

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

AN GLOBAL LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11294 (JKS)

(Jointly Administered)

Hearing Date: Sept. 22, 2023 at 11:00 a.m. (ET)

Objection Deadline: Sept. 15, 2023 at 4:00 p.m. (ET)

DEBTORS' MOTION FOR ENTRY OF: (I) AN ORDER (A) SCHEDULING A HEARING ON THE APPROVAL OF THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES OTHER THAN ASSUMED LIABILITIES AND PERMITTED ENCUMBRANCES, AND THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (B) APPROVING CERTAIN BIDDING PROCEDURES, BIDDING PROTECTIONS, AND ASSUMPTION AND ASSIGNMENT PROCEDURES, AND THE FORM AND MANNER OF NOTICE THEREOF, (C) AUTHORIZING THE DEBTORS TO ENTER INTO THE STALKING HORSE APA, AND (D) GRANTING RELATED RELIEF; AND (II) AN ORDER (A) APPROVING ASSET PURCHASE AGREEMENT, (B) AUTHORIZING THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES OTHER THAN ASSUMED LIABILITIES AND PERMITTED ENCUMBRANCES, (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (D) GRANTING RELATED RELIEF

The debtors and debtors-in-possession in the above-captioned cases (collectively, the “Debtors” or the “Company”) hereby submit this motion (this “Motion”), pursuant to sections

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1. The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number or registration number in the applicable jurisdiction, are: AN Global LLC (5504); AgileThought, Inc. (2509); 4th Source Holding Corp. (9629); 4th Source Mexico, LLC (7552); 4th Source, LLC (7626); AgileThought Brasil-Consultoria Em Tecnologia LTDA (01-42); AgileThought Brasil Servicos de Consultoria Em Software (01-20); AgileThought Costa Rica S.A. (6822); AgileThought Digital Solutions, S.A.P.I. de C.V. (3KR0); AgileThought México S.A. de C.V. (7E46); AgileThought, LLC (7076); AgileThought Servicios Administrativos, S.A. de C.V. (4AG1); AgileThought Servicios México S.A. de C.V. (8MY5); AgileThought, S.A.P.I. de C.V. (No Tax ID); AGS Alpama Global Services USA, LLC (0487); AN Data Intelligence, S.A. de C.V. (8I73); AN Extend, S.A. de C.V. (1D80); AN Evolution, S. de R.L. de C.V. (7973); AN USA (5502); AN UX, S.A. de C.V. (7A42); Cuarto Origen, S. de R.L. de C.V. (0IQ9); Entrepids México, S.A. de C.V. (OCYA); Entrepids Technology Inc. (No Tax ID); Facultas Analytics, S.A.P.I. de C.V. (6G37); Faktos Inc., S.A.P.I. de C.V. (3LLA); IT Global Holding LLC (8776); and QMX Investment Holdings USA, Inc. (9707). The Debtors' headquarters are located at 222 W. Las Colinas Boulevard, Suite 1650E, Irving, Texas 75039.



105, 363, 365, 503 and 507 of title 11 of the United States Code (the “Bankruptcy Code”), for the entry of: (i) an order, substantially in the form attached hereto as **Exhibit A** (the “Bidding Procedures Order”), (a) scheduling a hearing (the “Sale Hearing”) on approval of the proposed sale (the “Sale”) of all or substantially all of the Debtors’ assets (the “Assets”), free and clear of all encumbrances other than designated assumed liabilities and permitted encumbrances, to [Blue Torch Finance LLC], an entity organized and controlled by the Agent (as defined below), which has agreed to become the stalking horse bidder subject to finalizing the Stalking Horse APA (as defined below) (the “Stalking Horse Bidder”) or, in the event the Stalking Horse Bidder is not the Successful Bidder (as defined herein), then to the Successful Bidder (as defined below); (b) authorizing and approving certain bidding procedures for the Sale (collectively, the “Bidding Procedures,” a copy of which is attached as **Exhibit 1** to the Bidding Procedures Order), approving bidding protections in the form of an expense reimbursement for the Stalking Horse Bidder, and certain procedures for the assumption and assignment of the executory contracts and unexpired leases (collectively, the “Assumption Procedures”), and the form and manner of notice thereof; (c) authorizing and approving the Debtors’ entry into an Asset Purchase Agreement substantially in the form attached as **Exhibit 2** to the Bidding Procedures Order (the “Stalking Horse APA”) with the Stalking Horse Bidder; and (d) granting related relief; and (ii) an order (the “Sale Order”) (a) authorizing and approving the Sale on the terms contemplated in the Stalking Horse APA or, in the event the Stalking Horse Bidder is not the Successful Bidder, then an alternative asset purchase agreement (“Alternative APA”) with the Successful Bidder, and the Sale Order; (b) authorizing and approving the assumption and assignment of the certain executory contracts and unexpired leases in connection therewith (each an “Assigned Contract” and collectively, the

“Assigned Contracts”); and (c) granting related relief. In support of this Motion, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT

1. The Debtors commenced these chapter 11 cases (the “Chapter 11 Cases”) to effectuate an orderly and value-maximizing sale transaction for the benefit of their stakeholders and to address their liquidity issues and certain inequitable and heavily disputed tax assessments against certain of its Mexican Debtor-affiliates that now exceed \$200 million with interest and penalties (the “Mexican Tax Assessment”).

2. Prior to the Petition Date (as defined below), in an effort to ameliorate these conditions, the Company pursued several strategies with two nationally recognized investment banks. On March 22, 2023, the Debtors engaged Cantor Fitzgerald & Co. (“Cantor”) to help them seek financing, additional equity investment, and restructuring of debt. Cantor ran an extensive, multi-month process to obtain such alternative financing or investment for the Company. The Company received seven (7) indications of interest for financing or investment. However, these efforts ultimately proved unfruitful. Subsequently, on May 3, 2023, the Debtors engaged J.P. Morgan Securities LLC (“JPM”) to solicit bids to purchase the Debtors. JPM contacted fifty-nine (59) parties, thirty-four (34) of whom signed non-disclosure agreements. JPM’s marketing efforts yielded several rounds of bidding, including eleven (11) non-binding indications of interests and three (3) bids. However, despite interest from multiple bidders, the participating bidders ultimately declined to proceed with a purchase of the Debtors in an out-of-court transaction upon learning of the Mexican Tax Assessment and the other factors described above.

3. On August 11, 2023, the Debtors retained Guggenheim Securities, LLC (“Guggenheim Securities”) to assist the Debtors in their exploration and solicitation of offers for the Debtors’ assets in a going-concern sale during these Chapter 11 Cases. At this juncture, while

the Debtors, with the assistance of Guggenheim Securities, continue their postpetition marketing efforts, the Debtors have negotiated a stalking horse asset purchase agreement with the Stalking Horse Bidder, an entity formed and controlled by Blue Torch Finance LLC, as administrative agent and collateral agent for the prepetition first lien lenders and the postpetition lenders (in such capacity, the “Agent”), that contemplates the Agent credit bidding certain of its secured debt in the aggregate amount of \$100 million and assuming certain liabilities. As part of a broader agreement related to postpetition financing and the ongoing consensual use of cash collateral and to avoid the value-destructive consequences of a protracted stay in chapter 11, the Debtors have committed to conducting an efficient, 80-day in-court sale process, wherein the Stalking Horse Bidder will serve as the stalking horse. The Debtors seek the relief requested in this Motion to ensure that a timely and thorough sale process is implemented, and alternative purchasers understand the metrics and terms of the stalking horse arrangement when framing competitive offers for the subject assets. The Debtors believe that the relief requested in this Motion balances the dual goals of running a robust marketing process to ensure that the Debtors secure the highest and best purchase price possible, while also minimizing any potential business disruption. The proposed procedures outlined herein are reasonable, value-maximizing and in the best interest of the estates and all interested parties and should be approved by the Court.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtors confirm their consent, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in

connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The statutory and legal predicates for the relief sought herein are sections 105, 363, 365, 503 and 507 of the Bankruptcy Code, Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2002-1 and 6004-1.

BACKGROUND

6. On August 28, 2023 (the “Petition Date”), the Debtors commenced their bankruptcy cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). No trustee, examiner, or creditors’ committee has been appointed in these cases. The Debtors are operating their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the *Declaration of James S. Feltman, Chief Restructuring Officer of the Debtors, in Support of First Day Relief* [Docket No. 13] (the “Feltman Declaration”), incorporated herein by reference.

THE SALE PROCESS

8. The Debtors hereby seek authority to implement certain procedures and, ultimately, consummate a sale of all or substantially all of the Assets that will maximize recoveries for the Debtors’ estates, maintain a viable business, and ensure the continued employment of hundreds of current employees. As part of its agreement to allow continued consensual use of cash collateral, the Stalking Horse Bidder has agreed to serve as the stalking horse for the Assets,

subject to finalizing the Stalking Horse APA, and the Debtors, in turn, agreed to file this Motion and trigger the sale process in earnest.

9. With the foundation of the marketing process and extensive bidder outreach conducted by Cantor and JPM since March 2023, Guggenheim Securities has worked to prepare for a robust postpetition marketing process on an expedited basis that aligns with the milestones required under the DIP Credit Agreement.² To date, sixty-four (64) potential transaction parties, including strategic and financial partners, have been contacted regarding the Assets, thirty-seven (37) of whom have signed non-disclosure agreements. The Debtors, in consultation with Guggenheim Securities, expect that additional parties may become aware of the potential sale through the chapter 11 process, thus driving even more interest in the Assets. However, many of the potential bidders are already well underway with their diligence given the extensive sale process that has been ongoing for nearly six (6) months. During these Chapter 11 Cases, the Debtors, with the assistance of Guggenheim Securities, will continue to canvas the market for viable, value-maximizing proposals that will benefit all interested parties.

A. Use of Cash Collateral and Sale Timeline

10. Following arms-length negotiations, the Debtors and the Agent recently reached agreement on a case timeline that adequately balances the Debtors' need to execute a robust marketing process for the Assets with the need of their secured lender to have certainty on how and when the Debtors' assets will be monetized (the "Sale Process"). To that end, the Debtors respectfully request, pursuant to this Motion, a hearing to be held no later than September 23,

2. As defined in the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Senior Secured Priming Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to the Prepetition IL Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief [Docket No. 12] (the "DIP Motion").

2023, to consider approval of the Bidding Procedures and the Stalking Horse APA, consistent with the milestones (the “Transaction Milestones”) contemplated by the DIP Credit Agreement (as defined in the DIP Motion), and summarized below:

<u>Event</u>	<u>Due Date</u>
Entry of the Bidding Procedures Order	No later than September 23, 2023
Deadline for submitting a Qualified Bid	No later than November 9, 2023
Conclusion of an Auction (if necessary)	No later than November 13, 2023
Sale Hearing and Entry of the Sale Order	No later than November 16, 2023
Consummation of the Sale	No later than November 27, 2023

B. Proposed Sale Process

11. Among other things, the Sale Process will provide a transparent and comprehensive avenue through which the Debtors will seek bids for the Assets. In connection with the Sale Process, the Stalking Horse Bidder will have the right to submit a credit bid for the Assets in the form of the Stalking Horse APA, substantially in the form attached as **Exhibit 2** to the Bidding Procedures Order. The final form of the Stalking Horse APA will be filed no later than three (3) calendar days prior to the hearing on approval of the Bidding Procedures Order.

12. The contemplated Stalking Horse APA will serve as the baseline for all prospective bidders to negotiate from, and will be subject to higher or otherwise better bids for the Assets pursuant to the Bidding Procedures. Thus, upon the completion of the Sale Process (coupled with the Debtors’ robust sale process conducted for nearly six months prior to the Petition Date), the Debtors will have fully market tested the value of their Assets.

13. In furtherance of the ongoing efforts to actively market the Assets for sale, and consistent with the Transaction Milestones, the Debtors have filed this Motion seeking authority to proceed with a bidding and auction process to consummate a sale (or series of sales) that the Debtors expect will generate maximum value for their Assets. To facilitate the Sale, the

Debtors, in consultation with Guggenheim Securities and their other professional advisors, have developed certain customary bidding procedures (i.e., the Bidding Procedures) to preserve flexibility in the Sale Process, generate the greatest level of interest in the Assets, and result in the highest or otherwise best value for those Assets. Among other things, these procedures, in the Debtors' business judgment, create an appropriate timeline for the Sale Process, consistent with the Transaction Milestones and the contemplated Stalking Horse APA.

STALKING HORSE APA

14. The Debtors have negotiated the Stalking Horse APA with the Stalking Horse Bidder on a good faith and arms-length basis. The Debtors believe that consummation of the Stalking Horse APA, subject to higher or otherwise better offers, will maximize value for the Debtors' estates, provide for the continued employment of a significant portion of the Debtors' employees, and afford the Debtors the best possible opportunity to continue to service their customers and maintain business relationships with their vendors.

15. The following chart summarizes the terms and conditions of the Stalking Horse APA attached to the Bidding Procedures Order as **Exhibit 2** and discloses certain information required pursuant to Local Rule 6004-1:³

Stalking Horse APA Provision	Summary Description	Reference
Stalking Horse APA Parties	<u>Sellers</u> : AgileThought, Inc., AN Global LLC, and IT Global Holding LLC, AgileThought, LLC, 4th Source Holding Corp., 4th Source, LLC, 4th Source Mexico, LLC, QMX Investment Holdings USA, Inc., AGS Alpama Global Services USA, LLC, Entrepids Technology Inc., and AN USA; provided, that Buyer may in its sole discretion add or	Preamble, §§ 2.5(f), 4.2(c)

3. This summary is provided for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Stalking Horse APA, the Stalking Horse APA shall govern in all respects. All references to schedules or sections in the following summary shall refer to schedules or sections of the Stalking Horse APA. Terms used but not defined in this summary description have the meaning ascribed to such terms as in the Stalking Horse APA.

Stalking Horse APA Provision	Summary Description	Reference
	<p>remove any direct or indirect Subsidiary of Sellers as Additional Sellers until the date that is two (2) Business Days prior to the Closing Date.</p> <p><u>Buyer</u>: [Blue Torch Finance LLC] or one or more Affiliates designated by Blue Torch Finance LLC to purchase the Assets, assume the Assumed Liabilities, and employ Transferred Employees.</p>	
Purchase Price <i>Local Rule 6004-1(b)(iv)(N)</i>	<p>At the Closing, the Buyer shall (i) decrease the amount of principal due under the loans due under the Pre-Petition Credit Facility pursuant to the credit bid of such amount, by the Agent on behalf of the Pre-Petition Secured Lenders, pursuant to an irrevocable instruction letter, (ii) decrease the amount of obligations due under the DIP Facility by the amount under the DIP Facility as of the Closing Date pursuant to the credit bid of such amount, by the Agent on behalf of the DIP Lenders, pursuant to an irrevocable instruction letter (the sum of the amounts in (i) and (ii) shall be \$100,000,000), and (iii) assume the Assumed Liabilities as provided in the Stalking Horse APA (the sum of (i)-(iii) above, the “<u>Purchase Price</u>”).</p>	§ 3.2
Acquired Assets	<p>“<u>Acquired Assets</u>” will include:</p> <ul style="list-style-type: none"> (a) the Acquired Equity Interests; (b) cash, cash equivalents, all prepayments (including all prepayments made to third party vendors), deferred assets, refunds, cash held in reserve, deposits made by Sellers to any third parties, credits or overpayments, except for the Excluded Cash; (c) the Assigned Contracts; (d) all Accounts Receivables; (e) all Inventory; (f) all furniture, fixtures, equipment, marketing materials, merchandise and other personal property; (g) to the extent transferable pursuant to applicable Law, all Permits required for Sellers to conduct the Business as currently conducted or for the ownership, operation, use, maintenance, or repair of any of the Acquired Assets; (h) all Books and Records; (i) all Intellectual Property; (j) all General Intangibles; 	§ 2.1

Stalking Horse APA Provision	Summary Description	Reference
	<p>(k) all guarantees, representations, warranties and indemnities associated with the operation of the Business, including in respect of any Assumed Liabilities;</p> <p>(l) all insurance policies of Sellers and any claims thereunder to the extent such policies relate to the operation of the Business or to any Assumed Liabilities except to the extent included as an Excluded Asset in Section 2.2 of the Stalking Horse APA;</p> <p>(m) all goodwill associated with, or relating to, the Business or the Acquired Assets;</p> <p>(n) all claims, causes of action, choses in action, rights of recovery, rights of set off, and rights of recoupment (including any such item relating to the payment of Taxes) relating to the Acquired Assets set forth in clauses (a)-(r);</p> <p>(o) all claims and causes of action arising under sections 502(d), 542, 544, 545, 547, 548, 549, 550, 551, 553(b), or 724(a) of the Bankruptcy Code or any other avoidance actions under the Bankruptcy Code or applicable state-law equivalents and the proceeds of such claims, causes of action or avoidance actions;</p> <p>(p) all refunds, credits or overpayments or other receivables for Taxes, including Pre-Closing Straddle Period Taxes, that may be due for Pre-Closing Tax Periods (other than any refunds, credits, overpayments, or other receivables with respect to Taxes paid by Sellers after the Closing);</p> <p>(q) all claims of any Seller against any Excluded Subsidiary or other Group Company and any claim of any nature by any Seller against any present or former officer, director, employee, partner, member, Representative or agent of any member of any Seller, whether arising by way of counterclaim or otherwise; and</p> <p>(r) rights with respect to proofs of claim filed by or on behalf of any Sellers in any bankruptcy case other than the Bankruptcy Cases of Sellers.</p>	

Stalking Horse APA Provision	Summary Description	Reference
Assumed Liabilities	<p>“<u>Assumed Liabilities</u>” means:</p> <p>(a) all Liabilities of Sellers relating to or arising under Assigned Contracts, but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date and to the extent such Liabilities do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Sellers or their Affiliates on or prior to the Closing (other than as it pertains to the Cure Costs as set forth in clause (h), below);</p> <p>(b) all Liabilities of Sellers (other than in respect of Taxes) relating to, or arising in respect of, the Acquired Assets accruing, arising out of or relating to events, occurrences, acts or omissions occurring or existing after the Closing Date or the operation of the Business or the Acquired Assets after the Closing Date;</p> <p>(c) (i) Taxes with respect to the Acquired Assets or the Business for any taxable period beginning after the Closing Date and for any Straddle Period (other than Pre-Closing Straddle Period Taxes) and (ii) the Transaction Taxes;</p> <p>(d) all Liabilities of Sellers relating to Transferred Employees accruing from and after the Closing Date, to the extent arising out of or relating to their employment by Stalking Horse Bidder or any of its Affiliates;</p> <p>(e) all Liabilities of Sellers relating to accrued and unpaid vacation or paid time off obligations of Transferred Employees;</p> <p>(f) to the extent lawfully transferable, all obligations, commitments and Liabilities under any Permits assigned to Stalking Horse Bidder hereunder;</p> <p>(g) undisputed post-Petition Date accrued trade payables of Sellers incurred in the ordinary course of business that are reflected in the DIP Budget with respect to the Acquired Assets to the extent not paid by Sellers at or prior to Closing and in an amount no greater in the aggregate than an amount equal to (1) \$[____], less (2) any amounts paid by Sellers for such Liabilities at or prior to the Closing; and</p> <p>(h) any Cure Costs owed in connection with the Assigned Contracts.</p>	§ 2.3
Excluded Assets	<p>“<u>Excluded Assets</u>” means:</p> <p>(a) Equity Securities of each Seller;</p>	§ 2.2

Stalking Horse APA Provision	Summary Description	Reference
	<p>(b) Any properties, rights and assets under any Benefit Plan;</p> <p>(c) any Excluded Contracts;</p> <p>(d) Unless and until otherwise designated by Stalking Horse Bidder, (i) Equity Securities of the Excluded Subsidiaries and the Mexican Entities or (ii) any assets of the Mexican Entities;</p> <p>(e) any confidential personnel and medical records pertaining to any employee of any Seller and its Affiliates who is not a Transferred Employee;</p> <p>(f) rights of Sellers under the Stalking Horse APA;</p> <p>(g) subject to the DIP Facility, retainers held by any professional retained by Sellers, and any funds of Sellers held in escrow or reserve with respect to the fees and expenses of any professional retained by Sellers;</p> <p>(h) Sellers' (i) Fundamental Documents and stock and minute books, and (ii) documents protected by any applicable privilege, including attorney-client or attorney work product privilege;</p> <p>(i) Excluded Cash, except to the extent of the DIP Reversionary Interest; and</p> <p>(j) Sellers' director and officer insurance policies, fiduciary policies or employment practices policies (in each case of the foregoing, including any tail policies or coverage thereon); <i>provided, however</i>, that Buyer shall acquire the right of any Target Company to receive proceeds under such policies relating to derivative claims of equity holders or creditors of such Target Companies or direct claims of such Target Companies, in each case, against any of Sellers' directors or officers.</p>	
Excluded Liabilities	<p>“<u>Excluded Liabilities</u>” will include:</p> <p>(a) any Liability of any Seller relating to any Excluded Asset;</p> <p>(b) all of Sellers' Liabilities under Indebtedness of the type referred to in clause (a) of the definition of “Indebtedness” in the Stalking Horse APA (including any Indebtedness or accounts payable owing from any Seller to an Affiliate of such Seller);</p>	§ 2.4

