PUBLIC DOCUMENT CASE STUDY

From 40 MW to Usable Capacity

Commercial lessons from a public data center colocation agreement

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Based solely on a public SEC filing. Redacted terms are not inferred.

This analysis uses a public SEC filing—and does not fill in the redactions

PUBLIC FILING

8-K

Filed by Digi Power X Inc. on 8 May 2026.

CONTRACT EXHIBIT

10.1

Data Center Colocation and Master Services Agreement.

EVIDENCE BOUNDARY

[***] = unknown

Redacted economics and omitted exhibits are not reconstructed.

How to read the deck

Contract fact: directly supported by visible contract language.
Commercial interpretation: analysis of how the mechanism works in practice.
Transferable question: a review prompt for other deals—not a claim of market standard.
This material is educational and does not constitute legal, investment, accounting, tax or procurement advice.

The agreement converts headline capacity into a chain of conditional rights

The commercial product is not merely MW; it is usable, maintainable and recoverable capacity.

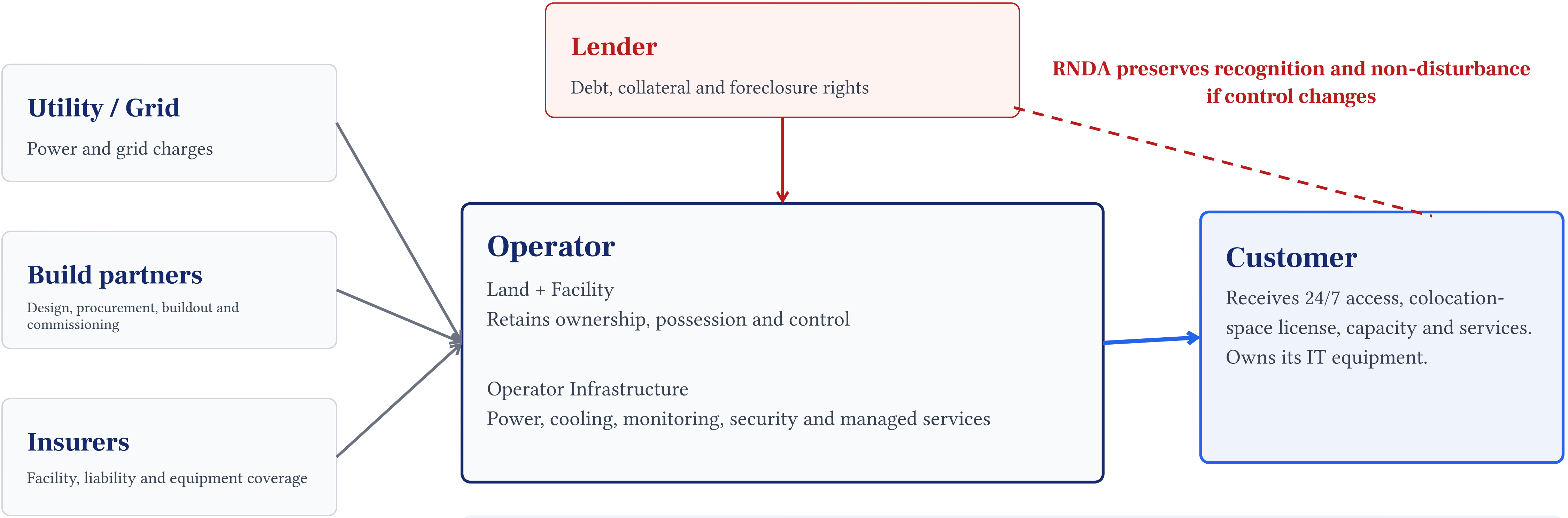
- **The transaction is a license plus managed infrastructure services—not a transfer of real-estate rights.**
  The Operator retains ownership, possession and control of the land and facility.
- **40 MW is split into 15 MW of Phase 1 capacity and 25 MW of conditional Phase 2 capacity.**
  Financing, customer approval, construction, commissioning and RFS still stand between signature and use.
- **Take-or-pay, NRCs and pass-throughs allocate utilization, buildout and regulatory-cost risk.**
  Capacity certainty for the Customer supports cash-flow certainty for the Operator.
- **An outage is not automatically a credit, a default or a termination right.**
  Evidence, exclusions, notice, cure and escalation determine which remedy—if any—becomes available.
- **Operator financing can become Customer continuity risk.**
  A signed RNDA helps preserve access and services if a lender or successor takes control.

