demonstrate that . . . it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Footer*, 2005 WL 2462010, at *2 (quoting *Packaging Inds. Grp., Inc.,* 380 Mass. at 616-17). Because VW seeks to prevent GER from exercising its contractual termination right and to compel GER to perform—potentially for years—without payment, the mandatory relief it seeks is prohibited. Indeed, any such injunction would require not mere "action" by GER, but a commitment to work on a large-scale project, unpaid, with VW, for years. Such relief would be appropriate, if at all, only in the most extraordinary circumstances, *see Holick*, 2021 WL 5630802, at *5—which do not exist here.

1. VW's Harm, If Any, Is Purely Economic and Self-Inflicted

Because VW's harm is purely economic and self-inflicted, the Motion must be denied. Even

[5] GER does not waive, and expressly reserves, its right to seek to compel arbitration of the Parties' dispute pursuant to Clause 20 of the TSA and files a cross-motion to compel arbitration concurrently herewith.

assuming VW's alleged parade of horribles will occur if the TSA terminates (it will not), the Motion puts the cart before the horse. The sole basis for the TSA's termination is VW's own decision not to pay GER. Ex. 15 (Termination Notice). If VW wants GER to continue working on the Project, then VW just needs to make outstanding payments before the Termination Effective Date. Ex. 1 (TSA) § 16.2.2. If it turns out that VW was not obligated to make such payments, then VW will have a claim for damages against GER. That is the textbook example of reparable—not irreparable—harm. *See Folan*, 2025 WL 1707231, at *7; *see also Pentwater Cap. Mgmt. LP v. Kaz*, No. 2021-1087-SG, 2022 WL 1052347, at *5 (Del. Ch. Apr. 8, 2022). For this reason alone, the Motion must be denied. *See Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007).[6]

2. VW Has Not Demonstrated That It Will Suffer Irreparable Harm

In an attempt to distract from this obvious solution to its self-made problem, VW argues that termination would (i) "deprive VW of GER's unique services that cannot be replaced by any other contractor," (ii) "imperil . . . VW's ability to complete [] the Project" given the outstanding work that "remains to be completed," and (iii) "imperil the Project's financing," Mot. at 14-18. Each argument fails.

First, GER's services are replaceable, and the Project is not imperiled. As discussed above, the Project is nearly complete. All but seven of the WTGs have generated energy, and GER has taken extraordinary steps to ensure the WTGs are operational, safe, and defect-free. Mertens Decl. ¶ 11. The remaining services required to complete the Project are commonly performed in the industry by several contractors, subcontractors (including subcontractors that GER has engaged for the Project and could assign to VW), and trained technicians, each of which would be able to

[6] If VW contends it does not have the funds to make such payments, that would not constitute irreparable harm; it would allow "virtually every person who" owes money to get an injunction. *Charlesbank Equity Fund II, Ltd. P'ship v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

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step into the Project as necessary. *Id*. ¶ 37-39. To the extent GER has unique technologies or software, GER has agreed to make such materials available to the replacement contractors as necessary. *Id*. ¶ 39. Thus, it is simply not the case that "[n]o replacement could replicate GER's" performance, *cf.* Mot. at 15, which is the standard that all of VW's authority imposes for when "unique" services warrant an injunction.[7] And since GER's services are not irreplaceable, termination will neither doom the Project nor VW's financing, and VW's irreparable harm claims fail. *See*, *e.g.*, *AM Project Norwood, LLC*, 2019 WL 938901, at *3.

Second*,** VW has failed to clearly establish that its alleged "'injury [] is not remote or speculative, but [] actual and imminent.'" *Am. Fed'n of State, Cnty. & Mun. Emps., Council 93, AFL-CIO, Loc. 419 v. Rouse*, No. CIV. A. 02-1819, 2002 WL 1584583, at *2 (Mass. Super. Ct. May 30, 2002) (citation omitted). All of VW's alleged harm is grounded not in reality but in its "belief" about what will happen after termination: VW "believe[s]*** that the Project's WTGs would become stranded . . . if GER would be permitted to" terminate, Møller Decl. ¶ 30 (emphasis added); VW "***believe[s]*** that GER would [not] actively facilitate the provision of any proprietary information] to another supplier," *id*. ¶ 32 (emphasis added); and, as it relates to its financing claim, VW does not even purport to opine that the lenders ***will declare*** an event of default (because they usually do not, *see* Mertens Decl. ¶ 41). Rather, VW states that "the lenders will ***have the ability to declare*** an event of default." Møller Decl. ¶ 37 (emphasis added). "But assertions in an affidavit or verified complaint made on 'information and belief' that are not supported by any other

[7] *Compare Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (product "could not simply [be] replace[d]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (similar) *with i.Lan Sys., Inc. v. Netscout Serv. Level Corp.*, 183 F. Supp. 2d 328, 334 (D. Mass. 2002) (finding "software is not unique or irreplaceable as a practical matter, so the Court would not award specific performance"); *CMRK, Inc. v. Mooney*, 193 F. Supp. 2d 286, 290 (D. Mass. 2001) (similar).