Stalking Horse APA Provision	Summary Description	Reference
	<p>(c) except for any Liabilities for Taxes that are Assumed Liabilities, all Tax Liabilities for Pre-Closing Tax Periods, including Pre-Closing Straddle Period Taxes, and any Tax Liabilities of Sellers arising from the transactions contemplated by the Stalking Horse APA;</p> <p>(d) all Excluded Employees;</p> <p>(e) all Liabilities of Sellers arising out of, relating to or with respect to (i) the employment or performance of services, or termination of employment or services by any Seller of any employee, or independent contractor on or before the close of business on the Closing Date, (ii) employment or labor Actions accruing either directly or indirectly against Seller that relate to the period on or before the close of business on the Closing Date, irrespective of whether such claims are made prior to or after the Closing and (iii) any Benefit Plan (including all Liabilities to the IRS or Department of Labor);</p> <p>(f) all Rejection Damages Claims;</p> <p>(g) any tort Liabilities of any Seller based on any acts, omissions, or conditions occurring or existing prior to the Closing Date;</p> <p>(h) all Environmental Liabilities relating to, resulting from, caused by or arising out of ownership, operation or control of the Business, to the extent accruing, arising out of or relating to events, occurrences, acts or omissions occurring or existing prior to the Closing Date;</p> <p>(i) all Actions against each Seller, any of their respective assets, the Business and any of their past or present operations or activities;</p> <p>(j) the obligations under the 2L Credit Agreement (as defined in the DIP Motion);</p> <p>(k) any Tax obligations of the Mexican Entities or any other Group Company, in each case, other than the Acquired Entities and their Subsidiaries; and</p> <p>(l) all Indemnification Claims.</p>	
Transition Services <i>Local Rule 6004-1(b)(iv)(G)</i>	It is a condition to Closing that Buyer and Sellers enter in a reverse transition services agreement (the “ <u>Operating Agreement</u> ”) pursuant to which Buyer or its Affiliates will provide certain transitional services to the Mexican Entities.	§ 9.2(b)

Stalking Horse APA Provision	Summary Description	Reference
Good Faith Deposit <i>Local Rule 6004-1(b)(iv)(F)</i>	<p>Stalking Horse Bidder will contingently assign \$10 million of secured claims under the Pre-Petition Credit Facility to Sellers (the “<u>Deposit Amount</u>”).</p> <p>The Deposit Amount shall be retained by Sellers in the following circumstances: (i) at the Closing, at which time such Deposit Amount shall be credited against the Purchase Price; or (ii) if this Agreement is terminated under the circumstances set forth in Section 10.2(d) of the Stalking Horse APA.</p>	§ 3.1
Record Retention <i>Local Rule 6004-1(b)(iv)(J)</i>	<p>Following the Closing, for the purposes of Sellers (i) preparing or reviewing Tax Returns or participating in any Tax Proceeding, (ii) monitoring or enforcing rights or obligations under this Agreement, (iii) defending third-party lawsuits or complying with the requirements of any Governmental Authority, or (iv) any other reasonable business purpose, including assistance with the wind-down and closing of the Chapter 11 Cases, the dissolution of Sellers, and related tax and other administrative matters, (x) upon reasonable notice, Stalking Horse Bidder shall permit Sellers, their counsel, and other professionals reasonable access to all premises, information, properties, personnel, Books and Records, and Contracts or Leases, which access shall include (1) the right to copy such documents and records as they may request, and (2) Stalking Horse Bidder’s copying and delivering such documents or records as requested, (y) Stalking Horse Bidder shall provide reasonable access to Stalking Horse Bidder’s personnel during regular business hours to assist Sellers’ in their post-Closing activities (including preparation of Tax Returns and requirements in the Bankruptcy Cases), provided that such access does not unreasonably interfere with Stalking Horse Bidder’s operations and (z) Stalking Horse Bidder shall provide reasonable access to Stalking Horse Bidder’s employees and systems during regular business hours, at no expense to Sellers, to assist Sellers in managing payments and benefits to non-Transferred Employees.</p>	§ 7.6(b)
Sale of Avoidance Actions <i>Local Rule 6004-1(b)(iv)(K)</i>	<p>Stalking Horse Bidder will acquire all claims and causes of action arising under sections 502(d), 542, 544, 545, 547, 548, 549, 550, 551, 553(b), or 724(a) of the Bankruptcy Code or any other avoidance actions under the Bankruptcy Code or applicable state-law equivalents and the proceeds of such claims, causes of action or avoidance actions.</p>	§ 2.1(o)

Stalking Horse APA Provision	Summary Description	Reference
Requested Findings as to Successor Liability <i>Local Rule 6004-1(b)(iv)(L)</i>	Stalking Horse Bidder will not assume, and shall be deemed not to have assumed, any Liabilities relating to the Business of Sellers or any Affiliate of Sellers and Sellers and their Affiliates shall be solely and exclusively liable with respect to all such Liabilities, other than the Assumed Liabilities.	<i>See § 2.4, Sale Order</i>

BIDDING PROCEDURES⁴

16. To optimize solicitation, receipt, and evaluation of bids in an efficient, fair, and equitable manner, the Debtors have developed and proposed the Bidding Procedures. The Bidding Procedures describe, among other things, (i) the Assets available for sale, (ii) the manner in which bids become “qualified,” (iii) the coordination of diligence efforts among the bidders and the Debtors, (iv) the receipt and negotiation of bids received, (v) the conduct of any Auction, and (vi) the selection and approval of the Successful Bidder and the selection of the Back-Up Bidder (as defined below). The proposed Bidding Procedures are designed to permit a fair, efficient, competitive, and value-maximizing auction process for the Debtors’ assets, consistent with the timeline of the Chapter 11 Cases.

17. Certain of the key terms of the Bidding Procedures, which shall apply to Interested Parties (as defined herein), Qualified Bidders, the submission, receipt, and analysis of all bids relating to the Sale, and the conduct of the Sale and the Auction, are included below:

- (a) Participation Requirements. To receive due diligence information, including full access to the Debtors’ electronic data room (the “Data Room”) and to additional non-public information regarding the Debtors, a potential bidder (each, an “Interested Party”) must have delivered to each of: (i) counsel to the Debtors: (a) Hughes Hubbard & Reed LLP, One Battery Park Plaza, 16th Floor, New York, NY 10004 (Attn: Kathryn A. Coleman, Esq.

4. Any summary of the Bidding Procedures contained herein is qualified in its entirety by the actual terms and conditions of the Bidding Procedures as provided for in the Bidding Procedures Order. To the extent that there is any conflict between any summary contained herein and the actual terms and conditions of the Bidding Procedures as provided for in the Bidding Procedures Order, the actual terms and conditions of the Bidding Procedures as provided for in the Bidding Procedures Order shall control.

(katie.coleman@hugheshubbard.com), Christopher Gartman, Esq. (chris.gartman@hugheshubbard.com), and Elizabeth A. Beitler, Esq. (elizabeth.beitler@hugheshubbard.com)); and (b) Potter Anderson & Corroon LLP, 1313 North Market Street, Sixth Floor, P.O. Box 951, Wilmington, Delaware 19801 (Attn: Jeremy W. Ryan, Esq. (jryan@potteranderson.com)); and (ii) investment banker to the Debtors: Guggenheim Securities, LLC, 330 Madison Avenue, New York, NY 10017 (Attn: Stephen Preefer (Stephen.Preefer@guggenheimpartners.com), Jim Suprenant (Jim.Suprenant@guggenheimpartners.com), and Scott Green (Scott.Green@guggenheimpartners.com)), the following documents (the “Preliminary Bid Documents”):

- (i) documentation identifying the Interested Party, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (ii) an executed confidentiality agreement in form and substance satisfactory to the Debtors;
- (iii) a statement and other factual support demonstrating to the Debtors’ reasonable satisfaction, after consultation with the Consultation Parties, that the Interested Party has a bona fide interest in consummating a transaction involving the Assets; and
- (iv) sufficient information, as determined by the Debtors, after consultation with the Consultation Parties, to allow the Debtors to determine that the Interested Party (x) has, or can obtain, the financial wherewithal and any required internal corporate, legal, or other authorizations to close a transaction for the Assets, including, but not limited to, current audited financial statements of the Interested Party (or such other form of financial disclosure acceptable to the Debtors in their discretion), and (y) can provide adequate assurance of future performance under any executory contracts and unexpired leases to be assumed by the Debtors and assigned to Interested Party, pursuant to section 365 of the Bankruptcy Code, in connection with the Sale.

Only those Interested Parties who have submitted acceptable Preliminary Bid Documents (each, a “Qualified Bidder”) may submit bids. For the avoidance of doubt, the Stalking Horse Bidder has been deemed to be a Qualified Bidder and is not required to provide any of the foregoing Preliminary Bid Documents.

Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures: (i) the Stalking Horse Bidder shall be considered a Qualified Bidder and (ii) the Stalking Horse APA shall be considered a Qualified Bid, without regard to any of the requirements or conditions set forth herein and without any other or further action by the Stalking Horse

Bidder. Additionally, in determining whether Interested Parties constitute Qualified Bidders, the Debtors may consider a combination of bids for the Assets.

- (b) Bid Requirements. Other than in the case of the Stalking Horse Bidder and the Stalking Horse APA, which shall be considered a Qualified Bidder and a Qualified Bid, respectively, for all purposes under the Bidding Procedures, without regard to any of the requirements or conditions set forth therein and without any other or further action by the Stalking Horse Bidder, to be deemed a “Qualified Bid,” a bid must be received from a Qualified Bidder by each of the Bid Notice Parties (as defined herein) on or before the Bid Deadline and include the following items:
- (i) a letter stating that the Qualified Bidder’s offer is irrevocable until consummation of a transaction involving the Assets (or lot thereof) identified in such offer (such Assets, the “Bid Assets”);
 - (ii) other than for any Chapter 11 Plan Bid, a duly authorized and executed purchase agreement based on the form purchase agreement provided by the Debtors (through their advisors), marked to show any revisions, including, among other things, the purchase price for the Bid Assets, together with all exhibits and schedules thereto (including, among other things, a proposed form of order approving the transaction(s) contemplated in such purchase agreement) (collectively, the “Transaction Documents”). For the avoidance of doubt, a “conceptual” or “issues list”-style markup of the form asset purchase agreement would not satisfy this requirement;
 - (iii) each Chapter 11 Plan Bid must be accompanied by an executed investment agreement, signed by an authorized representative of such bidder, pursuant to which the bidder proposes to effectuate the Chapter 11 Plan Transaction, in the form of a non-taxable recapitalization transaction effectuated pursuant to a chapter 11 plan of reorganization, and must provide for a fully-committed investment of capital in exchange for substantially all of the equity of the reorganized Debtors;
 - (iv) written evidence acceptable to the Debtors, in their discretion and in consultation with the Consultation Parties, demonstrating financial wherewithal, operational ability, and corporate authorization to consummate the proposed transaction;
 - (v) a written acknowledgment that the Qualified Bidder (i) has had an opportunity to conduct any and all due diligence regarding the Bid Assets, the Sale, and/or a Chapter 11 Plan Transaction, (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and any other information in making the bid, (iii) did not rely upon any written or oral

statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, by the Debtors or any of their advisors or other representatives, including, without limitation, the Debtors' investment banker, Guggenheim Securities, LLC, regarding the bid, the Bid Assets, the Sale, the Chapter 11 Plan Transaction, or the completeness or accuracy of any information provided in connection therewith or with the Auction, except as expressly stated in these Bidding Procedures, and (iv) the Qualified Bidder did not engage in any collusive conduct and acted in good faith in submitting its bid; and

- (vi) written evidence of a firm commitment for financing to consummate the proposed transaction, or other evidence of ability to consummate the proposed transaction without financing, in either case which is satisfactory to the Debtors in their discretion, in consultation with the Consultation Parties.

A bid will be considered only if the bid:

- (i) fully discloses the identity of each entity that will be bidding or otherwise participating in connection with such bid (including each equity holder or other financial backer of the Qualified Bidder, including if such Qualified Bidder is an entity formed for the purpose of consummating the proposed transaction contemplated by such bid), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any bid. Each bid must also include contact information for the specific person(s) and counsel whom the Debtors or their advisors should contact regarding such bid. Nothing herein shall preclude multiple Qualified Bidders from submitting a joint bid, subject to the Debtors' prior written consent to such submission and the disclosure requirements set forth herein.
- (ii) other than for a Chapter 11 Plan Bid, identifies the Bid Assets to be purchased and the contracts and leases to be assumed;
- (iii) other than for a Chapter 11 Plan Bid, identifies the liabilities of the Debtors or the Bid Assets to be assumed;
- (iv) includes a statement of proposed terms for employees;
- (v) sets forth the consideration, including the form thereof, for the Bid Assets to be purchased and the executory contracts and unexpired leases to be assumed (the "Bid Value"); *provided* that, the Bid Value must be at least equal to the following: (i) \$100,000,000;

plus (ii) assumption of those Assumed Liabilities in the Stalking Horse APA that the Stalking Horse Bidder has agreed to pay or assume or the cash equivalent of such amount; plus (iii) the Expense Reimbursement; plus (iv) cash equal to the amount of any transaction fee due to Debtors' investment banker, Guggenheim Securities, LLC, that would be payable on account of the consummation of a sale based on the Bid Value; plus (v) the minimum overbid amount of \$250,000;

- (vi) allocates the Bid Value among the Bid Assets and Contracts and Leases to be assumed (per lot of Assets);
- (vii) is not conditioned on (i) obtaining financing or (ii) the outcome of unperformed due diligence;
- (viii) includes a description of all governmental, licensing, regulatory, or other approvals or consents that are required to consummate the proposed transaction (including any antitrust approval related to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended), together with evidence satisfactory to the Debtors, in consultation with the Consultation Parties, of the ability to obtain such approvals or consents as soon as reasonably practicable, and in no event later than November 17, 2023 at 5:00 p.m. (prevailing Eastern Time), as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such approvals or consents;
- (ix) provides for the Qualified Bidder to serve as a backup bidder (the "Back-Up Bidder") if the Qualified Bidder's bid is the next highest and best bid (the "Back-Up Bid") after the Successful Bid, in accordance with the terms of the Successful Bidder's asset purchase agreement;
- (x) includes a signed writing stating that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder, provided that if such Qualified Bidder is selected as the Successful Bidder (as defined below) or the Back-Up Bidder its offer shall remain irrevocable until the later of (i) the closing of the transaction with the Successful Bidder, and (ii) November 27, 2023;
- (xi) is accompanied by a cash deposit by wire transfer to an escrow agent selected by the Debtors (the "Deposit Agent") in an amount equal to ten percent of the Bid Value (any such deposit, a "Good

Faith Deposit”);⁵

- (xii) sets forth the representatives that are authorized to appear and act on behalf of the Qualified Bidder in connection with the proposed transaction;
- (xiii) indicates that the Qualified Bidder will not seek any transaction or break-up fee, expense reimbursement, or similar type of payment and that it waives any substantial contribution administrative expense claims under section 503(b) of the Bankruptcy Code;
- (xiv) includes evidence of the Qualified Bidder’s ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Qualified Bidder’s ability to perform in the future the contracts and leases proposed in its bid to be assumed by the Debtors and assigned to the Qualified Bidder, in a form that will permit the Debtors to disseminate immediately such evidence to the non-Debtor counterparties to such contracts and leases;
- (xv) indicates whether or not the Qualified Bidder will assume all cure costs associated with any executory contracts and unexpired leases it intends to assume;
- (xvi) include written evidence of authorization and approval from the Qualified Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Qualified Bidder’s asset purchase agreement;
- (xvii) state or otherwise estimate the types of, and costs or charges for, transition services, if any, the Qualified Bidder would require of or provide to the Debtors, including an estimate of the time any such transition services would be required of or provided to the Debtors;
- (xviii) provide that in the event of the Qualified Bidder’s breach of, or failure to perform under, the Qualified Bidder’s asset purchase agreement, the Debtors and their estates shall be entitled to pursue all available legal and equitable remedies, including, without limitation, retention of the Good Faith Deposit as part of the damages resulting to the Debtors and their estates for such breach or failure to perform; and
- (xix) includes a commitment to close no later than the date that is 90 days

5. For the avoidance of doubt, the retention and return of the Deposit Amount (as defined in the Stalking Horse APA) by the Debtors shall be determined in accordance with the Stalking Horse APA.

following the Petition Date.

A bid from a Qualified Bidder satisfying all of the above requirements, as determined by the Debtors, in consultation with the Consultation Parties, shall constitute a Qualified Bid. The Debtors reserve the right to work with any Qualified Bidder in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualified Bid. The Debtors will be authorized to approve joint bids in their reasonable discretion, in consultation with the Consultation Parties, on a case-by-case basis.

Each Qualified Bidder submitting a bid shall be deemed to: (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures; and (b) have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures, and the Sale.

- (c) Bid Deadline. A Qualified Bidder, other than the Stalking Horse Bidder, that desires to make a bid shall deliver a written and electronic copy of its bid in both PDF and MS-WORD format to the Bid Notice Parties and the Consultation Parties so as to be received on or before **November 9, 2023 at 5:00 p.m. (prevailing Eastern Time)** (the “Bid Deadline”); *provided* that the Debtors may extend the Bid Deadline without further order of the Court, subject to the DIP Credit Agreement and the Stalking Horse APA and after consultation with the Consultation Parties. To the extent that the Bid Deadline is extended for all relevant parties, the Debtors shall file a notice on the docket of the Chapter 11 Cases indicating the same. **Any party that does not submit a bid by the Bid Deadline will not be allowed to (a) submit any offer after the Bid Deadline, or (b) participate in the Auction.**
- (d) Evaluation of Qualified Bids. The Debtors, in consultation with the Consultation Parties, shall make a determination regarding whether a timely submitted bid from a Qualified Bidder is a Qualified Bid.

No later than November 10, 2023 at 5:00 p.m. (prevailing Eastern Time), the Debtors shall: (i) notify all Qualified Bidders whether their respective bids have been determined to be Qualified Bids; and (ii) determine, in consultation with the Consultation Parties, which of the Qualified Bids, at such time, is the highest or best bid for purposes of constituting the opening bid at the Auction (the “Baseline Bid”), and shall promptly notify the Stalking Horse Bidder, the Bid Notice Parties and all Qualified Bidders with Qualified Bids of the Baseline Bid.

- (e) Auction. If the Debtors timely receive one or more Qualified Bids other than the Stalking Horse APA, then the Debtors shall conduct an auction (the “Auction”). Following the Auction, the Debtors will determine, in consultation with the Consultation Parties, which Qualified Bid is the highest or best bid for the Assets, which will be determined by considering, among other things, the following non-binding factors: (a) the transaction structure and execution risk, including

conditions to and certainty of closing, termination provisions, availability of financing, and financial wherewithal to meet all commitments and required governmental or other approvals, (b) the anticipated timing to closing; (c) if applicable, the number, type, and nature of any changes to the Stalking Horse APA requested by each Qualified Bidder; (d) the extent to which such modifications are likely to delay closing of the Sale and the cost to the Debtors and their estates of such modifications or delay; (e) in the case of a Chapter 11 Plan Transaction, the structure, confirmability, and feasibility of any proposed chapter 11 plan (including the proposed time and costs estimated to be necessary to negotiate, document, and obtain confirmation of such proposed chapter 11 plan); (f) the total consideration to be received by the Debtors and their estates; and (g) any other factors the Debtors may reasonably deem relevant.