Source: SEC Exhibit 10.1, Digi Power X-Cerebras public agreement, Articles 2-17; author synthesis

DEAL STRUCTURE

The Customer buys contractual capacity; asset control remains with the Operator ecosystem

Service rights and asset rights follow different chains.



Acquisition implication: confirm that access, equipment operation and services survive a lender takeover—not merely that the Operator promises service today.

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Source: SEC Exhibit 10.1, Digi Power X-Cerebras public agreement, §§2 and 16; author analysis

40 MW is not one firm commitment: 15 MW is committed and 25 MW is conditional

40 MW

headline capacity

PHASE 1 | 15 MW

First committed phase. Delivery remains subject to construction, commissioning and RFS.

PHASE 2 | +25 MW

Additional capacity only after Operator financing and written Customer approval within the contract process.

Potential total: 40 MW

Only if the Phase 2 conditions are satisfied—and each phase separately reaches RFS and acceptance.

A capacity forecast should distinguish headline, committed, conditional, RFS and operating capacity.

Capacity becomes usable only after five commercial and technical gates

A signed MW commitment is the start of the chain—not the end.

1 Phase condition
Phase 2 financing + Customer approval

→

2 Construction
Physical buildout completed

→

3 Commissioning
Integrated systems tested and validated

→

4 RFS evidence
Notice + engineer-of-record report

→

5 Acceptance
Inspection, deficiency cure or deemed acceptance

Management control

Every gate needs an owner, evidence, deadline and escalation path. Otherwise contract rights exist on paper but fail operationally.

Deemed acceptance turns silence into delivery risk

The inspection window must become an internal workflow before the RFS Notice arrives.

RFS Notice
Operator sends notice + commissioning report

→

Technical review
Validate Exhibits B / C / F and inspect the site

→

Objection
Identify material deviations before deadline

→

Cure + retest
Operator corrects; Customer verifies

→

Accepted
Expressly—or deemed accepted after silence

Minimum operating workflow

Notice intake + backup owner
Commissioning-report review
Inspection calendar + deficiency template
Cure tracker + independent-engineer escalation

The hidden failure mode

A qualified right to reject non-conforming delivery can disappear if the right people do not receive, review and answer the notice within the contract clock.

The fee model exchanges utilization flexibility for capacity certainty

BUILDOUT

NRC

Funds design, procurement, construction, installation and commissioning.

CAPACITY RESERVATION

Take-or-pay

Fees are based on contracted IT Load—not only actual draw.

REGULATORY COST

Pass-through

Certain new or increased government / grid charges may be transferred with evidence.

Customer receives

Reserved high-density capacity, clearer delivery obligations and long-term service access.

Operator receives

Pre-funded buildout support and more predictable cash flow for a capital-intensive facility.

Unknown: the public version redacts the actual rate, escalation, NRC economics and several caps—so price fairness cannot be concluded.

Source: SEC Exhibit 10.1, Digi Power X-Cerebras public agreement, Article 6; author analysis

Operational performance depends on the demarcation line

The same symptom can create different rights depending on which asset or service failed.

ISSUE	OPERATOR	CUSTOMER	COMMERCIAL CONTROL
Facility power / cooling	Build, commission, maintain and provide contracted service	Operate within contracted specifications	**SLA, monitoring, maintenance notice**
Customer IT equipment	Provide the contracted environment	Procure, install, maintain and insure	Asset list, warranty, incident evidence
Buildout	Manage construction and suppliers	Approve, specify and fund NRCs on time	Milestones, approval log, change control
Additional services	Deliver under SOW / cost-plus terms	Approve scope and charges	SOW, PO and invoice validation

Commercial consequence: ‘GPU down’ is not enough evidence—cause, ownership and the contractual demarcation point determine attribution.

Source: SEC Exhibit 10.1, Digi Power X-Cerebras public agreement, Article 5 and related exhibits; author operating interpretation

An outage does not automatically produce a Service Credit

Eligibility depends on timing, notice, cause, exclusions and the omitted Exhibit D formula.