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evidence do 'not supply an adequate factual basis for . . . showing [] likely irreparable harm." *Anaesthesia Assocs. of Mass., PC v. Plexus Anesthesia Servs. of Mass., PC*, No. 1884CV00375BLS2, 2018 WL 1863559, at *1-2 (Mass. Super. Ct. Feb. 21, 2018) (citations omitted). And here, there is no actual evidence to support VW's claims. For example, VW does not attest that—in the nearly two months since the Termination Notice—it tried to find a replacement contractor but failed or that its lenders have actually threatened to declare an event of default. The Motion must therefore be denied. *Id*.

None of VW's cases warrants a different conclusion. *See* Mot. at 16-18 (citing *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026); *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026); *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026)). Each case was about a "government issued [ ] stop work order," that "suspended ***all ongoing activities*** related to the project." *E.g.*, Bivens Decl. Ex. 3 at 79 (emphasis added). GER's termination does not stop VW from continuing work on the Project—it just means that VW cannot force GER to continue to work without pay—and, as such, the entire "premise [of VW's alleged harm] is faulty," and VW "has failed to show [] that it will be irreparably harmed should the injunction not issue." *Am. Grain Prods. Processing Inst. v. Dep't of Pub. Health*, 392 Mass. 309, 327 (1984); *see also Equitable Dev., LLC v. Marshfield Airport Comm'n*, No. CV 25-10736-BEM, 2025 WL 1115017, at *4 (D. Mass. Apr. 15, 2025).

B. VW Has Not Clearly Shown a Likelihood of Success on the Merits

1. The Plain Language of the TSA Entitles GER to Terminate

Under New York law (which governs the TSA, Mot. at 5 n.6), "where termination clauses exist, they will be enforced as written." *Callen v. Fourteenth Church of Christ, Scientist N.Y.C.*, 112 F. App'x 79, 80 (2d Cir. 2004) (summary order). "[I]t is a well[-] established principle of law that when a contract affords a party the . . . right to limit [a contract's] life by notice of termination,

that right is absolute and will be upheld in accordance with its clear and unambiguous terms." *Outdoor Partners LLC v. Rabbit Hole Interactive Corp.*, No. 13 CIV. 1797 KBF, 2014 WL 1316350, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Red Apple Dev. Ctr. v. Cmty. Sch. Dists. Two*, 756 N.Y.S.2d 527 (N.Y. App. Div. 1st Dep't 2003)).

To understand the scope of the TSA's termination provision, the Court must ascertain the intent of the Parties from the plain language of the agreement, considering "the entire contract . . . the relation of the parties[,] and the circumstances under which it was executed." *AT&T Corp. v. Atos IT Sols. & Servs., Inc.*, 708 F. Supp. 3d 385, 401 (S.D.N.Y. 2023). The Court should "give effect and meaning to every term of the contract" and "should not interpret[] [the contract in a manner that will] produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Id*. 400-01.

As set forth above, the plain language of the TSA and the facts of this case authorize GER's termination. Namely, the TSA provides that GER "***shall*** . . . ***be entitled to terminate***" when three conditions are met, and VW itself has admitted that each is met here:

	Sub-Clause 16.2.1(b) Termination Conditions	**VW's Admissions**
1.	GER must not have "receive[d] the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment;"	"***For more than a year***, VW has . . . with[e]ld[amounts] . . . that would otherwise have been due' to GER under Payment Certificates." Mot. at 4.
2.	"except for when [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6;" and	"VW [instead] has exercised its right under ***Sub-Clause 2.4.8*** to withhold" ***disputed*** amounts. Mot. at 9.
3.	"the amount due [must be] in excess of the sum equivalent to five per cent (5%) of the Contract Price" ($65.6 million).	"Amount of VW Withholdings" "$***308,051,124***[.]" Mot. at 4.

There is therefore no question that GER is acting within its rights to terminate the TSA, and the Motion should be denied. *Sur La Table Ltd. v. Rosenthal AG*, 575 N.Y.S.2d 281, 281 (N.Y. App. Div. 1st Dep't 1991).

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2. Each of VW's Arguments Fails

VW asserts that (i) "GER has not disputed any of the Engineer determinations under Clause 20," Mot. at 9; (ii) "VW has exercised its right under Sub-Clause 2.4.8," meaning "no amount is due" to GER, Mot. at 9-11, 13; (iii) the exception in the termination clause is only referring to part of Sub-Clause 2.4.6, Mot. at 11-13; and (iv) ambiguities must be resolved in favor of VW, Mot. at 13. Each argument fails.