The Auction shall be governed by the following procedures:

- (i) the Auction shall be held on **November 13, 2023 at 11:00 a.m. (prevailing Eastern Time)** at the offices of Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, NY 10004 or virtually via telephone or video conference pursuant to information to be timely provided by the Debtors to the Auction Participants (as defined below);
- (ii) only the Stalking Horse Bidder and the other Qualified Bidders with Qualified Bids (together, the “Auction Bidders”) shall be entitled to make any subsequent bids at the Auction;
- (iii) the Auction Bidders shall appear at the Auction, or through a duly authorized representative;
- (iv) only the Debtors, the Auction Bidders, the Consultation Parties, and any creditors of the Debtors, together with the professional advisors to each of the foregoing parties, may attend the Auction (collectively, the “Auction Participants”); *provided* that any such creditors provide counsel for the Debtors written notice of their intent to attend the Auction no later than 5:00 p.m. (ET) the day prior to the Auction;
- (v) the Debtors, with the assistance of their professional advisors, shall direct and preside over the Auction, which shall be transcribed;
- (vi) prior to start of the Auction, each of the Auction Bidders shall confirm that they have not engaged in any collusion with respect to the Bidding Procedures, the Auction, or the Sale;
- (vii) the Auction shall be conducted in an open-cry format (and not by way of sealed bids);
- (viii) during the Auction, bidding will begin initially with the Baseline

Bid and subsequently continue in minimum increments of at least \$250,000 in cash (each, an “Overbid”); *provided, however*, that the Stalking Horse Bidder may satisfy the minimum bid increment requirement by credit bidding at least \$250,000 of outstanding Prepetition 1L Obligations and DIP Obligations (each as defined in the DIP Motion) (up to the amount outstanding as of the projected closing date of the Sale (including but not limited to, principal, accrued and unpaid interest, and all outstanding fees and expenses and other amounts owed under the Prepetition 1L Credit Agreement and the DIP Documents (each as defined in the DIP Motion), respectively) that do not already form a part of the purchase price under the Stalking Horse APA as well as credit bidding the Expense Reimbursement (up to the amount of the Stalking Horse Bidder’s estimate of amount incurred as of the date of the Auction) . The Debtors will announce at the Auction the material terms of each Overbid, value each Overbid in accordance with these Bid Procedures and provide each Qualified Bidder with an opportunity to make a subsequent Overbid. Subject to the requirement (other than with regard to the Stalking Horse Bidder) that each Overbid include at least \$250,000 in cash more than the cash component of the Baseline Bid or prevailing Overbid, additional consideration in excess of the amount set forth in the Baseline Bid or the prevailing Overbid may include cash and/or other consideration in accordance with these procedures. To the extent that an Overbid has been accepted entirely or in part because of the addition, deletion, or modification of a provision or provisions in the applicable Transaction Documents or the Stalking Horse APA, the Debtors will provide notice to each participant of the value ascribed by the Debtors to any such added, deleted, or modified provision or provisions, with such value being determined by the Debtors in consultation with the Consultation Parties;

- (ix) any Overbid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such prior Overbid is not selected as the Back-Up Bid. To the extent not previously provided (which will be determined by the Debtors in consultation with the Consultation Parties), a Qualified Bidder submitting an Overbid must submit at the Debtors’ request (in consultation with the Consultation Parties), as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors in consultation with the Consultation Parties) demonstrating such Qualified Bidder’s ability to close the transaction at the purchase price contemplated by such Overbid;

- (x) the Auction may include individual negotiations with any of the Auction Bidders, but all bids shall be made on the record and in the presence of all of the Auction Bidders;
- (xi) all material terms of the bid that is deemed to be the highest and best bid for each round of bidding shall be fully disclosed to the Auction Bidders, and the Debtors shall use reasonable efforts to address any and all questions that the Auction Bidders may have regarding the Debtors' announcement of the then-current highest and best bid;
- (xii) except as specifically set forth herein, for the purpose of evaluating the value of the purchase price for the Bid Assets provided by each successive bid (including any successive bid by the Stalking Horse Bidder), the Debtors, in consultation with the Consultation Parties, may give effect to any additional liabilities to be assumed by a Qualified Bidder, and any additional costs which may be imposed on the Debtors;
- (xiii) each Auction Bidder shall (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction, and the construction and enforcement of the contemplated transaction documents of the Auction Bidders, (ii) bring any such action or proceeding in the Court, and (iii) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law;
- (xiv) throughout the Auction, subject to section 363(k) of the Bankruptcy Code, the Stalking Horse Bidder (i) shall have the continuing right to credit bid DIP Obligations then outstanding, or any part thereof, to purchase the Assets, and (ii) shall have the continuing right to credit bid the Prepetition 1L Obligations then outstanding, or any part thereof, to purchase the Assets.
- (xv) the Auction Bidders shall have the right to make additional modifications to the Stalking Horse APA or any alternative asset purchase agreement, as applicable, in conjunction with each Qualified Bid submitted in each round of bidding during the Auction, provided that (i) any such modifications on an aggregate basis and viewed in whole, shall not, in the Debtors' discretion, in consultation with the Consultation Parties, be less favorable to the Debtors and their estates than the terms of the Stalking Horse APA,

and (ii) each Qualified Bid shall constitute an irrevocable offer and shall be binding on the Auction Bidder submitting such bid until such party shall have submitted a subsequent Qualified Bid at the Auction or the conclusion of the Sale Hearing, whichever occurs sooner, unless such bid is selected as the Successful Bid or the Back-Up Bid, which shall remain binding as provided for herein;

- (xvi) the Debtors and the Consultation Parties shall have the right to request any additional financial information that will allow the Debtors and the Consultation Parties to make a reasonable determination as to an Auction Bidder's financial and other capabilities to consummate the transactions contemplated by the Stalking Horse APA or any Alternative APA, as applicable, as may be amended during the Auction, and any further information that the Debtors may believe is reasonably necessary to clarify and evaluate any bid made by an Auction Bidder during the Auction;
- (xvii) upon the conclusion of the Auction, the Debtors shall determine, in consultation with the Consultation Parties, and subject to Court approval, the offer or offers for the Assets that is or are the highest or best from among the Qualified Bids submitted at the Auction (the "Successful Bid"). In making this decision, the Debtors shall consider, in consultation with the Consultation Parties, the amount of the purchase price, the assumption of liabilities, the likelihood of the bidder's ability to close a transaction and the timing thereof, the number, type, and nature of any changes to the Stalking Horse APA or other asset purchase agreement submitted with the Successful Bid, as applicable, requested by each bidder, and the net benefit to the Debtors' estates. The bidder submitting such Successful Bid at the Auction shall become the "Successful Bidder," and shall have such rights and responsibilities of the purchaser as set forth in the Stalking Horse APA or an alternative asset purchase agreement, as applicable. The Debtors shall designate a Back-Up Bid (and the corresponding Back-Up Bidder which may be the Stalking Horse Bidder subject to the Stalking Horse Bidder's consent), to purchase the Assets in the event that the Successful Bidder does not close the Sale;
- (xviii) without the written consent of the Agent, no bid may qualify as the Successful Bid unless such bid provides for cash consideration of an amount equal to or greater than the Prepetition IL Obligations and DIP Obligations that have been credit bid subject to section 363(k) of the Bankruptcy Code by the Stalking Horse Bidder;
- (xix) within one day after the conclusion of the Auction, the Debtors will file with the Court and serve on the Bid Notice Parties a notice setting forth the results of the Auction (the "Notice of Successful

Bidder”), which will (a) identify the Successful Bidder and the Backup Bidder; (b) include a copy of the Successful Bid and the Backup Bid or a summary of the material terms of such bids, including any proposed assumption and assignment of executory contracts and unexpired leases contemplated thereby; and (c) set forth the (1) Adequate Assurance Objection Deadline, (2) date, time, and location of the Sale Hearing, and (3) any other relevant dates or other information necessary to reasonably apprise the Bid Notice Parties of the outcome of the Auction;

- (xx) within one (1) business day of the close of the Auction, in the event the Stalking Horse Bidder is not the Successful Bidder, the Successful Bidder shall supplement the Successful Bidder’s Good Faith Deposit such that the deposit shall be equal to an amount that is ten percent (10%) of the Successful Bid; and
- (xxi) prior to the Sale Hearing, the Successful Bidder shall complete and execute all agreements, contracts, instruments, and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

The Debtors reserve the right to make one or more adjournments in the Auction to, among other things (i) facilitate private discussions with individual Qualified Bidders and negotiate the terms of their Overbids, (ii) allow individual Qualified Bidders to consider how they wish to proceed, and (iii) give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors may require in their reasonable discretion (and in consultation with the Consultation Parties) to determine that the Qualified Bidder has sufficient internal resources, or has received sufficient non-contingent debt or equity funding commitments, to consummate the transaction.

THE SUCCESSFUL BID AND ANY BACK-UP BID AND THEIR RELATED TRANSACTION DOCUMENTS SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE SUCCESSFUL BIDDER AND THE BACK-UP BIDDER, RESPECTIVELY, FROM THE TIME THE BID IS SUBMITTED UNTIL TWO (2) BUSINESS DAYS AFTER THE SALE HAS CLOSED. EACH QUALIFIED BID THAT IS NOT THE SUCCESSFUL BID OR THE BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.

- (f) Sale Hearing. The Successful Bid and any Back-Up Bid (or if no Qualified Bid other than that of the Stalking Horse Bidder is received, then the Stalking Horse APA) will be subject to approval by the Court. The Sale Hearing to approve the Successful Bid and any Back-Up Bid (or if no Qualified Bid other than that of the Stalking Horse Bidder is received, then the Stalking Horse APA) shall take place on **[November 16], 2023 at [●] (prevailing Eastern Time).** The Sale Hearing

may be adjourned by the Debtors, in consultation with the Consultation Parties or, in the event the Stalking Horse Bidder is not the Successful Bidder, then in consultation with the Consultation Parties and the Successful Bidder, from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a hearing agenda or notice on the docket of the Chapter 11 Cases.

At the Sale Hearing, the Debtors will seek entry of an order, substantially in the form of the Sale Order that, among other things: (i) authorizes and approves the Sale to the Stalking Horse Bidder or, in the event the Stalking Horse Bidder is not the Successful Bidder, then to the Successful Bidder, pursuant to the terms and conditions set forth in the Stalking Horse APA or any alternative asset purchase agreement submitted by the Successful Bidder, as applicable, free and clear of all liens, claims, interests, and encumbrances, except certain permitted encumbrances as determined by the Debtors and any Successful Bidder; (ii) finds that the Stalking Horse Bidder or Successful Bidder, as applicable, is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code; (iii) authorizes the assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale; (iv) as appropriate, exempts the Sale(s) and conveyance(s) of the Assets from any transfer tax, stamp tax, or similar tax, or deposit under any applicable bulk sales statute; and (v) in the event that the Stalking Horse Bidder is not the Successful Bidder, directs that all cash proceeds generated from the Sale shall be paid to the Agent on behalf of the DIP Lenders and the Prepetition 1L Lenders upon the closing of the Sale for application in accordance with the terms and conditions of the DIP Order, the DIP Documents, and the Prepetition 1L Documents (each as defined in the DIP Order), until the DIP Obligations and the Prepetition 1L Obligations (each as defined in the DIP Order) are paid in full.

- (g) Back-Up Bidder. Notwithstanding any of the foregoing, in the event that the Successful Bidder fails to close the Sale on or before November 27, 2023 (or such date as may be extended by the Debtors with the consent of the Agent and in consultation with the Consultation Parties), the Back-Up Bid will be deemed to be the Successful Bid, the Back-Up Bidder will be deemed to be the Successful Bidder, and the Debtors shall be authorized to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any interested parties.
- (h) Return of Good Faith Deposits. All Good Faith Deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder no later than five (5) business days following the closing of the Sale. The deposit of the Successful Bidder or, if the Sale is closed with the Back-Up Bidder, the deposit of the Back-Up Bidder, shall be applied to the purchase price for the Sale. If the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Stalking Horse APA or any alternative asset purchase agreement, as applicable, the Debtors and their estates

shall be entitled to retain the Good Faith Deposit of the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) as part of the damages resulting to the Debtors and their estates for such breach or failure to perform. For the avoidance of doubt, the Debtors' retention of a Good Faith Deposit shall not constitute a waiver of any of the Debtors' legal or equitable rights relating to a Successful Bidder's or Back-Up Bidder's breach or failure to perform, and all such rights and remedies are preserved.

- (i) Notice and Consultation Parties. The term "Bid Notice Parties" as used in the Bidding Procedures shall mean: (a) the Debtors: 222 W. Las Colinas Boulevard, Suite 1650E, Irving, Texas 75039, (Attn: Diana P. Abril, Esq., Chief Legal Officer (diana.abril@agilethought.com)); (b) counsel to the Debtors, Hughes Hubbard & Reed LLP, One Battery Park Plaza, 16th Floor, New York, NY 10004 (Attn: Kathryn A. Coleman, Esq. (katie.coleman@hugheshubbard.com), Christopher Gartman, Esq. (chris.gartman@hugheshubbard.com), and Elizabeth A. Beitler, Esq. (elizabeth.beitler@hugheshubbard.com)); (c) co-counsel to the Debtors, Potter Anderson & Corroon LLP, 1313 North Market Street, Sixth Floor, P.O. Box 951, Wilmington, Delaware 19801 (Attn: Jeremy W. Ryan, Esq. (jryan@potteranderson.com)); (d) investment banker to the Debtors: Guggenheim Securities, LLC, 330 Madison Avenue, New York, NY 10017 (Attn: Stephen Preefer (Stephen.Preefer@guggenheimpartners.com), Jim Suprenant (Jim.Suprenant@guggenheimpartners.com), and Scott Green (Scott.Green@guggenheimpartners.com)); (e) counsel to any Official Committee of Unsecured Creditors appointed by the U.S. Trustee, if any (the "Committee"); (f) counsel to the Agent and Stalking Horse Bidder, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036-8704 (Attn: Gregg M. Galardi (Gregg.Galardi@ropesgray.com), Robb Tretter (Robb.Tretter@ropesgray.com), and Leonard Klingbaum (Leonard.Klingbaum@ropesgray.com)); and (g) co-counsel to the Agent and Stalking Horse Bidder, Chipman Brown Cicero & Cole, LLP, 1313 N. Market Street Suite 5400, Wilmington, DE 19801 (Attn: Mark L. Desgrosseilliers (desgross@chipmanbrown.com)).

The term "Consultation Parties" as used in the Bidding Procedures shall mean counsel to the Committee (if any), and the Agent.

18. As discussed throughout this Motion, the Bidding Procedures will provide potential bidders with ample time to thoroughly diligence the Assets before submitting binding bids. The Debtors, along with three different, nationally recognized investment banks since March 2023, have conducted a robust marketing and sale process to confirm the market value of the Debtors' assets. With this effort undertaken over the last six (6) months, the Debtors have now designed Bidding Procedures with the objective of generating the greatest level of interest in and

best value for the Assets, while allowing the Debtors to close the Sale in a timely and efficient manner. Moreover, the Debtors are confident that the Bidding Procedures and the other relief requested herein will preserve as many jobs as possible for their dedicated employees, afford the Debtors the best possible opportunity to continue their relationships with their customers and vendors, and otherwise maximize recoveries for all stakeholders through a value-maximizing transaction.

19. The following is a summary of the key dates established by the Bidding Procedures and the Assumption Procedures:

Event	Date
Deadline to file Cure Costs Motion	September 15, 2023 at 4:00 p.m. (prevailing Eastern Time)
Cure Objection Deadline	September 27, 2023 at 4:00 p.m. (prevailing Eastern Time)
Hearing on Cure Costs Motion	October 4, 2023 at 2:00 p.m. (prevailing Eastern Time)
Bid Deadline	November 9, 2023 at 5:00 p.m. (prevailing Eastern Time)
Deadline for Debtors to Designate Qualified Bids and Baseline Bid	November 10, 2023 at 5:00 p.m. (prevailing Eastern Time)
Auction	November 13, 2023 at 11:00 a.m. (prevailing Eastern Time)
Sale Objection Deadline	[November 2], 2023 at 4:00 p.m. (prevailing Eastern Time)
Debtors' Deadline to Reply to Sale Objections	[November 13], 2023 at 4:00 p.m. (prevailing Eastern Time)
Supplemental Sale Objection Deadline	[November 15], 2023 at 10:00 a.m. (prevailing Eastern Time)
Sale Hearing	[November 16], 2023 at [●] (prevailing Eastern Time)

20. The Debtors submit that it is critical that the sale process be consummated on the timeline set forth above, which is consistent with the requirements under the Debtors' DIP financing, but also that such timeline balances the dual goals of running a robust marketing process

to ensure that the Debtors secure the highest and best purchase price possible while also minimizing any potential business disruption. Such timeline provides an approximately 8-week period between the filing of this Motion and the Bid Deadline (which is a total of six (6) months since the Debtors first commenced marketing the Assets for sale), which will allow parties in interest sufficient time to formulate bids for the Assets. This timeline is particularly appropriate here, where the Debtors have already spent months marketing their assets with well-known investment bankers. Moreover, relevant information regarding the Debtors' business has been made available in the Data Room, allowing potential bidders (subject to the execution of a non-disclosure agreement) to immediately conduct diligence on the Debtors' Assets, and the Debtors, with the assistance of their advisors, began marketing the Assets prior to the filing of this Motion.

21. Finally, the Bidding Procedures recognize and comply with the Debtors' fiduciary obligations to maximize sale value, and, as such, do not impair the Debtors' ability to consider all qualified bid proposals and, as noted, preserve the Debtors' right to modify the Bidding Procedures as necessary or appropriate to maximize value for the Debtors' estates. The Debtors respectfully submit that the timeline set forth in the Bidding Procedures is reasonable and necessary under the circumstances of these Chapter 11 Cases.

**NOTICE PROCEDURES FOR THE SALE,
BIDDING PROCEDURES, AUCTION, AND SALE HEARING**

22. The Debtors also request approval of the sale notice (the "Sale Notice"), substantially in the form attached to the Bidding Procedures Order as **Exhibit 3**.

23. Upon entry of the Bidding Procedures Order, the Debtors will serve the Sale Notice by regular mail on: (a) the U.S. Trustee for the District of Delaware; (b) counsel to the Committee, if any; (c) counsel to the Agent; (d) counsel to GLAS Americas LLC, as the administrative agent for the prepetition second lien lenders; (e) counsel to the Stalking Horse

Bidder; (f) the United States Attorney's Office for the District of Delaware; (g) the state attorneys general for all states in which the Debtors conduct business; (h) all parties to Potential Assigned Contracts; (i) all parties who have expressed to the Debtors or their professionals in writing an interest in acquiring some or all of the Assets; (j) all known holders of liens, encumbrances, and other claims secured by any of the Assets; (k) the Internal Revenue Service; (l) all applicable state and local taxing authorities; (m) the Federal Trade Commission; (n) each governmental agency that is an interested party with respect to the Sale and transactions proposed thereunder; (o) all of the Debtors' other known creditors and equity security holders; and (p) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002 (collectively, the "Sale Notice Parties").

24. The Debtors will also cause the Sale Notice to be published once in the national edition of *USA Today* or another nationally circulated newspaper, with any modifications necessary for ease of publication, and post the Sale Notice and the Bidding Procedures Order on the website of the Debtors' claims and noticing agent.

ASSUMPTION PROCEDURES

25. The Debtors seek entry of the Assumption Procedures to facilitate the fair and orderly assumption and assignment of the Assigned Contracts to the Stalking Horse Bidder or, in the event the Stalking Horse Bidder is not the Successful Bidder, then to the Successful Bidder.

26. The Assumption Procedures are as follows:

- a. **Motion to Set Cure Costs.** By no later than September 15, 2023, the Debtors shall file a motion (such motion the "Cure Costs Motion") through which the Debtors will seek entry of an order (the "Cure Costs Order") fixing monetary amounts that the Debtors would be obligated to pay in connection with the assumption or the assumption and assignment of all of the Debtors' executory contracts and unexpired leases (the "Potential Assigned Contracts") and to elicit any objection to the assumption and assignment of such Potential Assigned Contracts other than objections based on adequate assurance of future performance. The Debtors shall set the Cure Costs Motion for hearing no later than October 4, 2023. The Cure

Costs Motion shall include (i) the title of each Potential Assigned Contract, (ii) the name of the counterparty to the Potential Assigned Contract, (iii) Debtors' proposed Cure Costs (if any) required in connection with the Potential Assigned Contract, and (iv) the deadline to object to the Debtors' proposed Cure Costs.