Incident recorded	Start / end time, affected phase and service
Maintenance test	Was notice valid and was the window permitted?
Cause test	Operator, Customer, Force Majeure or excluded downtime?
Formula test	Claim protocol, cap and deadline in Exhibit D
Invoice recovery	Credit appears on the next invoice

Why this matters

Power available does not mean cooling available. Service restored does not prove response time. A maintenance exclusion may remove the credit even when compute stopped.

Evidence gap

Exhibit D is omitted from the public filing, so the actual formula, cap and claim window remain unknown.

Four risk mechanisms answer four different questions

Treating them as interchangeable hides uninsured loss, third-party exposure and payment asymmetry.

Insurance | Who funds covered loss?

Facility and Operator Infrastructure coverage sit primarily with the Operator; Customer equipment and related property coverage sit primarily with the Customer.

Indemnity | Who handles third-party claims?

Allocation depends on cause—for example, facility-level design or operations versus Customer equipment, personnel or breach.

Liability | Which losses are recoverable?

Consequential loss may be excluded; remaining loss may be capped; exceptions are partly redacted and must be reviewed separately.

Force Majeure | What is excused?

Relief requires notice and mitigation—but payment obligations are expressly carved out, creating a continuity-versus-cash-flow tension.

Operator financing becomes Customer continuity risk when the facility changes hands

RNDA preserves future access and service continuity—but does not cure every pre-existing problem.

Operator

Owns / controls the facility and may grant financing security.

Lender

May obtain title or control through foreclosure, deed-in-lieu or other remedies.

Customer

Needs continued access, equipment operation and services.

RNDA = Recognition ✦ Non-disturbance ✦ Attornment

The successor recognizes the contract; does not disturb a non-defaulting Customer; and becomes the new counterparty. The visible clause limits successor liability for certain pre-existing obligations and defenses.

A service incident is only the first rung in the remedy ladder

Service Credit, breach, material breach and Event of Default are distinct legal-commercial states.

01 Incident / SLA variance

Define scope, duration and affected Service Order

→

02 Evidence + exclusions

Logs, tickets, maintenance, Customer cause, Force Majeure

→

03 Rights classification

Credit eligibility, breach or material breach

→

04 Formal notice + cure

Valid delivery, required cure and escalation

→

05 Default + remedies

Termination, refund, specific performance or other relief

A vague or omnibus default notice has no effect under §13.3. The notice must identify the breached provision, facts and required cure action.

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Source: SEC Exhibit 10.1, Digi Power X-Cerebras public agreement, Articles 7, 12-14 and 17; author analysis

Formalities can preserve—or silently destroy—commercial rights

Assignment / control change

Review consent, permitted transfers, successor capability and competitor restrictions. A transaction is not automatically prohibited—but the successor must satisfy the contract structure.

Formal notice

Hand delivery, recognized overnight courier or email with confirmed read receipt may be valid under §17.2. The notice matrix must keep addresses, owners and evidence of receipt current.

Dispute escalation

Operational representatives negotiate first; senior executives follow; Delaware courts come after the escalation steps, subject to emergency-relief exceptions.

A right can be economically real yet procedurally unusable if notice, authority, escalation or venue rules are missed.

Source: SEC Exhibit 10.1, Digi Power X-Cerebras public agreement, §§17.1-17.3

The agreement is best managed as five linked control systems

Any one failure can prevent contracted capacity from being delivered, maintained or protected in distress.

1 Delivery

Phases, construction, commissioning, RFS, inspection, acceptance

2 Economics

NRC, prepaid fees, take-or-pay, escalation, pass-through, tax

Usable compute capacity

Available • maintainable • recoverable

3 Operations

Responsibilities, SLA, maintenance, incidents, reporting, credits

4 Risk + continuity

Insurance, indemnity, liability, FM, financing, RNDA

5 Default + exit

Evidence, notice, cure, remedies, termination, equipment removal

Acquisition governance: contract calendar • RACI • evidence log • notice register • remedy tracker

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Source: SEC Exhibit 10.1, Digi Power X-Cerebras public agreement, Articles 2-17; author synthesis