The first argument is incorrect and illogical. GER has consistently and contemporaneously disputed the VW-appointed Engineer's determinations, both informally and in writing, Ex. 14 (Dispute Notices); the only reason it did not serve a formal notice is because the Parties agreed ***not*** to do so;[8] and the fact that GER did not invoke the formal dispute-resolution processes of Clause 20 of the TSA does not mean no dispute exists.

VW's second argument also fails. VW contends that, under Sub-Clause 2.4.8, once the Engineer determines that VW is entitled to an amount, those amounts are no longer "due," and GER cannot terminate for non-payment. Mot. at 10. But that reading renders the parenthetical in Sub-Clause 16.2.1(b) superfluous. Sub-Clause 16.2.1(b) expressly provides that GER's termination right applies "***except for when*** [VW] is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6." If, as VW argues, ***any*** withholding eliminated the "amount due" and blocked termination, there would be no need for a separate carve-out limited to ***undisputed*** amounts under ***Sub-Clause 2.4.6***. Under VW's reinterpretation, that carve-out would do no work. Because contract interpretation must give effect to every provision, *AT&T Corp.*, 708 F. Supp. 3d at 401; *HongKong & Shanghai Banking Corp. v. Suveyke*, 392 F. Supp. 2d 489, 492 (E.D.N.Y. 2005), the Court should reject VW's interpretation.

[8] *See supra* at note 3.

VW tries to give meaning to the parenthetical by arguing that "the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately 'claim[]' undisputed amounts 'as a debt for which payment ***will be due***' within 14 days of a ***future*** Engineer determination." Mot. at 13. But that is not what Sub-Clause 16.2.1(b) says. Rather, the provision makes clear that GER is entitled to terminate the TSA except for where VW is entitled to undisputed amounts under Sub-Clause 2.4.6. Ex. 1 (TSA) § 16.2.1(b). If the Parties had intended the parenthetical to refer to the second half of Sub-Clause 2.4.6, they could and would have said so; they did not, and, under black-letter New York law (and VW's own authority), the Court may not rewrite the Parties' agreement under the guise of interpretation. *Vermont Teddy Bear Co., Inc. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 768 (2004).

Such a rewriting would not only be impermissible but would also ignore the circumstances of the Parties and the context in which the TSA was made. GER was aware of the potential risks associated with this large-scale Project (which experienced delays even before GER came on board) and took careful steps to limit its potential liability under the TSA. Ghinassi Decl. ¶ 20; Mertens Decl. ¶ 6. "There is nothing to suggest that, in those circumstances, [GER] would have entered into an agreement to undertake . . . a liability with unlimited potential" by giving VW a blank check. *Awards.com, LLC v. Kinko's, Inc.*, 834 N.Y.S.2d 147, 153 (N.Y. App. Div. 1st Dep't 2007), aff'd, 14 N.Y.3d 791 (2010).[9]

VW's final argument is backwards. If the Court concludes that the relevant provisions of the TSA are ambiguous, then the Court may consider extrinsic evidence to determine what the Parties meant by the words they chose. *See, e.g.*, *Fattorusso v. RJR Mech., Inc.*, 16 N.Y.S.3d 844,

[9] Even if VW potentially had such unlimited withholding rights, it did not have such rights after GER replaced the Removed Blades, VW's sole remedy for such Defects. *Supra* n. 4.

846 (N.Y. App. Div. 2d Dep't 2015). Mr. Iglesias claims that he never "understood" Sub-Clause 16.2.1(b) "to cap or limit VW's ability to withhold amounts under Sub-Clause 2.4.8." Iglesias Decl. ¶¶ 29-30. But assertions like these are not extrinsic evidence, and the Court should not consider them. In interpreting a contract, "a court looks to the objective meaning of contractual language, not to the parties' individual subjective understanding of it." *Ashwood Cap., Inc. v. OTG Mgmt., Inc.*, 948 N.Y.S.2d 292, 296 (N.Y. App. Div. 1st Dep't 2012). This rule is applied "with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople." *Id.* at 297.

The only admissible extrinsic evidence before the Court is the declaration of Floriano Ghinassi (GER's lead negotiator of the TSA) and attached TSA drafts because they show the history of the parties' negotiations to shed light on the parties' intent. *See generally* Ghinassi Decl. That declaration and those drafts make clear that the Parties intended that, under Sub-Clause 2.4.6 of the TSA, VW could withhold undisputed amounts from payments due to GER and, under Sub-Clause 2.4.8, VW could withhold disputed amounts from payments due to GER—but, under Sub-Clause 16.2.1(b), only up to five percent of the Contract Price. Ghinassi Decl. ¶ 20; Ghinassi Exs. 1-7. VW's interpretation, on the other hand, returns the Parties to the status quo before any of their negotiations or revisions—i.e., Mr. Iglesias's first draft of the TSA—which contemplated giving VW unlimited setoff rights and GER no meaningful termination rights. The Parties spent months negotiating these terms, with each side giving ground on their respective positions until they reached the final bargain to which VW is bound. VW cannot "obtain through litigation what [it] failed to secure at the bargaining table." *Awards.com, LLC*, 834 N.Y.S.2d at 153.