- b. **Notice of Assumption, Assignment and Sale.** No later than three (3) business days prior to the Bid Deadline (the "Assumption, Assignment and Sale Service Deadline"), the Debtors shall serve the Notice of Assumption, Assignment and Sale via overnight delivery on all counterparties to executory contracts and unexpired leases of the Debtors designated as Assigned Contracts by the Stalking Horse Bidder (collectively, the "Assigned Contracts") and file the same with the Court. The Notice of Assumption, Assignment and Sale shall inform each recipient of (i) the timing and procedures relating to such assumption, assignment and sale, (ii) the title of the Potential Assigned Contract, and (iii) the name of the counterparty to the Potential Assigned Contract; provided, however, that service of a Notice of Assumption, Assignment and Sale does not constitute an admission that such Potential Assigned Contract is an executory contract or unexpired lease or that such stated Cure Cost constitutes a claim against the Debtors or a right against the Stalking Horse Bidder (or other Successful Bidder) and all rights with respect thereto shall be expressly reserved. Further, the inclusion of a Potential Assigned Contract on the Notice of Assumption, Assignment and Sale is not a guarantee that such Potential Assigned Contract will ultimately be assumed, assigned and sold.

As set forth above, within three (3) business days of the entry of this Order, the Debtors shall serve the Sale Notice on the Sale Notice Parties, including all parties to Potential Assigned Contracts. The Sale Notice, among other things, sets forth the timing and procedures for objecting to the assumption and assignment of the Potential Assigned Contracts on the basis of adequate assurance of future performance by the Stalking Horse Bidder or the Successful Bidder.

- c. **Objections.** Any counterparty to a Potential Assigned Contract shall file and serve objections with respect to the Cure Costs Motion in accordance with the Cure Costs Motion. Any counterparty to a Potential Assigned Contract shall file and serve on the Objection Notice Parties any objection to the proposed assumption and assignment of the Potential Assigned Contracts on the basis of adequate assurance of future performance to (i) the Stalking Horse Bidder by no later than the Sale Objection Deadline, and (ii) to any other Successful Bidder by no later than [November 15, 2023] at 10:00 a.m. (prevailing Eastern Time). If no objection is timely filed and served, (x) the counterparty to the Potential Assigned Contract shall be deemed to have consented to the assumption, assignment and sale of the Contract to the Successful Bidder pursuant to sections 363 and 365 of the Bankruptcy Code if such Potential Assigned Contract is designated by the Successful Bidder as an Assigned Contract, and shall be forever barred from asserting any objection with regard to such assumption, assignment and sale, except with respect to the adequate assurance of future performance by a Successful Bidder other than the Stalking Horse Bidder.
- d. **Supplemental Contract Assumption Notice.** To the extent the Stalking Horse Bidder, at any time after the Assumption, Assignment and Sale Service Deadline

(i) identifies additional Assigned Contracts, or (ii) removes Assigned Contracts from the list of executory contracts and unexpired leases ultimately selected as Assigned Contracts, the Debtors will promptly file with this Court and serve by overnight delivery a supplemental notice of contract assumption (a “Supplemental Assumption Notice”) on each of the counterparties to the affected Potential Assigned Contracts and their counsel of record, if any. Each Supplemental Assumption Notice will include the same information with respect to listed Potential Assigned Contracts as was included in the Notice of Assumption, Assignment and Sale. Each Supplemental Assumption Notice that identifies a Potential Assigned Contract that was not previously designated to be assumed, assigned and sold shall provide a deadline of not less than seven (7) business days from the date of service of such Supplemental Assumption Notice by which the counterparty to any such Potential Assigned Contract may object only to its listing as an Assigned Contract (if it was not previously designated to be assigned).

- e. **Supplemental Adequate Assurance Objection Deadline.** Following the Bid Deadline, in the event that the Debtors receive one or more Qualified Bids other than the Stalking Horse APA, upon request by any counterparty to a Potential Assigned Contract, the Debtors will send such party evidence that any Qualified Bidder that included such Potential Assigned Contract in its Bid has the ability to perform thereunder and otherwise complies with the requirements of adequate assurance of future performance under section 365(b)(1) of the Bankruptcy Code on a confidential basis for all nonpublic information. Consistent with Paragraph 17 of the Bidding Procedures Order, the Debtors shall file a Notice of Successful Bidder within twenty-four (24) hours of the conclusion of the Auction and send such notice by overnight mail to all counterparties of Potential Assigned Contracts, which shall set forth, among other things, (i) the Successful Bidder and Back-Up Bidder (if any) and the amount of each of the Successful Bid and the Back-Up Bid (if any), (ii) the Assigned Contracts the Successful Bidder intends to assume, and (iii) the proposed assignee(s) of such Assigned Contracts. To the extent the Successful Bidder is not the Stalking Horse Bidder, the non-debtor counterparties to the Assigned Contracts shall have until 10:00 a.m. on [November 15, 2023] to file any objections to adequate assurance of future performance by the Successful Bidder.
- f. **Contract Assumption.** No Assigned Contract shall be deemed assumed, assigned and sold pursuant to sections 365 and 363 of the Bankruptcy Code until the later of (i) the date the Court has entered an order assuming, assigning and selling such Assigned Contracts or (ii) the date the Sale has closed.

27. The inclusion of a Potential Assigned Contract on the Notice of Assumption, Assignment and Sale or any Supplemental Assumption Notice shall not: (a) obligate the Debtors to assume, assign or sell any executory contracts or unexpired leases listed thereon, (b) obligate any Qualified Bidder or the Successful Bidder to designate such Potential Assigned

Contract as an Assigned Contract or refrain from redesignating it to not be an Assigned Contract, or (c) constitute any admission or agreement of the Debtors that such Potential Assigned Contract is an executory contract or such lease is unexpired, as applicable. Only those Potential Assigned Contracts that are included on a schedule of Assigned Contracts (for which the Stalking Horse Bidder's or other Successful Bidder's, as applicable, designation rights with respect thereto have expired) attached to a final asset purchase agreement will be assumed, assigned and sold.

RELIEF REQUESTED

28. By this Motion, the Debtors seek entry of: (i) the Bidding Procedures Order, (a) scheduling a date for the Sale Hearing, (b) authorizing and approving the Bidding Procedures and the Assumption Procedures, and the form and manner of notice thereof, (c) authorizing and approving the Debtors' entry into the Stalking Horse APA, and (d) granting related relief; and (ii) the Sale Order, which shall be filed no later than twenty-one (21) days before the Sale Hearing, (a) authorizing and approving the Sale free and clear of all encumbrances other than assumed liabilities and permitted encumbrances, on the terms contemplated in the Stalking Horse APA or, in the event the Stalking Horse Bidder is not the Successful Bidder, then in the Alternative APA with the Successful Bidder, (b) authorizing and approving the assumption and assignment of executory contracts and unexpired leases to the Stalking Horse Bidder or, in the event the Stalking Horse Bidder is not the Successful Bidder, then to the Successful Bidder; and (c) granting related relief.

BASIS FOR RELIEF

A. Sufficient Business Justification Exists for Consummation of the Sale under Sections 105(a) and 363(b) of the Bankruptcy Code

29. Pursuant to section 105(a) of the Bankruptcy Code, a “[c]ourt may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.”

11 U.S.C. § 105(a). Section 363(b) of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). Although section 363(b) does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts have required that such use, sale or lease be based upon the sound business judgment of the debtor. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (internal citation omitted); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070–71 (2d Cir. 1983); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147–48 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of *In re Lionel Corp.*); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175–76 (D. Del. 1991) (holding that the Third Circuit adopted the “sound business judgment” test in *Abbotts Dairies*); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (same).

30. The demonstration of a valid business justification by the debtor leads to a strong presumption “that in making [the] business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

31. The Debtors submit that their decision to pursue and, ultimately, consummate the Sale⁶ represents a reasonable exercise of the Debtors’ business judgment and,

6. The Bid Procedures also contemplate that Qualified Bidders may submit bids in the form of a proposed plan of reorganization.

accordingly, the Sale should be approved under sections 105(a) and 363(b) of the Bankruptcy Code. The proposed Bidding Procedures will allow the Debtors to conduct the Sale in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who will offer the best package for the Debtors' assets and who can demonstrate the ability to close a transaction quickly. Specifically, the Bidding Procedures contemplate an open auction process with minimum barriers to entry and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.

32. At the same time, the Bidding Procedures provide the Debtors with a robust opportunity to continue marketing the Assets and consider competing bids and select the highest or otherwise best offer for the completion of the Sale. Entering into the Stalking Horse APA with the Stalking Horse Bidder ensures that the Debtors obtain fair market value by setting a minimum purchase price for the Debtors' assets that will be tested in the marketplace. As such, creditors of the Debtors' estates can be assured that the consideration obtained will be fair and reasonable and at or above market.

33. The Debtors submit that the proposed Bidding Procedures will encourage competitive bidding, are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings, and are consistent with other procedures previously approved by this Court

34. Additionally, the Debtors believe that the notice procedures described above are reasonable and adequate under the circumstances. Bankruptcy Rules 2002(a) and (c) require the Debtors to notify creditors of the Sale, the terms and conditions of the Sale, the time and place of the Auction, and the deadline for filing any objections. The Debtors believe that the

proposed notice procedures fully comply with Bankruptcy Rule 2002, and are reasonably calculated to provide timely and adequate notice of the Stalking Horse APA, the Bidding Procedures, the Auction, the Sale Hearing, and the Sale to the Debtors' creditors and all other parties in interest that are entitled to notice, as well as those parties that have expressed a *bona fide* interest in acquiring the Assets.

35. The Sale, conducted in accordance with the Bidding Procedures, will generate significant value for the Debtors' estates, and represents the best path forward for maximizing recoveries in connection with the Chapter 11 Cases. The Debtors submit that ample business justification exists for the consummation of the Sale, and therefore request that this Court approve such Sale.

B. The Sale of the Assets Free and Clear of All Encumbrances Is Authorized Under Section 363(f) of the Bankruptcy Code

36. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests and encumbrances if:

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). This provision is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

37. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Assets “free and clear” of liens and interests. *See Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that because section 363(f) is written in the disjunctive, a

court may approve a sale free and clear if any one subsection is met); *see also Mich. Emp't Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (same); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same). Furthermore, a debtor possesses broad authority to sell assets free and clear of liens. *See In re Trans World Airlines, Inc.*, 322 F.3d 283, 289 (3d Cir. 2003).

38. The Debtors submit that, in the interest of attracting the best offers, it is appropriate to sell the Assets on a final “as is” basis, free and clear of any and all encumbrances other than assumed liabilities and permitted encumbrances (and except as otherwise expressly set forth in the Sale Order), in accordance with section 363(f) of the Bankruptcy Code because one or more of the tests of section 363(f) are satisfied with respect to such Sale. In particular, the Debtors believe that section 363(f)(2) of the Bankruptcy Code will be met because the Prepetition 1L Secured Parties have a valid, blanket security interest in substantially all of the Assets and have consented to the Sale to the Stalking Horse Bidder pursuant to the Stalking Horse APA, subject to higher or better terms as set forth in an Alternative APA.

39. Moreover, with respect to any other party asserting a lien, claim, encumbrance or the like against the Assets, the Debtors anticipate that they will be able to satisfy one or more of the conditions set forth in section 363(f) of the Bankruptcy Code. In particular, known lienholders will receive notice and will be given sufficient opportunity to object to the relief requested. Such lienholders that do not object to the Sale should be deemed to have consented. *See FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) (“[L]ack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt’s assets had to execute a formal consent before they could be sold.”) (internal citations omitted); *Hargrave v. Twp. of*

Pemberton (In re Tabone, Inc.), 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (holding that creditor's failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); *In re Elliot*, 94 B.R. at 345 (same). Consistent with the foregoing, the Bidding Procedures Order provides that the absence of a timely objection to the sale of the Assets in accordance therewith shall be "consent" to such sale within the meaning of section 363(f)(2) of the Bankruptcy Code.

40. Furthermore, the Debtors propose that any encumbrances asserted against the Assets be transferred to, and attach to, the proceeds of the Sale, and application of the proceeds generated by the Sale will be subject to any applicable provisions of the DIP Orders (as defined in the DIP Motion).

C. The Sale Should Be Subject to the Protections of Section 363(m) of the Bankruptcy Code

41. Section 363(m) of the Bankruptcy Code provides, in part, that the reversal or modification on appeal of an authorization of a sale pursuant to section 363(b) or section 363(c) of the Bankruptcy Code does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. *See* 11 U.S.C. § 363(m).

42. Section 363(m) of the Bankruptcy Code thus protects the purchaser of assets sold pursuant to section 363 of the Bankruptcy Code from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal, as long as such purchaser leased or purchased the assets in "good faith." While the Bankruptcy Code does not define "good faith," courts have held that a purchaser shows its good faith through the integrity of its conduct during the course of the sale proceedings, finding that where there is a lack of such integrity, a good-faith finding may not be made. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d

Cir. 1986) (“Typically, the misconduct that would destroy a [buyer’s] good faith status at a judicial sale involves fraud, collusion between the [proposed buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”); *In the Matter of Andy Frain Servs., Inc.*, 798 F.2d 1113, 1125 (7th Cir. 1986) (same); *In re Sasson Jeans, Inc.*, 90 B.R. 608, 610 (S.D.N.Y. 1988) (same).

43. The Debtors submit that the Stalking Horse Bidder, or any other Successful Bidder arising from the Auction, is or would be “good faith purchasers” within the meaning of section 363(m) of the Bankruptcy Code, and the Stalking Horse APA, or any marked version thereof, are or would be a good-faith agreement on arms’-length terms entitled to the protections of section 363(m) of the Bankruptcy Code.⁷ **First**, as set forth in more detail above, the consideration to be received by the Debtors pursuant to the Stalking Horse APA is substantial, fair, and reasonable. **Second**, the parties entered into the Stalking Horse APA in good faith and after extensive, arm’s-length negotiations, during which all parties were represented by competent counsel, and any sale agreement with a Successful Bidder will be the culmination of a competitive Auction process in which all parties will presumably be represented by counsel and all negotiations will be conducted on an arm’s-length, good-faith basis. **Third**, there is no indication of any “fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders” or similar conduct that would cause or permit the Sale or Stalking Horse APA to be avoided under section 363(m) of the Bankruptcy Code. And, with

7. The Debtors believe that a finding of good faith within the meaning of section 363(m) of the Bankruptcy Code will be appropriate for any Successful Bidder arising from the Auction. Pursuant to the Bidding Procedures, any Successful Bidder will have had to present a proposal in accordance with the Bidding Procedures. In addition, the Debtors will not choose as the Successful Bidder or Backup Bidder (as defined in the Bidding Procedures) any entity whose good faith under section 363(m) of the Bankruptcy Code can reasonably be doubted, and will be prepared to present the Court with sufficient evidence to allow the Court to find that the “good faith” standard of section 363(m) of the Bankruptcy Code has been satisfied.

respect to potential bidders, the Bidding Procedures are designed to ensure that no party is able to exert undue influence over the process. **Finally**, the Debtors evaluated and approved the Stalking Horse Bidder's offer in consultation with their advisors, and any other bids that the Debtors ultimately determine to be a successful bid will have been evaluated in a similar fashion. Accordingly, the Debtors believe that the Stalking Horse Bidder (or other Successful Bidder arising from the Auction, if any) and Stalking Horse APA (or marked version thereof) should be entitled to the full protections of section 363(m) of the Bankruptcy Code.

D. The Court Should Approve the Bidding Procedures

44. The key objective in any sale of property of a debtor's estate is to maximize the value received by the estate. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004) (finding that debtor "had a fiduciary duty to protect and maximize the estate's assets"); *Official Comm. of Unsecured Creditors of Cybergenics, Corp v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) (same). Procedures used to enhance competitive bidding support this objective and, therefore, are appropriate in the context of bankruptcy sales. *See In re O'Brien Envtl. Energy, Inc.*, 181 F.3d 527, 537 (3d Cir. 1999); *see also Integrated Res. Inc.*, 147 B.R. at 659 (stating that bidding procedures "encourage bidding and . . . maximize the value of the debtor's assets").

45. The Debtors, with the assistance of their professional advisors, including Guggenheim Securities, have designed the Bidding Procedures to promote a competitive and fair bidding process and, thus, to maximize value for the Debtors' estates and creditors. The Bidding Procedures will allow the Debtors to conduct the Auction in an orderly, fair and open fashion, which will encourage participation by financially capable bidders, thereby increasing the likelihood that the Debtors will receive the highest or best possible consideration for the Assets. Furthermore, the Bidding Procedures provide an appropriate framework for the Debtors, in consultation with their professional advisors, to review, analyze and compare any bids received to

determine which bids are in the best interests of the Debtors' estates and their creditors. The Debtors, in consultation with their investment bank, Guggenheim Securities, believe that the Bidding Procedures are appropriately crafted to, and will maximize, the value of the Assets. Moreover, the Debtors are required under the DIP Credit Agreement to complete the auction and sale process on the timetable set forth therein and contemplated by the Bidding Procedures, which timetable is fair and reasonable in light of the circumstances of the Chapter 11 Cases.

46. The Debtors submit that the Bidding Procedures are necessary and transparent and will derive the highest or best bids for the Assets. Therefore, the Debtors request the Court to approve the Bidding Procedures.

E. The Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Sale Satisfies Section 365 of the Bankruptcy Code

47. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The Second Circuit has stated that "[t]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to 'renounce title to and abandon burdensome property.'" *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993) (quoting 2 COLLIER ON BANKRUPTCY ¶ 365.01[1] (15th ed. 1993)).

48. The standard applied to determine whether the assumption of a contract or an unexpired lease should be authorized is the "business judgment" standard. *See In re AbitibiBowater Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (finding that a debtor's decision to assume or reject an executory contract will stand so long as "a reasonable business person would make a similar decision under similar circumstances."); *In re HQ Global Holdings, Inc.*, 290 B.R.

507, 511 (Bankr. D. Del. 2003) (stating a debtor’s decision to reject an executory contract is governed by the business judgment standard and can only be overturned if the decision was the product of bad faith, whim, or caprice). As described above, “[t]he business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company.’” *Integrated Res., Inc.*, 147 B.R. at 656 (quoting *Smith v. Van Gorkom*, 488 A.2d at 872). Indeed, “the sole issue is whether the rejection benefits the estate.” *In re HQ Global*, 290 B.R. at 511.

49. The business judgment rule is crucial in chapter 11 cases and shields a debtor’s management from judicial second-guessing. *See id.*; *see also Comm. of Asbestos Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions.”). Generally, courts defer to a debtor in possession’s business judgment to assume or reject an executory contract or lease. *See Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co., (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (stating that the business judgment test “requires only that the trustee [or debtor in possession] demonstrate that [assumption or] rejection of the executory contract will benefit the estate.”); *see also N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984); *Control Data Corp. v. Zelman (In re Minges)*, 602 F.2d 38, 42-43 (2d Cir. 1979); *In re Riordizio, Inc.*, 204 B.R. 417, 424-25 (Bankr. S.D.N.Y. 1997); *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994).

50. Here, the Debtors have exercised their sound business judgment in determining that assumption and assignment of the Assigned Contracts is in the best interests of

the Debtors and their estates and, accordingly, the Debtors submit that the Court should approve the proposed assumption under section 365(a) of the Bankruptcy Code. *See, e.g., In re Philadelphia Newspapers, LLC*, 424 B.R. 178, 182-83 (Bankr. E.D. Pa. 2010) (stating that if a debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of an executory contract or unexpired lease); *Westbury Real Estate Ventures, Inc. v. Bradlees, Inc. (In re Bradlees Stores, Inc.)*, 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996); *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that, absent extraordinary circumstances, court approval of a debtor's decision to assume or reject an executory contract "should be granted as a matter of course").

51. As set forth above, the Sale will provide significant benefits to the Debtors' estates. To that end, the assumption, assignment and sale of the Assigned Contracts is necessary for the Debtors to obtain the benefits of the Stalking Horse APA or an Alternative APA, as applicable. In addition, under section 365(k) of the Bankruptcy Code, the assignment by a debtor to an entity of a contract or lease "relieves the trustee and the estate from any liability for any breach of such contract or lease occurring after such assignment." 11 U.S.C. § 365(k). Thus, following an assignment to the Successful Bidder of any Assigned Contract, the Debtors will be relieved from any liability for any subsequent breach associated therewith.