The acquisition manager's job changes across four contract phases

1 BEFORE SIGNING

Define what is being bought

Parties, title, license structure, capacity, RFS, economics, SLA, risk, financing, default and notices

2 BUILD TO RFS

Turn delivery into governance

Financing approvals, milestones, Customer decisions, early access, commissioning, inspection, cure and delay attribution

3 OPERATIONS

Turn SLA into recoverable rights

Monthly reporting, RCA, maintenance notices, exclusions, credit calculations, pass-through evidence and insurance renewal

4 DISTRESS / EXIT

Preserve compute before litigating

RNDA contact, valid default notice, cure tracking, migration, equipment removal, data sanitization and refunds

The job is not only to acquire capacity—it is to keep the rights executable throughout the asset life cycle.

PRIORITY READING

Three exhibits contain the operational truth

The master agreement defines governance; the exhibits determine what actually happens on the ground.

EXHIBIT A

Schedule

When each phase is targeted, triggered and finally due.

EXHIBIT C

RFS criteria

What must be true before capacity is contractually ready.

EXHIBIT D

SLA ✦ credits

How operating failure is measured, excluded and compensated.

Then read the supporting exhibits

Facility specifications • technical requirements • responsibility and cost breakdown • physical security • escrow mechanics

Public-filing limitation: key exhibits and appendices were not included in the visible agreement, so a final Go / No-Go recommendation is not possible from the public record alone.

A disciplined review starts with 18 questions—not one headline number

01	**Parties and roles**	Operator, Customer, owners, guarantor, lender and authority
02	**Transaction structure**	Lease, license, services; retained access and control
03	**Capacity and phases**	Firm vs. conditional capacity; future options / ROFR
04	**Term and renewal**	Commencement trigger, renewal notice, holdover economics
05	**Delivery and RFS**	Dates, commissioning evidence and acceptance criteria
06	**Acceptance and delay**	Inspection, deemed acceptance and delay attribution
07	**Responsibility split**	Power, cooling, network, security and demarcation points
08	**NRC / prepayment / fees**	Use of funds, refundability and fee commencement
09	**Escalation / pass-through / tax**	Evidence, true-up and double-counting controls

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Source: Author checklist derived from the public agreement

The remaining questions determine resilience and exit optionality

10	**SLA / maintenance / credits**	Metrics, exclusions, formula, deadline, cap and sole-remedy language
11	**Insurance**	Limits, deductibles, additional insured and cancellation notice
12	**Indemnity**	Third-party claims, environmental / coolant exposure and cap treatment
13	**Liability**	Excluded losses, cap mechanics and carve-outs
14	**Default / cure / remedies**	Trigger, notice, cure, termination, refund and specific performance
15	**Force Majeure**	Definition, exclusions, notice, mitigation, payment and SLA treatment
16	**Title / financing / RNDA**	Encumbrances, recognition, non-disturbance and successor limits
17	**Assignment / Change of Control**	Consent, transfers, competitors, capability and credit
18	**Notices / disputes / law**	Valid delivery, escalation, governing law, venue and emergency relief

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Source: Author checklist derived from the public agreement

A compact glossary makes the contract easier to operate

Commissioning	Integrated testing and validation before RFS
RFS	Ready for Service—the contract-defined delivery state
Deemed acceptance	Silence within the window is treated as acceptance
Liquidated Damages	Pre-agreed estimate for hard-to-measure delay loss
Service Credits	Fee credits for qualifying SLA failure
Take-or-pay	Pay for contracted capacity regardless of actual use
NRC	One-time buildout / commissioning charge
Pass-through	Defined cost transferred with supporting evidence

RNDA	Recognition, Non-disturbance and Attornment Agreement
Attornment	Customer recognizes the successor as new Operator
Foreclosure	Lender enforcement against secured collateral
Encumbrance	Mortgage, lien, easement or other burden on title
Indemnity	Allocation of defense and loss for certain third-party claims
Liability cap	Contractual ceiling on specified monetary exposure
Cure period	Time allowed to fix a breach before further remedies
Specific performance	Request for actual performance—not only damages

CLOSING SYNTHESIS

MW is written on page one. Capacity value lives in delivery, continuity and remedies.

The acquisition function turns a capacity promise into engineering evidence, internal workflow, enforceable notice and recoverable operational rights.