At best, VW's arguments "reveal[] disputed and unresolved issues" that "'subvert [VW's] likelihood of success on the merits . . . to such a degree that it cannot be said that [VW has]

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established a clear right to relief." *Corp. Coffee Sys., LLC v. R.U.G. Consulting, LLC*, 227 N.Y.S.3d 673, 675 (N.Y. App. Div. 2d Dep't 2025). Where the parties to a request for injunctive relief present competing versions of complex contract provisions, the plaintiff's motion must be denied. *Id.*; *see also Tretola v. Gossels*, No. CA 01-0442A, 2001 WL 498273, at *1 (Mass. Super. Ct. Apr. 24, 2001). For these reasons, VW cannot carry its burden to establish a likelihood of success. The Court should deny the Motion. *Bina v. Ristorante Toscano, Inc.*, No. CIV.A. 06-596-BLS2, 2006 WL 1084113, at *13 (Mass. Super. Ct. Feb. 24, 2006).

C. VW Has Not Shown the Balance of the Equities Weighs in VW's Favor

VW's only argument for why the equities fall on its side of the ledger is that "the overwhelming ***public interest*** in VW's operations favors an injunction." Mot. at 18. But VW ignores that this is a private contractual dispute, and the only reason it exists is VW's decision not to pay. "[I]t is reversible error for a trial court to consider harm to the public interest as a factor in granting or denying a preliminary injunction in a case like this that involves a dispute between [] private" parties. *Anaesthesia Assocs. of Mass., PC*, 2018 WL 1863559, at *1 n.1 (citing *Bank of New England, N.A. v. Mortg. Corp. of New England,* 30 Mass. App. Ct. 238, 246–48, rev. denied, 409 Mass. 1105 (1991)). Accordingly, VW's arguments—and all its authorities from the federal law context—should be dismissed out of hand. *Bank of New England, N.A.*, 30 Mass. App. Ct. at 245-46 ("Massachusetts law differs from Federal law[;] the public interest is not ordinarily considered.").

Even if the public interest were relevant, it would favor GER. The public's interest lies in enforcing contractual terms as written. *See Empower Energies, Inc. v. SolarBlue, LLC*, No. 16cv3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016). Holding owners/developers to the terms of their development contracts—and not allowing them to escape payment by asserting meritless arguments—is more likely to incentivize contractors to enter into

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and perform under such contracts. *See Bank of Am., N.A. v. ASD Gem Realty LLC*, 164 N.Y.S.3d 566, 572-74 (N.Y. App. Div. 1st Dep't 2022). Finally, VW is wrong that GER will suffer no harm. Relying on Sub-Clause 20.9.1, VW contends GER will suffer no harm because GER agreed to perform during the resolution of disputes. Mot. at 19. VW is taking Sub-Clause 20.9.1 too far. All that clause provides is that GER will continue to perform pending a determination of whether preliminary relief is warranted, not that GER will work indefinitely for free. Indeed, the TSA's more specific provision, Sub-Clause 16.3.1, explicitly requires GER to "cease all further work" after "a notice of termination . . . has taken effect." In any event, when determining the balance of the equities, this Court must look "to the risk of harm in view of the party's chance of success on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 622. Since VW has demonstrated neither a chance of succeeding on the merits nor suffering non-compensable harm, the equities favor denying the injunction.

If the Court were inclined to grant the Motion (it should not be), VW should be required to secure GER against the costs and damages of a wrongful injunction. Mass. R. Civ. P. 65(c). Any such injunction would require GER to continue performing under a multi-billion-dollar contract potentially for years while being deprived of the very payments the TSA entitles it to receive. That is precisely the type of harm Rule 65(c) is designed to address. At a minimum, VW should be required to post security sufficient to cover GER's ongoing performance costs and any additional damages resulting from a delay in the exercise of GER's contractual termination rights. GER respectfully reserves all rights to be heard on the appropriate amount and form of such security, if necessary.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Motion in its entirety.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adam S. Gershenson, hereby certify that, on this 15th day of April 2026, the foregoing document was electronically filed with the Superior Court for Suffolk County via efileMA and that a true copy of the foregoing document was served via e-mail upon Plaintiff's counsel of record.

/s/ *Adam S. Gershenson*
Adam S. Gershenson