52. Furthermore, section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Assigned Contracts must be cured or that adequate assurance be provided that such defaults will be promptly cured. 11 U.S.C. § 365(b)(1). The Debtors propose to file with the Court, and serve on each counterparty to an Assigned Contract, a Notice of Assumption, Assignment and Sale that indicates the proposed Cure Cost for each such contract. As such, each counterparty will have the opportunity to object to the proposed assumption and

assignment to the Successful Bidder and to the proposed Cure Cost, if applicable. Moreover, the payment or reserve of the applicable Cure Cost, as provided for in the Bidding Procedures, will be a condition to the Debtors' assumption and assignment of any Assigned Contract.

53. Relatedly, section 365(f)(2) of the Bankruptcy Code provides that a debtor may assign an executory contract or unexpired lease of nonresidential real property if “adequate assurance of future performance by the assignee of such contract or lease is provided.” 11 U.S.C. § 365(f)(2). The words “adequate assurance of future performance” must be given a “practical, pragmatic construction” in light of the facts and circumstances of the proposed assumption. *See In re Fleming Cos., Inc.*, 499 F.3d 300, 307 (3d Cir. 2007) (internal citation omitted); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (same); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (finding that adequate assurance of future performance does not mean absolute assurance that debtor will thrive and profit); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”).

54. Specifically, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (holding that adequate assurance of future performance is given where the assignee of lease has financial resources and expressed a willingness to devote sufficient funding to the business to ensure its success, and that in the leasing context, the chief determinant of adequate assurance is whether rent will be paid).

55. Here, the Successful Bidder will have provided adequate assurance of future performance with respect to any Assigned Contract. For its bid to be deemed a Qualified Bid,

each Qualified Bidder will be required to provide evidence supporting its ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code (the “Adequate Assurance Information”), including: (a) the bidder’s financial wherewithal and willingness to perform under any contracts that are assumed and assigned to such potential bidder; and (b) a contact person for the proposed assignee that the counterparty may directly contact in connection with the adequate assurance of future performance. To the extent that the Qualified Bidder is a newly formed acquisition entity or the like, the financial and other information supporting the Qualified Bidder’s financial wherewithal shall include financial and other information supporting the financial wherewithal of the Qualified Bidder’s parent company or sponsor. Furthermore, given that the Debtors will submit evidence that all requirements for the assumption and assignment of such contracts at the Sale Hearing, the Court and other interested parties will have the opportunity to evaluate the ability of each Successful Bidder to provide adequate assurance of future performance.

56. Therefore, the Debtors respectfully request the Court to (a) approve the proposed assumption and assignment of the Assigned Contracts, and (b) find that all anti-assignment provisions of such contracts to be unenforceable under section 365(f) of the Bankruptcy Code.⁸

8. Section 365(f)(1) provides that “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease. . . .” 11 U.S.C. § 365(f)(1). Section 365(f)(3) further provides that “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.” 11 U.S.C. § 365(f)(3).

F. The Stalking Horse Bidder Should Be Authorized to Credit Bid on the Assets Under Section 363(k) of the Bankruptcy Code

57. A secured creditor is allowed to “credit bid” the amount of its claim in a sale. Section 363(k) of the Bankruptcy Code provides, in relevant part, that unless the court for cause orders otherwise, the holder of a claim secured by property that is the subject of the sale “may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.” 11 U.S.C. § 363(k). Even if a secured creditor is undersecured as determined in accordance with section 506(a) of the Bankruptcy Code, section 363(k) of the Bankruptcy Code allows such secured creditor to bid the total face value of its claim and does not limit the credit bid to the claim’s economic value. *See In re Submicron Sys. Corp.*, 432 F.3d 448, 459-60 (3d Cir. 2006) (explaining that “[i]t is well settled among district court and bankruptcy courts that creditors can bid the full face value of their secured claims under section 363(k)”).

58. Here, the Stalking Horse APA contemplates consideration in the form of a credit bid of certain of the outstanding obligations under both the Prepetition 1L Credit Facility and the postpetition DIP Facility (each as defined in the DIP Motion). The Agent, as collateral agent under both facilities holding claims secured by valid, binding, enforceable, non-avoidable and perfected liens on and security interests in substantially all of the Assets as provided for in the DIP Order, is entitled to credit bid some or all of the claims secured by its collateral pursuant to section 363(k) of the Bankruptcy Code. Accordingly, the credit bid contemplated by the Stalking Horse APA should be authorized.

G. The Expense Reimbursement Has a Sound Business Purpose and Should be Approved

59. The Debtors also request approval of the Stalking Horse Bidder’s expense reimbursement (the “Expense Reimbursement”). In accordance with the terms of the Stalking

Horse APA, the Debtors request authority to provide the Stalking Horse Bidder with an allowed administrative claim in the Chapter 11 Cases in an amount equal to the Expense Reimbursement. The Expense Reimbursement is an amount not to exceed \$2.5 million.

60. Generally, stalking horse expense reimbursements are a normal, and, in many cases, necessary component of significant sales conducted under section 363 of the Bankruptcy Code. For example, courts have found that because a “corporation [has] a duty to encourage bidding, [bid protections] can be necessary to discharge [such] duties to maximize value. . . . [Bid protections] may ‘be legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking.’” *In re Integrated Res., Inc.*, 147 B.R. at 660– 61. As a result, courts routinely approve such bidding protections in connection with proposed bankruptcy sales where a proposed fee or reimbursement provides a benefit to the estate. *See In re Energy Future Holdings Corp.*, 904 F.3d 298 (3d Cir. 2018) (holding that “[T]he allowability of [bid protections] . . . depends upon the requesting party’s ability to show that the fees [a]re actually necessary to preserve the value of the estate.”) (internal quotations omitted) (alterations in original); *In re Reliant Energy Channelview LP*, 594 F.3d 200, 206 (3d Cir. 2010) (same); *In re O’Brien Env’t Energy, Inc.*, 181 F.3d 527, 533 (3d Cir. 1999) (same); *In re Women First Healthcare, Inc.*, 332 B.R. 115, 121–23 (Bankr. D. Del. 2005) (same). The Debtors believe that the allowance of the Expense Reimbursement is in the best interests of their estates and their creditors, as the Stalking Horse Bidder, if designated, will establish a floor for further bidding that may increase the consideration given in exchange for the applicable assets for the benefit of the Debtors’ estates.

61. In the Third Circuit, bidding protections, such as those proposed here, are subject to the general standard used for administrative expenses under section 503 of the

Bankruptcy Code. *Energy Future*, 904 F.3d at 313 (“[T]ermination fees are subject to the same general standard used for all administrative expenses under 11 U.S.C. § 503.”); *Women First Healthcare, Inc.*, 332 B.R. at 121–23 (holding that the general standard used for all administrative expenses applies to expense reimbursements). Thus, the allowability of expense reimbursements, “like that of other administrative expenses, depends upon the requesting party’s ability to show that the fees were actually necessary to preserve the value of the estate.” *Reliant Energy*, 594 F.3d at 206 (internal quotations omitted) (quoting *O’Brien*, 181 F.3d at 535).

62. The Expense Reimbursement provided to the Stalking Horse Bidder (i) is an actual and necessary cost and expense of preserving the Debtors’ estates within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code, (ii) is commensurate to the real and material benefits conferred upon the Debtors’ estates by the Progrexion Stalking Horse Bidder, and (iii) is fair, reasonable, and appropriate, including in light of the size and nature of the proposed sale of the applicable assets, the commitments that will be made, and the efforts that have been and will be expended by the Stalking Horse Bidder. The Expense Reimbursement is necessary to induce the Stalking Horse Bidder to pursue the sale of the Assets and to be bound by the Stalking Horse APA.

63. The Expense Reimbursement that may be granted to a Stalking Horse Bidder falls well within the range of bid protections typically approved by the bankruptcy courts in the Third Circuit. The Expense Reimbursement is consistent with the range of bid protections typically paid in sale transactions that have been recently approved. *See In re Virgin Orbit Holdings, Inc.*, No. 23-10405 (KBO) (Bankr. D. Del. May 1, 2023) (approving expense reimbursements equal to approximately 2% of the proposed purchase price); *In re American Eagle Del. Holding Co., LLC*, No. 22-10028 (JKS) (Bankr. D. Del. Aug. 12, 2022) (approving expense

reimbursements equal to approximately 1.25% of the proposed purchase price); *In re BHCosmetics Holdings, LLC*, No. 22-10050 (CSS) (Bankr. D. Del. Jan. 28, 2022) (approving expense reimbursements equal to approximately 3.5% of the proposed purchase price); *In re Gorham Paper & Tissue, LLC*, No. 20-11662 (KBO) (Bankr. D. Del. Nov. 19, 2020) (approving expense reimbursements equal to approximately 2% of the proposed purchase price).

64. Accordingly, for the reasons set forth above, the Debtors respectfully request that the Court grant the Debtors the authority to incur and pay the Expense Reimbursement to the extent the Expense Reimbursement is necessary to preserve the value of the Debtors' estates.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h) AND 6006(d)

65. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Furthermore, Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d). To maximize the value received for the assets, the Debtors seek to close the Sale as soon as possible after the Sale Hearing. Accordingly, the Debtors hereby request that the Court waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d), to the extent applicable.

NOTICE

66. Notice of this Motion will be provided to: (i) the U.S. Trustee for the District of Delaware; (ii) counsel for Blue Torch Finance LLC, as the administrative agent for the Prepetition 1L Lenders and the DIP Lenders (each as defined in the DIP Motion); (iii) counsel for GLAS Americas LLC, as the administrative agent for the prepetition second lien lenders; (iv) the United States Attorney's Office for the District of Delaware; (v) the Internal Revenue Service;

(vi) the state attorneys general for all states in which the Debtors conduct business; (vii) all parties who have expressed a written interest in some or all of the Assets; (viii) all known holders of liens, encumbrances, and other claims secured by the Assets; (ix) all parties to Potential Assigned Contracts; and (x) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

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WHEREFORE, the Debtors request entry of the Bidding Procedures Order and the Sale Order, granting the relief requested herein and such other and further relief as is just and proper.

Dated: September 1, 2023
Wilmington, Delaware

Respectfully submitted,

/s/ Gregory J. Flasser

Jeremy W. Ryan (No. 4057)

R. Stephen McNeill (No. 5210)

Gregory J. Flasser (No. 6154)

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Proposed Counsel for the Debtors and Debtors-in-Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

AN GLOBAL LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11294 (JKS)

(Jointly Administered)

Hearing Date: Sept. 22, 2023 at 11:00 a.m. (ET)

Objection Deadline: Sept. 15, 2023 at 4:00 p.m. (ET)

NOTICE OF DEBTORS' MOTION FOR ENTRY OF: (I) AN ORDER (A) SCHEDULING A HEARING ON THE APPROVAL OF THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES OTHER THAN ASSUMED LIABILITIES AND PERMITTED ENCUMBRANCES, AND THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (B) APPROVING CERTAIN BIDDING PROCEDURES, BIDDING PROTECTIONS, AND ASSUMPTION AND ASSIGNMENT PROCEDURES, AND THE FORM AND MANNER OF NOTICE THEREOF, (C) AUTHORIZING THE DEBTORS TO ENTER INTO THE STALKING HORSE APA, AND (D) GRANTING RELATED RELIEF; AND (II) AN ORDER (A) APPROVING ASSET PURCHASE AGREEMENT, (B) AUTHORIZING THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES OTHER THAN ASSUMED LIABILITIES AND PERMITTED ENCUMBRANCES, (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (D) GRANTING RELATED RELIEF

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number or registration number in the applicable jurisdiction, are: AN Global LLC (5504); AgileThought, Inc. (2509); 4th Source Holding Corp. (9629); 4th Source Mexico, LLC (7552); 4th Source, LLC (7626); AgileThought Brasil-Consultoria Em Tecnologia LTDA (01-42); AgileThought Brasil Servicos de Consultoria Em Software (01-20); AgileThought Costa Rica S.A. (6822); AgileThought Digital Solutions, S.A.P.I. de C.V. (3KR0); AgileThought México S.A. de C.V. (7E46); AgileThought, LLC (7076); AgileThought Servicios Administrativos, S.A. de C.V. (4AG1); AgileThought Servicios México S.A. de C.V. (8MY5); AgileThought, S.A.P.I. de C.V. (No Tax ID); AGS Alpama Global Services USA, LLC (0487); AN Data Intelligence, S.A. de C.V. (8I73); AN Extend, S.A. de C.V. (1D80); AN Evolution, S. de R.L. de C.V. (7973); AN USA (5502); AN UX, S.A. de C.V. (7A42); Cuarto Origen, S. de R.L. de C.V. (0IQ9); Entrepids México, S.A. de C.V. (OCYA); Entrepids Technology Inc. (No Tax ID); Facultas Analytics, S.A.P.I. de C.V. (6G37); Faktos Inc., S.A.P.I. de C.V. (3LLA); IT Global Holding LLC (8776); and QMX Investment Holdings USA, Inc. (9707). The Debtors' headquarters are located at 222 W. Las Colinas Boulevard, Suite 1650E, Irving, Texas 75039.

PLEASE TAKE NOTICE THAT the above-captioned debtors and debtors in possession (collectively, “Debtors”) have filed the attached *Debtors’ Motion For Entry of: (I) an Order (A) Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (B) Approving Certain Bidding Procedures, Bidding Protections, and Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, (C) Authorizing the Debtors to Enter Into the Stalking Horse APA, and (D) Granting Related Relief; and (II) an Order (A) Approving Asset Purchase Agreement, (B) Authorizing the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, (C) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (D) Granting Related Relief* (the “Motion”).

PLEASE TAKE FURTHER NOTICE that objections to the Motion, if any, must be in writing, filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 North Market Street, Wilmington, Delaware 19801, on or before **September 15, 2023 at 4:00 p.m. (ET)** (the “Objection Deadline”) and served upon the undersigned proposed counsel to Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE that, if any objections to the Motion are received, the Motion and such objection shall be considered at a hearing before the Honorable J. Kate Stickles at the Bankruptcy Court, 824 Market Street, 5th Floor, Courtroom No. 6, Wilmington, Delaware 19801 on **September 22, 2023 at 11:00 a.m. (ET)**.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: September 1, 2023
Wilmington, Delaware

Respectfully submitted,

/s/ Gregory J. Flasser

Jeremy W. Ryan (No. 4057)

R. Stephen McNeill (No. 5210)

Gregory J. Flasser (No. 6154)

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Proposed Counsel for the Debtors and Debtors in Possession

EXHIBIT A

Proposed Bidding Procedures Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

AN GLOBAL LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11294 (JKS)

(Jointly Administered)

Re: D.I. ____

ORDER (I) SCHEDULING A HEARING ON THE APPROVAL OF THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES OTHER THAN ASSUMED LIABILITIES AND PERMITTED ENCUMBRANCES, AND THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (II) APPROVING CERTAIN BIDDING PROCEDURES, BIDDING PROTECTIONS, AND ASSUMPTION AND ASSIGNMENT PROCEDURES, AND THE FORM AND MANNER OF NOTICE THEREOF, (III) AUTHORIZING THE DEBTORS TO ENTER INTO THE STALKING HORSE APA, AND (IV) GRANTING RELATED RELIEF

Upon the motion (the "Motion")² of the above-captioned affiliated debtors and debtors in possession (collectively, the "Debtors"), pursuant to sections 105, 363, 365, 503, and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1 and 6004-1

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1. The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number or registration number in the applicable jurisdiction, are: AN Global LLC (5504); AgileThought, Inc. (2509); 4th Source Holding Corp. (9629); 4th Source Mexico, LLC (7552); 4th Source, LLC (7626); AgileThought Brasil-Consultoria Em Tecnologia LTDA (01-42); AgileThought Brasil Servicos de Consultoria Em Software (01-20); AgileThought Costa Rica S.A. (6822); AgileThought Digital Solutions, S.A.P.I. de C.V. (3KR0); AgileThought México S.A. de C.V. (7E46); AgileThought, LLC (7076); AgileThought Servicios Administrativos, S.A. de C.V. (4AG1); AgileThought Servicios México S.A. de C.V. (8MY5); AgileThought, S.A.P.I. de C.V. (No Tax ID); AGS Alpama Global Services USA, LLC (0487); AN Data Intelligence, S.A. de C.V. (8I73); AN Extend, S.A. de C.V. (1D80); AN Evolution, S. de R.L. de C.V. (7973); AN USA (5502); AN UX, S.A. de C.V. (7A42); Cuarto Origen, S. de R.L. de C.V. (0IQ9); Entrepids México, S.A. de C.V. (OCYA); Entrepids Technology Inc. (No Tax ID); Facultas Analytics, S.A.P.I. de C.V. (6G37); Faktos Inc., S.A.P.I. de C.V. (3LLA); IT Global Holding LLC (8776); and QMX Investment Holdings USA, Inc. (9707). The Debtors' headquarters are located at 222 W. Las Colinas Boulevard, Suite 1650E, Irving, Texas 75039.
 2. Capitalized terms used but not defined herein shall have the meanings given them in the Bidding Procedures (as defined below), or to the extent not defined therein, the Motion or the Stalking Horse APA (as defined below).

of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), for entry of an order (this “Order”): (i) scheduling a hearing (the “Sale Hearing”) on approval of the proposed sale (the “Sale”) of all or substantially all of the Debtors’ assets (the “Assets”) free and clear of all Liens, claims, and interests, other than Assumed Liabilities (as defined in the Stalking Horse APA) to [Blue Torch Finance LLC], an entity organized and controlled by the Agent (as defined herein) (the “Stalking Horse Bidder”), or any other Successful Bidder (as defined herein), and the assumption and assignment of certain executory contracts and unexpired leases (each, an “Assigned Contract” and collectively, the “Assigned Contracts”); (ii) authorizing and approving certain bidding procedures for the Sale (collectively, the “Bidding Procedures,” a copy of which is attached hereto as **Exhibit 1**), and the form and manner of notice thereof; (iii) authorizing the Debtors’ entry into the Asset Purchase Agreement substantially in the form attached hereto as **Exhibit 2** (the “Stalking Horse APA”) with the Stalking Horse Bidder; (iv) authorizing and approving the Expense Reimbursement (as defined herein), (v) approving procedures related to the assumption and assignment of certain executory contracts and unexpired leases, (vi) scheduling an auction for the Assets (the “Auction”); and (vii) granting related relief, all as more fully described in the Motion; and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the “Hearing”); and the Court having determined the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice

of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore;

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. This Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012.

B. Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. The statutory and legal predicates for the relief requested in the Motion and provided for herein are (i) sections 105, 363, 365, 503 and 507 of title 11 of the Bankruptcy Code; (ii) Bankruptcy Rules 2002, 6004, 6006, and 9014; and (ii) Local Rules 2002-1 and 6004-1.

D. Good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order (including, without limitation, with respect to the Bidding Procedures) has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and Local Rule 2002-1(b).

E. The Sale Notice (as defined below), in substantially in the form attached hereto as **Exhibit 3**, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of this Order, the Bidding Procedures, the Auction, the Sale, and the Sale

3. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Hearing, and any and all objection deadlines related thereto, and no other or further notice is required of the foregoing.

F. The Debtors have articulated good and sufficient business reasons for the Court to approve the Bidding Procedures and the Expense Reimbursement. The Bidding Procedures are: (i) fair, reasonable and appropriate; and (ii) designed to maximize recovery with respect to a Sale or an investment in the form of a Chapter 11 Plan Transaction (as defined in the Bidding Procedures). The Bidding Procedures and Expense Reimbursement were negotiated in good faith and at arm's length and are reasonably designed to promote a competitive and robust bidding process to generate the greatest level of interest in the Debtors' Assets. The process for selecting the Stalking Horse Bidder was fair and appropriate under the circumstances and in the best interests of the Debtors' estates. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c).

G. The Stalking Horse APA represents the highest or otherwise best offer the Debtors have received to date to purchase the Assets designated for purchase thereunder. The Stalking Horse APA provides the Debtors with the opportunity to sell such Assets in a manner designed to preserve and maximize their value and provides a floor for a further marketing and auction process. Without the Stalking Horse APA, the Debtors are at a significant risk of realizing a lower price for their Assets. The Stalking Horse Bidder shall act as a "stalking horse bidder" pursuant to the Stalking Horse APA and shall be subject to higher or otherwise better offers in accordance with the Stalking Horse APA and the Bidding Procedures. Pursuit of the Stalking Horse Bidder as a "stalking horse bidder" and the Stalking Horse APA as a "stalking horse purchase agreement" is in the best interests of the Debtors and the Debtors' estates and their creditors, and it reflects a sound exercise of the Debtors' business judgment.

H. The Expense Reimbursement to be paid to the Stalking Horse Bidder, up to the cap of \$2.5 million on account of the documented out-of-pocket fees and expenses incurred by the Stalking Horse Bidder and its Affiliates (as defined in the Stalking Horse APA), (i) are an actual and necessary cost and expense of preserving the Debtors' estates, within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code, (ii) are commensurate to the real and substantial benefit conferred upon the Debtors' estates by the Stalking Horse Bidder, (iii) are reasonable and appropriate, in light of the size and nature of the proposed Sale and comparable transactions, the commitments that have been made and the efforts that have been and will be expended by the Stalking Horse Bidder, (iv) were negotiated by the parties at arm's length and in good faith, and (v) are necessary to ensure that the Stalking Horse Bidder will continue to pursue its proposed acquisition of the Assets contemplated in the Stalking Horse APA. The Stalking Horse Bidder is unwilling to commit to purchase the Assets under the terms of the Stalking Horse APA without approval of the Expense Reimbursement. The Expense Reimbursement and the limitation on the Stalking Horse Bidder's liability in the event of a termination of the Stalking Horse APA, as set forth in, and in accordance with, Section 10.2 of the Stalking Horse APA were material inducements to the Stalking Horse Bidder to submit a bid that will serve as a minimum or floor bid on which the Debtors, their creditors, customers, suppliers, vendors, and other bidders can rely. The Stalking Horse Bidder has provided a material benefit to the Debtors and their creditors by increasing the likelihood that the best possible price given the circumstances for the Assets will be received. Accordingly, the Bidding Procedures, the Expense Reimbursement, and the limitation on damages are reasonable and appropriate and represent the best method for maximizing value for the benefit of the Debtors' estates.

I. The Notice of Assumption, Assignment and Sale (as defined below) (substantially in the form attached hereto as **Exhibit 4**) is appropriate and reasonably calculated to provide counterparties to the Assigned Contracts with timely and proper notice of the potential/intended assumption and assignment of their executory contracts or unexpired leases, and the procedures for the assumption and assignment of the Assigned Contracts, and no other or further notice is required.

J. Entry of this Order is in the best interests of the Debtors, their estates, and creditors and all other interested parties.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED with respect to all issues other than approval of the Sale, to the extent set forth herein.

2. Except as expressly provided herein, nothing herein shall be construed as a determination of the rights of any party in interest in these Chapter 11 Cases. Any objections to the Motion as they pertain to the bidding and Auction process or the relief granted by this Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits with prejudice.

Bidding Procedures

3. The Bidding Procedures attached hereto as **Exhibit 1** are hereby APPROVED. The failure to specifically include or reference any particular provision of the Bidding Procedures in the Motion or this Order shall not diminish or otherwise impair the effectiveness of such provision, it being this Court's intent that the Bidding Procedures are approved in their entirety, as if fully set forth in this Order. The Debtors are authorized to take any and all actions reasonably necessary or appropriate to implement the Bidding Procedures.

The Sale Schedule

4. The dates and deadlines below are approved, but may also be modified by the Debtors to the extent permitted under the Bidding Procedures.

Event	Date
Deadline to file Cure Costs Motion	September 15, 2023 at 4:00 p.m. (prevailing Eastern Time)
Cure Objection Deadline	September 27, 2023 at 4:00 p.m. (prevailing Eastern Time)
Hearing on Cure Costs Motion	October 4, 2023 at 2:00 p.m. (prevailing Eastern Time)
Bid Deadline	November 9, 2023 at 5:00 p.m. (prevailing Eastern Time)
Deadline for Debtors to Designate Qualified Bids and Baseline Bid	November 10, 2023 at 5:00 p.m. (prevailing Eastern Time)
Auction	November 13, 2023 at 11:00 a.m. (prevailing Eastern Time)
Sale Objection Deadline	[November 2], 2023 at 4:00 p.m. (prevailing Eastern Time)
Debtors' Deadline to Reply to Sale Objections	[November 13], 2023 at 6:00 p.m. (prevailing Eastern Time)
Supplemental Sale Objection Deadline	[November 15], 2023 at 10:00 a.m. (prevailing Eastern Time)
Sale Hearing	[November 16], 2023 at [●] (prevailing Eastern Time)

The Stalking Horse APA and Stalking Horse Bidder

5. Subject to the Bidding Procedures and approval at the Sale Hearing, the Debtors' entry into the Stalking Horse APA attached hereto as **Exhibit 2** is hereby authorized.

6. The Stalking Horse Bidder is deemed a Qualified Bidder and the Stalking Horse APA is a Qualified Bid for all purposes in connection with the bidding process, the Auction, and the Sale. Notwithstanding anything herein to the contrary, the Stalking Horse Bidder shall not be required to take any further action in order to participate in the Auction (if any) or, if the Stalking Horse Bidder is the Successful Bidder, to be named the Successful Bidder at the Sale Hearing.

7. The Stalking Horse Bidder is authorized to credit bid (or assume debt) up to the full amount of the full amount of the DIP Obligations, the Prepetition 1L Obligations, and the First Lien Adequate Protection Obligations (all as defined in the DIP Order) pursuant to section 363(k) of the Bankruptcy Code.⁴

8. In the event of a competing bid, the Stalking Horse Bidder will be entitled, but not obligated, to submit successive subsequent bids and will be entitled in the calculation of the amount of the Stalking Horse Bidder's bid and any subsequent bids for a credit equal to the amount of the Expense Reimbursement. For the avoidance of doubt, the Stalking Horse Bidder does not waive its right to the Expense Reimbursement by placing a subsequent bid. Any proposal for a competing bid must be made in accordance with the Bidding Procedures.

The Expense Reimbursement

9. To the extent due under the Stalking Horse APA, the Debtors are authorized to pay the Stalking Horse Bidder's reasonable, documented out-of-pocket fees and expenses incurred by the Stalking Horse Bidder and its affiliates prior to termination of the Stalking Horse APA in connection with the Stalking Horse APA, the other transaction Documents, the Sale Order, and the transactions contemplated thereby, including the reasonable fees and expenses of legal counsel, financial advisors, consultants, and any other advisors that the Stalking Horse Bidder engages in its reasonable discretion up to \$2.5 million (the "Expense Reimbursement"), to be paid under the terms of the Stalking Horse APA.

4. *See Interim Order (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing and (B) Utilize Cash Collateral, (II) Granting Senior Secured Priming Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to the Prepetition 1L Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. 65] (the "DIP Order").

10. The obligation to pay the Expense Reimbursement in accordance with the terms of the Stalking Horse APA shall not be discharged, modified, or otherwise affected by any chapter 11 plan in these Chapter 11 Cases or by any other order or action of the Court. The Expense Reimbursement shall be an allowed administrative expense claim pursuant to sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code.

11. Except for the Stalking Horse Bidder, no other person or entity shall be entitled to any expense reimbursement or any break-up, “topping,” termination, or other similar fee or payment in connection with any bid. Any bid (other than the Stalking Horse APA) that seeks allowance or payment of any topping or other similar fee or expense reimbursement or similar consideration from the Debtors in connection with such bid, shall not be a Qualified Bid and shall not be a permitted bid at any Auction.

Notice Procedures

12. The Sale Notice, the Notice of Assumption, Assignment and Sale, and any Supplemental Assumption Notice, the Bidding Procedures, the Auction, and the Sale Hearing, and the objection periods associated with each of the foregoing are reasonably calculated to provide notice to any affected party and afford the affected party the opportunity to exercise any rights affected by the Motion as it relates to the Bidding Procedures, the Auction, the Sale, the Sale Hearing, and the assumption and assignment to the Stalking Horse Bidder or, in the event the Stalking Horse Bidder is not the Successful Bidder, then to the Successful Bidder, of the Assigned Contracts pursuant to Bankruptcy Rules 2002(a)(2), 6004, and 6006, and such notice and objection periods are hereby approved.

13. The Sale Notice is approved. Within three (3) business days of the entry of this Order, the Debtors shall serve the Sale Notice by regular mail on: (a) the U.S. Trustee for the District of Delaware; (b) counsel to the Committee, if any; (c) counsel to the Agent; (d) counsel to

GLAS Americas LLC, as the administrative agent for the prepetition second lien lenders; (e) counsel to the Stalking Horse Bidder; (f) the United States Attorney's Office for the District of Delaware; (g) the state attorneys general for all states in which the Debtors conduct business; (h) all parties to Potential Assigned Contracts; (i) all parties who have expressed to the Debtors or their professionals in writing an interest in acquiring some or all of the Assets; (j) all known holders of liens, encumbrances, and other claims secured by any of the Assets; (k) the Internal Revenue Service; (l) all applicable state and local taxing authorities; (m) the Federal Trade Commission; (n) each governmental agency that is an interested party with respect to the Sale and transactions proposed thereunder; (o) all of the Debtors' other known creditors and equity security holders; and (p) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002 (collectively, the "Sale Notice Parties").

14. The Debtors shall post the Sale Notice, the Notice of Assumption, Assignment and Sale, and any Supplemental Assumption Notice and this Order on the website of the Debtors' claims and noticing agent. Within seven (7) business days of the entry of this Order, the Debtors shall cause the Sale Notice to be published once in the national edition of USA Today or another nationally circulated newspaper, with any modifications necessary for ease of publication. Publication of the Sale Notice as described in this Order conforms to the requirements of Bankruptcy Rules 2002(l) and 9008, and is reasonably calculated to provide notice to any affected party, including any Interested Parties, and afford the affected party the opportunity to exercise any rights affected by the Motion and the relief granted by this Order.

Sale Objection Procedures

15. Any objections to the Sale or the relief requested in connection with the Sale including objections related to the adequate assurance of future performance by the Stalking Horse Bidder but not including objections related to cure costs for the Assigned Contracts or general

objections to the assumption and assignment of the Assigned Contracts (a “Sale Objection”), must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) set forth the specific basis for the Sale Objection; (d) be filed with the Clerk of this Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 **on or before [November 2], 2023 at 4:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”), and proof of service of such Sale Objection upon the Objection Notice Parties⁵ shall be filed with the Court as and when required by the Local Rules; and (e) be served upon the Objection Notice Parties; *provided, however*, that the Sale Objection Deadline solely for Sale Objections related to the adequate assurance of future performance of a purchaser that is not the Stalking Horse Bidder or to the conduct of the Auction shall be **on or before [November 15], 2023 at 10:00 a.m. (prevailing Eastern Time)** (the “Supplemental Sale Objection Deadline”). If a Sale Objection is not filed and served on or before the Sale Objection Deadline or Supplemental Sale Objection Deadline, as applicable, in accordance with the foregoing requirements, the objecting party may be barred from objecting to the Sale and being heard at the Sale Hearing, and this Court may enter the Sale Order without further notice to such party.

16. Failure to object to the relief requested in the Motion shall be deemed to be “consent” for purposes of section 363(f) of the Bankruptcy Code. All objections to the Motion or

5. The “Objection Notice Parties” and their addresses are as follows: (a) Debtors’ counsel, (i) Hughes Hubbard & Reed LLP, One Battery Park Plaza, 16th Floor, New York, NY 10004 (Attn: Kathryn A. Coleman, Esq. (katie.coleman@hugheshubbard.com), Christopher Gartman, Esq. (chris.gartman@hugheshubbard.com), and Elizabeth A. Beitler, Esq. (elizabeth.beitler@hugheshubbard.com)); and (ii) Potter Anderson & Corroon LLP, 1313 North Market Street, Sixth Floor, P.O. Box 951, Wilmington, Delaware 19801 (Attn: Jeremy W. Ryan, Esq. (jryan@potteranderson.com)); (b) counsel to the Agent and Stalking Horse Bidder, (i) Ropes & Gray LLP, 1211 Avenue of the Americas, New York, New York 10036, (Attn: Gregg M. Galardi (Gregg.Galardi@ropesgray.com), Robb Tretter (Robb.Tretter@ropesgray.com), and Leonard Klingbaum (Leonard.Klingbaum@ropesgray.com)) and (ii) Chipman Brown Cicero & Cole, LLP, 1313 N. Market Street Suite 5400, Wilmington, DE 19801 (Attn: Mark L. Desgrosseilliers (desgross@chipmanbrown.com)) and (c) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Benjamin Hackman, Esq. (benjamin.a.hackman@usdoj.gov)).

the relief requested therein (and all reservations of rights included therein), as they pertain to the entry of this Order, are overruled to the extent they have not been withdrawn, waived, or otherwise resolved.

Notice of Successful Bidder

17. The Debtors shall file a Notice of Successful Bidder within twenty-four (24) hours of the conclusion of the Auction and send such notice by overnight mail to all counterparties of all Potential Assigned Contracts (as defined below), and if the Successful Bidder is an entity other than the Stalking Horse Bidder, the Debtors shall include in the Notice of Successful Bidder notice of a status conference regarding scheduling around adequate assurance of future performance on **[November 16], 2023 at [●] (prevailing Eastern Time)** or at the Court's earliest convenience thereafter.

18. As soon as reasonably practicable after the completion of the Auction (if any), if the Successful Bidder is not the Stalking Horse Bidder, the Debtors shall file a final form of order (the "**Alternative Sale Order**") approving the Sale as agreed upon between the Debtors (in consultation with the Consultation Parties) and the Successful Bidder. If a Successful Bid is a Chapter 11 Plan Bid, the Alternative Sale Order shall, among other things, set proposed dates for (a) the filing of a chapter 11 plan (the "**Plan**") propounded by the Debtors in consultation with the Successful Bidder and the Consultation Parties, (b) a hearing to consider the disclosure statement with respect to the Plan, and (c) a confirmation hearing with respect to the Plan.

19. In the event that the Successful Bidder does not consummate the Sale and a Back-Up Bidder(s) has been previously identified, the Debtors shall file and serve a notice of the Debtors' intent to proceed with the Back-Up Bid.

Assumption and Assignment Procedures

20. The form of notice to counterparties to all Potential Assigned Contracts (the “Notice of Assumption, Assignment and Sale”) attached hereto as **Exhibit 4** is hereby authorized, approved, and made part of this Order as if fully set forth herein.

21. The following procedures for assumption and assignment of executory contracts and unexpired leases (the “Assumption Procedures”) are hereby approved:

- a. **Motion to Set Cure Costs.** By no later than September 15, 2023, the Debtors shall file a motion (such motion the “Cure Costs Motion”) through which the Debtors will seek entry of an order (the “Cure Costs Order”) fixing monetary amounts that the Debtors would be obligated to pay in connection with the assumption or the assumption and assignment of all of the Debtors’ executory contracts and unexpired leases (the “Potential Assigned Contracts”) and to elicit any objection to the assumption and assignment of such Potential Assigned Contracts other than objections based on adequate assurance of future performance. The Debtors shall set the Cure Costs Motion for hearing no later than October 4, 2023. The Cure Costs Motion shall include (i) the title of each Potential Assigned Contract, (ii) the name of the counterparty to the Potential Assigned Contract, (iii) Debtors’ proposed Cure Costs (if any) required in connection with the Potential Assigned Contract, and (iv) the deadline to object to the Debtors’ proposed Cure Costs.
- b. **Notice of Assumption, Assignment and Sale.** No later than three (3) business days prior to the Bid Deadline (the “Assumption, Assignment and Sale Service Deadline”), the Debtors shall serve the Notice of Assumption, Assignment and Sale via overnight delivery on all counterparties to executory contracts and unexpired leases of the Debtors designated as Assigned Contracts by the Stalking Horse Bidder (collectively, the “Assigned Contracts”) and file the same with the Court. The Notice of Assumption, Assignment and Sale shall inform each recipient of (i) the timing and procedures relating to such assumption, assignment and sale, (ii) the title of the Potential Assigned Contract, and (iii) the name of the counterparty to the Potential Assigned Contract; provided, however, that service of a Notice of Assumption, Assignment and Sale does not constitute an admission that such Potential Assigned Contract is an executory contract or unexpired lease or that such stated Cure Cost constitutes a claim against the Debtors or a right against the Stalking Horse Bidder (or other Successful Bidder) and all rights with respect thereto shall be expressly reserved. Further, the inclusion of a Potential Assigned Contract on the Notice of Assumption, Assignment and Sale is not a guarantee that such Potential Assigned Contract will ultimately be assumed, assigned and sold.

As set forth above, within three (3) business days of the entry of this Order, the Debtors shall serve the Sale Notice on the Sale Notice Parties, including all parties to Potential Assigned Contracts. The Sale Notice, among other things, sets forth the timing and procedures for objecting to the assumption and assignment of the

Potential Assigned Contracts on the basis of adequate assurance of future performance by the Stalking Horse Bidder or the Successful Bidder.

- c. **Objections.** Any counterparty to a Potential Assigned Contract shall file and serve objections with respect to the Cure Costs Motion in accordance with the Cure Costs Motion. Any counterparty to a Potential Assigned Contract shall file and serve on the Objection Notice Parties any objection to the proposed assumption and assignment of the Potential Assigned Contracts on the basis of adequate assurance of future performance to (i) the Stalking Horse Bidder by no later than the Sale Objection Deadline, and (ii) to any other Successful Bidder by no later than [November 15, 2023] at 10:00 a.m. (prevailing Eastern Time). If no objection is timely filed and served, (x) the counterparty to the Potential Assigned Contract shall be deemed to have consented to the assumption, assignment and sale of the Contract to the Successful Bidder pursuant to sections 363 and 365 of the Bankruptcy Code if such Potential Assigned Contract is designated by the Successful Bidder as an Assigned Contract, and shall be forever barred from asserting any objection with regard to such assumption, assignment and sale, except with respect to the adequate assurance of future performance by a Successful Bidder other than the Stalking Horse Bidder.
- d. **Supplemental Contract Assumption Notice.** To the extent the Stalking Horse Bidder, at any time after the Assumption, Assignment and Sale Service Deadline (i) identifies additional Assigned Contracts, or (ii) removes Assigned Contracts from the list of executory contracts and unexpired leases ultimately selected as Assigned Contracts, the Debtors will promptly file with this Court and serve by overnight delivery a supplemental notice of contract assumption (a “Supplemental Assumption Notice”) on each of the counterparties to the affected Potential Assigned Contracts and their counsel of record, if any. Each Supplemental Assumption Notice will include the same information with respect to listed Potential Assigned Contracts as was included in the Notice of Assumption, Assignment and Sale. Each Supplemental Assumption Notice that identifies a Potential Assigned Contract that was not previously designated to be assumed, assigned and sold shall provide a deadline of not less than seven (7) business days from the date of service of such Supplemental Assumption Notice by which the counterparty to any such Potential Assigned Contract may object only to its listing as an Assigned Contract (if it was not previously designated to be assigned).
- e. **Supplemental Adequate Assurance Objection Deadline.** Following the Bid Deadline, in the event that the Debtors receive one or more Qualified Bids other than the Stalking Horse APA, upon request by any counterparty to a Potential Assigned Contract, the Debtors will send such party evidence that any Qualified Bidder that included such Potential Assigned Contract in its Bid has the ability to perform thereunder and otherwise complies with the requirements of adequate assurance of future performance under section 365(b)(1) of the Bankruptcy Code on a confidential basis for all nonpublic information. Consistent with Paragraph 17 of the Bidding Procedures Order, the Debtors shall file a Notice of Successful Bidder within twenty-four (24) hours of the conclusion of the Auction and send such notice by overnight mail to all counterparties of Potential Assigned Contracts,

which shall set forth, among other things, (i) the Successful Bidder and Back-Up Bidder (if any) and the amount of each of the Successful Bid and the Back-Up Bid (if any), (ii) the Assigned Contracts the Successful Bidder intends to assume, and (iii) the proposed assignee(s) of such Assigned Contracts. To the extent the Successful Bidder is not the Stalking Horse Bidder, the non-debtor counterparties to the Assigned Contracts shall have until 10:00 a.m. on [November 15, 2023] to file any objections to adequate assurance of future performance by the Successful Bidder.

- f. **Contract Assumption.** No Assigned Contract shall be deemed assumed, assigned and sold pursuant to sections 365 and 363 of the Bankruptcy Code until the later of (i) the date the Court has entered an order assuming, assigning and selling such Assigned Contracts or (ii) the date the Sale has closed.

22. The Successful Bidder shall be responsible for paying any Cure Costs for an Assigned Contract that is assumed and assigned and for satisfying any requirements regarding adequate assurance of future performance that may be imposed under section 365(b) of the Bankruptcy Code in connection with the proposed assignment of any Assigned Contract, and the failure to provide adequate assurance of future performance to any counterparty to any Assigned Contract shall not excuse the Successful Bidder from performance of any and all of its obligations pursuant to the Successful Bidder's asset purchase agreement.

23. The Debtors' decision to assume and assign the Assigned Contracts to the Stalking Horse Bidder or, in the event the Stalking Horse Bidder is not the Successful Bidder, then to the Successful Bidder, is subject to this Court's approval and the closing of the Sale. Accordingly, absent this Court's approval and the closing of the Sale, the Assigned Contracts shall not be assumed or assumed and assigned and shall in all respects be subject to further administration by the Debtors and their estates under the Bankruptcy Code in connection with these Chapter 11 Cases.

24. Nothing herein shall restrict the ability of the Debtors to reject or terminate a contract or lease that has not been designated as an Assigned Contract as of the Closing Date, except to the extent provided in the asset purchase agreement that is the Successful Bid.

Other Relief Granted

25. If no timely Qualified Bids other than the Stalking Horse APA are submitted on or before the Bid Deadline, the Debtors shall not hold an Auction and shall request at the Sale Hearing that this Court approve the Stalking Horse APA and the transactions contemplated thereunder. If the Debtors timely receive one or more Qualified Bids other than the Stalking Horse APA, then the Debtors shall conduct the Auction on **November 13, 2023 at 11:00 a.m. (prevailing Eastern Time)**, at the offices of Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, New York 10004 or virtually via telephone or video conference pursuant to information to be timely provided by the Debtors to the Auction Participants (as defined below). Only the Debtors, the Auction Bidders (including the Stalking Horse Bidder), the Consultation Parties, and any creditors of the Debtors, together with the professional advisors to each of the foregoing parties, may attend the Auction (collectively, the “Auction Participants”); *provided* that any such creditors provide counsel for the Debtors written notice of their intent to attend the Auction no later than 5:00 p.m. (ET) the day prior to the Auction.

26. The Debtors shall have until **[November 13], 2023 at 4:00 p.m. (prevailing Eastern Time)** to file and serve a reply to any objection filed in connection with the Sale, including any Sale Objection, Adequate Assurance Objection, or Omitted Contract Objection, that is duly filed by **[November 2], 2023 at 4:00 p.m. (prevailing Eastern Time)**, and shall have until the Sale Hearing to reply to any objections filed or asserted thereafter.

27. The Sale Hearing shall be held in this Court on **[November 16], 2023 at [●] (prevailing Eastern Time)**, unless otherwise determined by this Court. The Sale Hearing may be adjourned by the Debtors, the Consultation Parties, and the Stalking Horse Bidder, or, in the event the Stalking Horse Bidder is not the Successful Bidder, then in consultation with the Consultation

Parties, and the Successful Bidder, from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a hearing agenda or notice on the docket of these Chapter 11 Cases.

28. All persons and entities that participate in the Auction or bid for any Asset during the Sale Process shall be deemed to have knowingly and voluntarily (i) consented to the core jurisdiction of the Court to enter any order related to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order; (ii) waived any right to a jury trial in connection with any disputes relating to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order; and (iii) consented to the entry of a final order or judgment in connection with any disputes relating to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order, if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the relevant parties; *provided* that, notwithstanding anything contained in this Order, nothing herein alters or impacts any party in interest's rights with respect to which judicial forum is the appropriate judicial forum for a lawsuit or proceeding arising under the Prepetition 1L Credit Agreement (as defined in the DIP Order).

29. The Debtors are authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

30. In the event that there is a conflict between this Order or the Bidding Procedures, on the one hand, and the Motion, the Stalking Horse APA, or the Successful Bidder's asset purchase agreement, on the other hand, this Order and the Bidding Procedures shall control and govern. If there is a conflict between this Order and the Bidding Procedures, this Order shall

control and govern. If there is a conflict between this Order or the Bidding Procedures, on the one hand, and any notice served in connection with the Motion or this Order, on the other hand, this Order and the Bidding Procedures shall control and govern.

31. Prior to mailing the Sale Notice, the Notice of Assumption, Assignment and Sale, and any Supplemental Assumption Notice, the Debtors may fill in, or cause to be filled in, any missing dates and other information, correct any typographical errors, conform the provisions thereof to the provisions of this Order, and make such other, non-material changes as the Debtors deem necessary or appropriate.

32. This Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rules 6004(h) or 6006(d) or any other provision of the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules is expressly waived. The Debtors are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order, and may, in their sole discretion and without further delay, take any action and perform any act authorized or approved under this Order.

33. The requirements set forth in Local Rules 6004-1, 9006-1, and 9013-1 are hereby satisfied or waived.

34. The Debtors are authorized to take all steps necessary or appropriate to implement the relief granted in this Order.

35. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation or interpretation of the Order.

EXHIBIT 1

Bidding Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

AN GLOBAL LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11294 (JKS)

(Jointly Administered)

BIDDING PROCEDURES

On August 28, 2023 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”). The Debtors are maintaining their business and managing their property as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

On [●], 2023, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered an order [Docket No. ●] (the “Bidding Procedures Order”), among other things, granting certain relief requested in the related motion [Docket No. ●] (the “Bidding Procedures Motion”), including authorizing the Debtors to solicit bids and approving the procedures set forth herein (collectively, the “Bidding Procedures”) to be employed by the Debtors in connection with the proposed sale (the “Sale”) of all or substantially all of the Debtors’ assets (the “Assets”), free and clear of all encumbrances other than Assumed Liabilities² to [Blue Torch Finance LLC], an entity organized and controlled by the Agent (as defined herein) (the “Stalking Horse Bidder”), pursuant to an Asset Purchase Agreement dated as of [●], 2023 (the “Stalking Horse APA”) with the Stalking Horse Bidder or, in the event the Stalking Horse Bidder is not the

1. The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number or registration number in the applicable jurisdiction, are: AN Global LLC (5504); AgileThought, Inc. (2509); 4th Source Holding Corp. (9629); 4th Source Mexico, LLC (7552); 4th Source, LLC (7626); AgileThought Brasil-Consultoria Em Tecnologia LTDA (01-42); AgileThought Brasil Servicos de Consultoria Em Software (01-20); AgileThought Costa Rica S.A. (6822); AgileThought Digital Solutions, S.A.P.I. de C.V. (3KR0); AgileThought México S.A. de C.V. (7E46); AgileThought, LLC (7076); AgileThought Servicios Administrativos, S.A. de C.V. (4AG1); AgileThought Servicios México S.A. de C.V. (8MY5); AgileThought, S.A.P.I. de C.V. (No Tax ID); AGS Alpama Global Services USA, LLC (0487); AN Data Intelligence, S.A. de C.V. (8I73); AN Extend, S.A. de C.V. (1D80); AN Evolution, S. de R.L. de C.V. (7973); AN USA (5502); AN UX, S.A. de C.V. (7A42); Cuarto Origen, S. de R.L. de C.V. (0IQ9); Entrepids México, S.A. de C.V. (OCYA); Entrepids Technology Inc. (No Tax ID); Facultas Analytics, S.A.P.I. de C.V. (6G37); Faktos Inc., S.A.P.I. de C.V. (3LLA); IT Global Holding LLC (8776); and QMX Investment Holdings USA, Inc. (9707). The Debtors’ headquarters are located at 222 W. Las Colinas Boulevard, Suite 1650E, Irving, Texas 75039.
2. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Bidding Procedures Order.

Successful Bidder, then an alternative asset purchase agreement with the Successful Bidder. The Stalking Horse APA is attached to the Bidding Procedures Order as **Exhibit 2**.

These Bidding Procedures also provide that the Debtors, in consultation with the Consultation Parties (as defined herein), may consider competing bids (each, a “Chapter 11 Plan Bid”) in the form of a chapter 11 plan of reorganization (a “Chapter 11 Plan Transaction”), subject to the requirements set forth herein.

ANY PARTY INTERESTED IN BIDDING ON THE ASSETS SHOULD CONTACT:

- (A) THE INVESTMENT BANKER FOR THE DEBTORS, GUGGENHEIM SECURITIES, LLC, 330 MADISON AVENUE, NEW YORK, NY 10017 (ATTN: STEPHEN PREEFER (STEPHEN.PREEFER@GUGGENHEIMPARTNERS.COM), JIM SUPRENANT (JIM.SUPRENANT@GUGGENHEIMPARTNERS.COM), AND SCOTT GREEN (SCOTT.GREEN@GUGGENHEIMPARTNERS.COM)); AND**
- (B) COUNSEL FOR THE DEBTORS, HUGHES HUBBARD & REED LLP, HUGHES HUBBARD & REED LLP, ONE BATTERY PARK PLAZA, 16TH FLOOR, NEW YORK, NY 10004 (ATTN: KATHRYN A. COLEMAN, ESQ. (KATIE.COLEMAN@HUGHESHUBBARD.COM), CHRISTOPHER GARTMAN, ESQ. (CHRIS.GARTMAN@HUGHESHUBBARD.COM), AND ELIZABETH A. BEITLER, ESQ. (ELIZABETH.BEITLER@HUGHESHUBBARD.COM)).**

Summary of Key Dates Established by Bidding Procedures

Event	Date
Deadline to file Cure Costs Motion	September 15, 2023 at 4:00 p.m. (prevailing Eastern Time)
Cure Objection Deadline	September 27, 2023 at 4:00 p.m. (prevailing Eastern Time)
Hearing on Cure Costs Motion	October 4, 2023 at 2:00 p.m. (prevailing Eastern Time)
Bid Deadline	November 9, 2023 at 5:00 p.m. (prevailing Eastern Time)
Deadline for Debtors to Designate Qualified Bids and Baseline Bid	November 10, 2023 at 5:00 p.m. (prevailing Eastern Time)
Auction	November 13, 2023 at 11:00 a.m. (prevailing Eastern Time)
Sale Objection Deadline	[November 2], 2023 at 4:00 p.m. (prevailing Eastern Time)
Debtors' Deadline to Reply to Sale Objections	[November 13], 2023 at 4:00 p.m. (prevailing Eastern Time)
Supplemental Sale Objection Deadline	[November 15], 2023 at 10:00 a.m. (prevailing Eastern Time)
Sale Hearing	[November 16], 2023 at [●] (prevailing Eastern Time)

Stalking Horse Bidder

Prior to the entry of the Bidding Procedures Order, the Debtors entered into the Stalking Horse APA with the Stalking Horse Bidder. As set forth more fully in the Stalking Horse APA, the Stalking Horse Bidder is (i) credit bidding \$100,000,000 on account of the DIP Obligations and the Prepetition 1L Obligations (as each term is defined in the DIP Order),³ (ii) assuming certain liabilities and executory contracts and unexpired leases of the Debtors, and (iii) satisfying cure costs. The Stalking Horse APA also includes various customary representations, warranties, and covenants by and from the Debtors and the Stalking Horse Bidder, and certain conditions to closing and rights of termination related to the Sale and the Debtors' chapter 11 cases (the "Chapter 11 Cases") generally.

The Stalking Horse Bidder is deemed to be a Qualified Bidder (as defined below) and the Stalking Horse APA is deemed to be a Qualified Bid (as defined below). Subject to the DIP Order,

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3. For purposes of these Bidding Procedures, "DIP Order" means that certain *Interim Order (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing and (B) Utilize Cash Collateral, (II) Granting Senior Secured Priming Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to the Prepetition 1L Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and*

the Stalking Horse Bidder is credit bidding pursuant to 363(k) of the Bankruptcy Code, and thus is not required to make a Good Faith Deposit (as defined below) with the Debtors. The Stalking Horse Bidder shall have the unqualified right at any time to credit bid on a dollar-for-dollar basis up to the full amount of the Prepetition Obligations and the DIP Obligations pursuant to section 363(k) of the Bankruptcy Code.

Assets to be Sold

The Debtors are offering for sale the Assets, *provided* that the Debtors, in consultation with the Consultation Parties, determine that the aggregate consideration offered by any bid, or combination of bids, for the Assets, satisfies the requirements set forth in these Bidding Procedures. Qualified Bidders may bid on all or any number or combination of the Assets.

Participation Requirements

To receive due diligence information, including full access to the Debtors' electronic data room (the "Data Room") and to additional non-public information regarding the Debtors, a potential bidder (each, an "Interested Party") must have delivered to each of: (i) counsel to the Debtors: (a) Hughes Hubbard & Reed LLP, One Battery Park Plaza, 16th Floor, New York, NY 10004 (Attn: Kathryn A. Coleman, Esq. (katie.coleman@hugheshubbard.com), Christopher Gartman, Esq. (chris.gartman@hugheshubbard.com), and Elizabeth A. Beitler, Esq. (elizabeth.beitler@hugheshubbard.com)); and (b) Potter Anderson & Corroon LLP, 1313 North Market Street, Sixth Floor, P.O. Box 951, Wilmington, Delaware 19801 (Attn: Jeremy W. Ryan, Esq. (jryan@potteranderson.com)); and (ii) investment banker to the Debtors: Guggenheim Securities, LLC, 330 Madison Avenue, New York, NY 10017 (Attn: Stephen Preefer (Stephen.Preefer@guggenheimpartners.com), Jim Suprenant (Jim.Suprenant@guggenheimpartners.com), and Scott Green (Scott.Green@guggenheimpartners.com)), the following documents (the "Preliminary Bid Documents"):

- (a) documentation identifying the Interested Party, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (b) an executed confidentiality agreement in form and substance satisfactory to the Debtors;
- (c) a statement and other factual support demonstrating to the Debtors' reasonable satisfaction, after consultation with the Consultation Parties, that the Interested Party has a bona fide interest in consummating a transaction involving the Assets; and
- (d) sufficient information, as determined by the Debtors, after consultation with the Consultation Parties, to allow the Debtors to determine that the Interested Party (x)

(VI) *Granting Related Relief* [Docket No. 65] (the "DIP Order"), together with any other orders approving the DIP Facility on an interim or final basis.

has, or can obtain, the financial wherewithal and any required internal corporate, legal, or other authorizations to close a transaction for the Assets, including, but not limited to, current audited financial statements of the Interested Party (or such other form of financial disclosure acceptable to the Debtors in their discretion), and (y) can provide adequate assurance of future performance under any executory contracts and unexpired leases to be assumed by the Debtors and assigned to Interested Party, pursuant to section 365 of the Bankruptcy Code, in connection with the Sale.

Only those Interested Parties who have submitted acceptable Preliminary Bid Documents (each, a “Qualified Bidder”) may submit bids. For the avoidance of doubt, the Stalking Horse Bidder has been deemed to be a Qualified Bidder and is not required to provide any of the foregoing Preliminary Bid Documents.

Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures: (i) the Stalking Horse Bidder shall be considered a Qualified Bidder and (ii) the Stalking Horse APA shall be considered a Qualified Bid, without regard to any of the requirements or conditions set forth herein and without any other or further action by the Stalking Horse Bidder. Additionally, in determining whether Interested Parties constitute Qualified Bidders, the Debtors may consider a combination of bids for the Assets.

Bankruptcy Court Jurisdiction

Any Interested Parties and Qualified Bidders shall: (a) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating to the Bidding Procedures, the Sale, the Auction, and the construction and enforcement of the contemplated transaction documents of such parties; (b) bring any such action or proceeding in the Court; and (c) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

Due Diligence

The Debtors will provide any Qualified Bidder with reasonable access to the Data Room and any other additional information that the Debtors believe to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to: (a) investment banker for the Debtors, Guggenheim Securities, LLC; or (b) counsel for the Debtors, Hughes Hubbard & Reed LLP.

The due diligence period shall extend through and including the Bid Deadline. The Debtors, in their business judgment, may, but shall not be obligated to, furnish any due diligence information after the Bid Deadline.

The Debtors reserve the right, in their reasonable discretion, to withhold or limit access to any due diligence information that the Debtors determine is business-sensitive or otherwise not

appropriate for disclosure to a Qualified Bidder. Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality, or similar provisions relating to any due diligence information, the Debtors and their estates shall be authorized to provide due diligence information to Interested Parties *provided* that such Interested Parties have delivered an executed confidentiality agreement in form and substance acceptable to the Debtors. The Debtors and their estates are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Interested Parties in connection with the Bidding Procedures and the Sale.

Bid Requirements

Other than in the case of the Stalking Horse Bidder and the Stalking Horse APA, which shall be considered a Qualified Bidder and a Qualified Bid, respectively, for all purposes under the Bidding Procedures, without regard to any of the requirements or conditions set forth therein and without any other or further action by the Stalking Horse Bidder, to be deemed a “Qualified Bid,” a bid must be received from a Qualified Bidder by each of the Bid Notice Parties (as defined herein) on or before the Bid Deadline and include the following items:

- (a) a letter stating that the Qualified Bidder’s offer is irrevocable until consummation of a transaction involving the Assets (or lot thereof) identified in such offer (such Assets, the “Bid Assets”);
- (b) other than for any Chapter 11 Plan Bid, a duly authorized and executed purchase agreement based on the form purchase agreement provided by the Debtors (through their advisors), marked to show any revisions, including, among other things, the purchase price for the Bid Assets, together with all exhibits and schedules thereto (including, among other things, a proposed form of order approving the transaction(s) contemplated in such purchase agreement). For the avoidance of doubt, a “conceptual” or “issues list”-style markup of the form asset purchase agreement would not satisfy this requirement;
- (c) each Chapter 11 Plan Bid must be accompanied by an executed investment agreement, signed by an authorized representative of such bidder, pursuant to which the bidder proposes to effectuate the Chapter 11 Plan Transaction, in the form of a non-taxable recapitalization transaction effectuated pursuant to a chapter 11 plan of reorganization, and must provide for a fully-committed investment of capital in exchange for substantially all of the equity of the reorganized Debtors;
- (d) written evidence acceptable to the Debtors, in their discretion and in consultation with the Consultation Parties, demonstrating financial wherewithal, operational ability, and corporate authorization to consummate the proposed transaction;
- (e) a written acknowledgment that the Qualified Bidder (i) has had an opportunity to conduct any and all due diligence regarding the Bid Assets, the Sale, and/or a Chapter 11 Plan Transaction, (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and any other information in making the bid, (iii) did not rely upon any written or oral statements,

representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, by the Debtors or any of their advisors or other representatives, including, without limitation, the Debtors' investment banker, Guggenheim Securities, LLC, regarding the bid, the Bid Assets, the Sale, the Chapter 11 Plan Transaction, or the completeness or accuracy of any information provided in connection therewith or with the Auction, except as expressly stated in these Bidding Procedures, and (iv) the Qualified Bidder did not engage in any collusive conduct and acted in good faith in submitting its bid; and

- (f) written evidence of a firm commitment for financing to consummate the proposed transaction, or other evidence of ability to consummate the proposed transaction without financing, in either case which is satisfactory to the Debtors in their discretion, in consultation with the Consultation Parties.

A bid will be considered only if the bid:

- (a) fully discloses the identity of each entity that will be bidding or otherwise participating in connection with such bid (including each equity holder or other financial backer of the Qualified Bidder, including if such Qualified Bidder is an entity formed for the purpose of consummating the proposed transaction contemplated by such bid), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any bid. Each bid must also include contact information for the specific person(s) and counsel whom the Debtors or their advisors should contact regarding such bid. Nothing herein shall preclude multiple Qualified Bidders from submitting a joint bid, subject to the Debtors' prior written consent to such submission and the disclosure requirements set forth herein.
- (b) other than for a Chapter 11 Plan Bid, identifies the Bid Assets to be purchased and the contracts and leases to be assumed;
- (c) other than for a Chapter 11 Plan Bid, identifies the liabilities of the Debtors or the Bid Assets to be assumed;
- (d) includes a statement of proposed terms for employees;
- (e) sets forth the consideration, including the form thereof, for the Bid Assets to be purchased and the executory contracts and unexpired leases to be assumed (the "Bid Value"); *provided* that, the Bid Value must be at least equal to the following: (i) \$100,000,000; plus (ii) assumption of those Assumed Liabilities in the Stalking Horse APA that the Stalking Horse Bidder has agreed to pay or assume or the cash equivalent of such amount; plus (iii) the Expense Reimbursement, plus (iv) cash equal to the amount of any transaction fee due to Debtors' investment banker, Guggenheim Securities, LLC, that would be payable on account of the consummation of a sale based on the Bid Value; plus (v) the minimum overbid amount of \$250,000;
- (f) allocates the Bid Value among the Bid Assets and Contracts and Leases to be

assumed (per lot of Assets);

- (g) is not conditioned on (i) obtaining financing or (ii) the outcome of unperformed due diligence;
- (h) includes a description of all governmental, licensing, regulatory, or other approvals or consents that are required to consummate the proposed transaction (including any antitrust approval related to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended), together with evidence satisfactory to the Debtors, in consultation with the Consultation Parties, of the ability to obtain such approvals or consents as soon as reasonably practicable, and in no event later than November 17, 2023 at 5:00 p.m. (prevailing Eastern Time), as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such approvals or consents;
- (i) provides for the Qualified Bidder to serve as a backup bidder (the “Back-Up Bidder”) if the Qualified Bidder’s bid is the next highest and best bid (the “Back-Up Bid”) after the Successful Bid, in accordance with the terms of the Successful Bidder’s asset purchase agreement;
- (j) includes a signed writing stating that the Qualified Bidder’s offer is irrevocable until the selection of the Successful Bidder, provided that if such Qualified Bidder is selected as the Successful Bidder (as defined below) or the Back-Up Bidder, its offer shall remain irrevocable until the later of (i) the closing of the transaction with the Successful Bidder, and (ii) November 27, 2023;
- (k) is accompanied by a cash deposit by wire transfer to an escrow agent selected by the Debtors (the “Deposit Agent”) in an amount equal to ten percent of the Bid Value (any such deposit, a “Good Faith Deposit”);⁴
- (l) sets forth the representatives that are authorized to appear and act on behalf of the Qualified Bidder in connection with the proposed transaction;
- (m) indicates that the Qualified Bidder will not seek any transaction or break-up fee, expense reimbursement, or similar type of payment and that it waives any substantial contribution administrative expense claims under section 503(b) of the Bankruptcy Code;
- (n) includes evidence of the Qualified Bidder’s ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Qualified Bidder’s ability to perform in the future the contracts and leases proposed in its bid to be assumed by the Debtors and assigned to the Qualified Bidder, in a form that will permit the Debtors to disseminate immediately such evidence to the non-Debtor counterparties to such contracts and

4. For the avoidance of doubt, the retention and return of the Deposit Amount (as defined in the Stalking Horse APA) by the Debtors shall be determined in accordance with the Stalking Horse APA.

leases;

- (o) indicates whether or not the Qualified Bidder will assume all cure costs associated with any executory contracts and unexpired leases it intends to assume;
- (p) include written evidence of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Qualified Bidder's asset purchase agreement;
- (q) state or otherwise estimate the types of, and costs or charges for, transition services, if any, the Qualified Bidder would require of or provide to the Debtors, including an estimate of the time any such transition services would be required of or provided to the Debtors;
- (r) provide that in the event of the Qualified Bidder's breach of, or failure to perform under, the Qualified Bidder's asset purchase agreement, the Debtors and their estates shall be entitled to pursue all available legal and equitable remedies, including, without limitation, retention of the Good Faith Deposit as part of the damages resulting to the Debtors and their estates for such breach or failure to perform; and
- (s) includes a commitment to close no later than the date that is 90 days following the Petition Date.

A bid from a Qualified Bidder satisfying all of the above requirements, as determined by the Debtors, in consultation with the Consultation Parties, shall constitute a Qualified Bid. The Debtors reserve the right to work with any Qualified Bidder in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualified Bid. The Debtors will be authorized to approve joint bids in their reasonable discretion, in consultation with the Consultation Parties, on a case-by-case basis.

Each Qualified Bidder submitting a bid shall be deemed to: (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures; and (b) have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures, and the Sale.

Bid Deadline

A Qualified Bidder, other than the Stalking Horse Bidder, that desires to make a bid shall deliver a written and electronic copy of its bid in both PDF and MS-WORD format to the Bid Notice Parties and the Consultation Parties so as to be received on or before **November 9, 2023 at 5:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline"); *provided* that the Debtors may extend the Bid Deadline without further order of the Court, subject to the DIP Credit Agreement and the Stalking Horse APA and after consultation with the Consultation Parties. To the extent that the Bid Deadline is extended for all relevant parties, the Debtors shall file a notice on the docket of the Chapter 11 Cases indicating the same. **Any party that does not submit a bid by the Bid Deadline will not be allowed to (a) submit any offer after the Bid Deadline, or (b) participate in the Auction.**

Evaluation of Qualified Bids

The Debtors, in consultation with the Consultation Parties, shall make a determination regarding whether a timely submitted bid from a Qualified Bidder is a Qualified Bid.

No later than November 10, 2023 at 5:00 p.m. (prevailing Eastern Time), the Debtors shall: (i) notify all Qualified Bidders whether their respective bids have been determined to be Qualified Bids; and (ii) determine, in consultation with the Consultation Parties, which of the Qualified Bids, at such time, is the highest or best bid for purposes of constituting the opening bid at the Auction (the “Baseline Bid”), and shall promptly notify the Stalking Horse Bidder, the Bid Notice Parties and all Qualified Bidders with Qualified Bids of the Baseline Bid.

No Qualified Bids

If no timely Qualified Bids other than the Stalking Horse APA are submitted on or before the Bid Deadline, the Debtors shall not hold an Auction and shall request at the Sale Hearing that the Court approve the Stalking Horse APA and the transactions contemplated thereunder.

Auction

If the Debtors timely receive one or more Qualified Bids other than the Stalking Horse APA, then the Debtors shall conduct an auction (the “Auction”). Following the Auction, the Debtors will determine, in consultation with the Consultation Parties, which Qualified Bid is the highest or best bid for the Assets, which will be determined by considering, among other things, the following non-binding factors: (a) the transaction structure and execution risk, including conditions to and certainty of closing, termination provisions, availability of financing, and financial wherewithal to meet all commitments and required governmental or other approvals, (b) the anticipated timing to closing; (c) if applicable, the number, type, and nature of any changes to the Stalking Horse APA requested by each Qualified Bidder; (d) the extent to which such modifications are likely to delay closing of the Sale and the cost to the Debtors and their estates of such modifications or delay; (e) in the case of a Chapter 11 Plan Transaction, the structure, confirmability, and feasibility of any proposed chapter 11 plan (including the proposed time and costs estimated to be necessary to negotiate, document, and obtain confirmation of such proposed chapter 11 plan); (f) the total consideration to be received by the Debtors and their estates; and (g) any other factors the Debtors may reasonably deem relevant.

The Auction shall be governed by the following procedures:

- (a) the Auction shall be held on **November 13, 2023 at 11:00 a.m. (prevailing Eastern Time)** at the offices of Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, NY 10004 or virtually via telephone or video conference pursuant to information to be timely provided by the Debtors to the Auction Participants (as defined below);
- (b) only the Stalking Horse Bidder and the other Qualified Bidders with Qualified Bids (together, the “Auction Bidders”) shall be entitled to make any subsequent bids at the Auction;

- (c) the Auction Bidders shall appear at the Auction, or through a duly authorized representative;
- (d) only the Debtors, the Auction Bidders, the Consultation Parties, and any creditors of the Debtors, together with the professional advisors to each of the foregoing parties, may attend the Auction (collectively, the “Auction Participants”); *provided* that any such creditors provide counsel for the Debtors written notice of their intent to attend the Auction no later than 5:00 p.m. (ET) the day prior to the Auction;
- (e) the Debtors, with the assistance of their professional advisors, shall direct and preside over the Auction, which shall be transcribed;
- (f) prior to start of the Auction, each of the Auction Bidders shall confirm that they have not engaged in any collusion with respect to the Bidding Procedures, the Auction, or the Sale;
- (g) the Auction shall be conducted in an open-cry format (and not by way of sealed bids);
- (h) during the Auction, bidding will begin initially with the Baseline Bid and subsequently continue in minimum increments of at least \$250,000 in cash (each, an “Overbid”); *provided, however*, that the Stalking Horse Bidder may satisfy the minimum bid increment requirement by credit bidding at least \$250,000 of outstanding Prepetition 1L Obligations and DIP Obligations (each as defined in the DIP Motion) (up to the amount outstanding as of the projected closing date of the Sale (including but not limited to, principal, accrued and unpaid interest, and all outstanding fees and expenses and other amounts owed under the Prepetition 1L Credit Agreement and the DIP Documents (each as defined in the DIP Motion), respectively) that do not already form a part of the purchase price under the Stalking Horse APA as well as credit bidding the Expense Reimbursement (up to the amount of the Stalking Horse Bidder’s estimate of amount incurred as of the date of the Auction). The Debtors will announce at the Auction the material terms of each Overbid, value each Overbid in accordance with these Bid Procedures and provide each Qualified Bidder with an opportunity to make a subsequent Overbid. Subject to the requirement (other than with regard to the Stalking Horse Bidder) that each Overbid include at least \$250,000 in cash more than the cash component of the Baseline Bid or prevailing Overbid, additional consideration in excess of the amount set forth in the Baseline Bid or the prevailing Overbid may include cash and/or other consideration in accordance with these procedures. To the extent that an Overbid has been accepted entirely or in part because of the addition, deletion, or modification of a provision or provisions in the applicable Transaction Documents or the Stalking Horse APA, the Debtors will provide notice to each participant of the value ascribed by the Debtors to any such added, deleted, or modified provision or provisions, with such value being determined by the Debtors in consultation with the Consultation Parties;

- (i) any Overbid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such prior Overbid is not selected as the Back-Up Bid. To the extent not previously provided (which will be determined by the Debtors in consultation with the Consultation Parties), a Qualified Bidder submitting an Overbid must submit at the Debtors' request (in consultation with the Consultation Parties), as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors in consultation with the Consultation Parties) demonstrating such Qualified Bidder's ability to close the transaction at the purchase price contemplated by such Overbid;
- (j) the Auction may include individual negotiations with any of the Auction Bidders, but all bids shall be made on the record and in the presence of all of the Auction Bidders;
- (k) all material terms of the bid that is deemed to be the highest and best bid for each round of bidding shall be fully disclosed to the Auction Bidders, and the Debtors shall use reasonable efforts to address any and all questions that the Auction Bidders may have regarding the Debtors' announcement of the then-current highest and best bid;
- (l) except as specifically set forth herein, for the purpose of evaluating the value of the purchase price for the Bid Assets provided by each successive bid (including any successive bid by the Stalking Horse Bidder), the Debtors, in consultation with the Consultation Parties, may give effect to any additional liabilities to be assumed by a Qualified Bidder, and any additional costs which may be imposed on the Debtors;
- (m) each Auction Bidder shall (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction, and the construction and enforcement of the contemplated transaction documents of the Auction Bidders, (ii) bring any such action or proceeding in the Court, and (iii) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law;
- (n) throughout the Auction, subject to section 363(k) of the Bankruptcy Code, the Stalking Horse Bidder (i) shall have the continuing right to credit bid DIP Obligations then outstanding, or any part thereof, to purchase the Assets, and (ii) shall have the continuing right to credit bid the Prepetition 1L Obligations then outstanding, or any part thereof, to purchase the Assets.

- (o) the Auction Bidders shall have the right to make additional modifications to the Stalking Horse APA or any alternative asset purchase agreement, as applicable, in conjunction with each Qualified Bid submitted in each round of bidding during the Auction, provided that (i) any such modifications on an aggregate basis and viewed in whole, shall not, in the Debtors' discretion, in consultation with the Consultation Parties, be less favorable to the Debtors and their estates than the terms of the Stalking Horse APA, and (ii) each Qualified Bid shall constitute an irrevocable offer and shall be binding on the Auction Bidder submitting such bid until such party shall have submitted a subsequent Qualified Bid at the Auction or the conclusion of the Sale Hearing, whichever occurs sooner, unless such bid is selected as the Successful Bid or the Back-Up Bid, which shall remain binding as provided for herein;
- (p) the Debtors and the Consultation Parties shall have the right to request any additional financial information that will allow the Debtors and the Consultation Parties to make a reasonable determination as to an Auction Bidder's financial and other capabilities to consummate the transactions contemplated by the Stalking Horse APA or any Alternative APA, as applicable, as may be amended during the Auction, and any further information that the Debtors may believe is reasonably necessary to clarify and evaluate any bid made by an Auction Bidder during the Auction;
- (q) upon the conclusion of the Auction, the Debtors shall determine, in consultation with the Consultation Parties, and subject to Court approval, the offer or offers for the Assets that is or are the highest or best from among the Qualified Bids submitted at the Auction (the "Successful Bid"). In making this decision, the Debtors shall consider, in consultation with the Consultation Parties, the amount of the purchase price, the assumption of liabilities, the likelihood of the bidder's ability to close a transaction and the timing thereof, the number, type, and nature of any changes to the Stalking Horse APA or other asset purchase agreement submitted with the Successful Bid, as applicable, requested by each bidder, and the net benefit to the Debtors' estates. The bidder submitting such Successful Bid at the Auction shall become the "Successful Bidder," and shall have such rights and responsibilities of the purchaser as set forth in the Stalking Horse APA or an alternative asset purchase agreement, as applicable. The Debtors shall designate a Back-Up Bid (and the corresponding Back-Up Bidder which may be the Stalking Horse Bidder subject to the Stalking Horse Bidder's consent), to purchase the Assets in the event that the Successful Bidder does not close the Sale;
- (r) without the written consent of the Agent, no bid may qualify as the Successful Bid unless such bid provides for cash consideration of an amount equal to or greater than the Prepetition 1L Obligations and DIP Obligations that have been credit bid subject to section 363(k) of the Bankruptcy Code by the Stalking Horse Bidder;
- (s) within one day after the conclusion of the Auction, the Debtors will file with the Court and serve on the Bid Notice Parties a notice setting forth the results of the Auction (the "Notice of Successful Bidder"), which will (a) identify the Successful

Bidder and the Backup Bidder; (b) include a copy of the Successful Bid and the Backup Bid or a summary of the material terms of such bids, including any proposed assumption and assignment of executory contracts and unexpired leases contemplated thereby; and (c) set forth the (1) Adequate Assurance Objection Deadline, (2) date, time, and location of the Sale Hearing, and (3) any other relevant dates or other information necessary to reasonably apprise the Bid Notice Parties of the outcome of the Auction;

- (t) within one (1) business day of the close of the Auction, in the event the Stalking Horse Bidder is not the Successful Bidder, the Successful Bidder shall supplement the Successful Bidder's Good Faith Deposit such that the deposit shall be equal to an amount that is ten percent (10%) of the Successful Bid; and
- (u) prior to the Sale Hearing, the Successful Bidder shall complete and execute all agreements, contracts, instruments, and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

The Debtors reserve the right to make one or more adjournments in the Auction to, among other things (i) facilitate private discussions with individual Qualified Bidders and negotiate the terms of their Overbids, (ii) allow individual Qualified Bidders to consider how they wish to proceed, and (iii) give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors may require in their reasonable discretion (and in consultation with the Consultation Parties) to determine that the Qualified Bidder has sufficient internal resources, or has received sufficient non-contingent debt or equity funding commitments, to consummate the transaction.

THE SUCCESSFUL BID AND ANY BACK-UP BID AND THEIR RELATED TRANSACTION DOCUMENTS SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE SUCCESSFUL BIDDER AND THE BACK-UP BIDDER, RESPECTIVELY, FROM THE TIME THE BID IS SUBMITTED UNTIL TWO (2) BUSINESS DAYS AFTER THE SALE HAS CLOSED. EACH QUALIFIED BID THAT IS NOT THE SUCCESSFUL BID OR THE BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.

Sale Hearing

The Successful Bid and any Back-Up Bid (or if no Qualified Bid other than that of the Stalking Horse Bidder is received, then the Stalking Horse APA) will be subject to approval by the Court. The Sale Hearing to approve the Successful Bid and any Back-Up Bid (or if no Qualified Bid other than that of the Stalking Horse Bidder is received, then the Stalking Horse APA) shall take place on **[November 16], 2023 at [●] (prevailing Eastern Time)**. The Sale Hearing may be adjourned by the Debtors, in consultation with the Consultation Parties or, in the event the Stalking Horse Bidder is not the Successful Bidder, then in consultation with the Consultation Parties and the Successful Bidder, from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a hearing agenda or notice on the docket of the Chapter 11 Cases.

At the Sale Hearing, the Debtors will seek entry of an order, substantially in the form of the Sale Order that, among other things: (i) authorizes and approves the Sale to the Stalking Horse Bidder or, in the event the Stalking Horse Bidder is not the Successful Bidder, then to the Successful Bidder, pursuant to the terms and conditions set forth in the Stalking Horse APA or any alternative asset purchase agreement submitted by the Successful Bidder, as applicable, free and clear of all liens, claims, interests, and encumbrances, except certain permitted encumbrances as determined by the Debtors and any Successful Bidder; (ii) finds that the Stalking Horse Bidder or Successful Bidder, as applicable, is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code; (iii) authorizes the assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale; (iv) as appropriate, exempts the Sale(s) and conveyance(s) of the Assets from any transfer tax, stamp tax, or similar tax, or deposit under any applicable bulk sales statute; and (v) in the event that the Stalking Horse Bidder is not the Successful Bidder, directs that all cash proceeds generated from the Sale shall be paid to the Agent on behalf of the DIP Lenders and the Prepetition 1L Lenders upon the closing of the Sale for application in accordance with the terms and conditions of the DIP Order, the DIP Documents, and the Prepetition 1L Documents (each as defined in the DIP Order), until the DIP Obligations and the Prepetition 1L Obligations (each as defined in the DIP Order) are paid in full.

Back-Up Bidder

Notwithstanding any of the foregoing, in the event that the Successful Bidder fails to close the Sale on or before November 27, 2023 (or such date as may be extended by the Debtors with the consent of the Agent and in consultation with the Consultation Parties), the Back-Up Bid will be deemed to be the Successful Bid, the Back-Up Bidder will be deemed to be the Successful Bidder, and the Debtors shall be authorized to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any interested parties.

Return of Good Faith Deposits

All Good Faith Deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder no later than five (5) business days following the closing of the Sale. The deposit of the Successful Bidder or, if the Sale is closed with the Back-Up Bidder, the deposit of the Back-Up Bidder, shall be applied to the purchase price for the Sale. If the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Stalking Horse APA or any alternative asset purchase agreement, as applicable, the Debtors and their estates shall be entitled to retain the Good Faith Deposit of the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) as part of the damages resulting to the Debtors and their estates for such breach or failure to perform. For the avoidance of doubt, the Debtors' retention of a Good Faith Deposit shall not constitute a waiver of any of the Debtors' legal or equitable rights relating to a Successful Bidder's or Back-Up Bidder's breach or failure to perform, and all such rights and remedies are preserved.

No-Shop or No-Solicitation Provisions

Neither the Bidding Procedures Order nor these Bidding Procedures limit the Debtors' ability or right to solicit higher or otherwise better bids. The Sale contemplated by the Motion, these Bidding Procedures, and the Bidding Procedures Order calls for a fair and open bidding and auction process.

Notice and Consultation Parties

The term "Bid Notice Parties" as used in these Bidding Procedures shall mean: (a) the Debtors: 222 W. Las Colinas Boulevard, Suite 1650E, Irving, Texas 75039, (Attn: Diana P. Abril, Esq., Chief Legal Officer (diana.abril@agilethought.com)); (b) counsel to the Debtors, Hughes Hubbard & Reed LLP, One Battery Park Plaza, 16th Floor, New York, NY 10004 (Attn: Kathryn A. Coleman, Esq. (katie.coleman@hugheshubbard.com), Christopher Gartman, Esq. (chris.gartman@hugheshubbard.com), and Elizabeth A. Beitler, Esq. (elizabeth.beitler@hugheshubbard.com)); (c) co-counsel to the Debtors, Potter Anderson & Corroon LLP, 1313 North Market Street, Sixth Floor, P.O. Box 951, Wilmington, Delaware 19801 (Attn: Jeremy W. Ryan, Esq. (jryan@potteranderson.com)); (d) investment banker to the Debtors: Guggenheim Securities, LLC, 330 Madison Avenue, New York, NY 10017 (Attn: Stephen Preefer (Stephen.Preefer@guggenheimpartners.com), Jim Suprenant (Jim.Suprenant@guggenheimpartners.com), and Scott Green (Scott.Green@guggenheimpartners.com)); (e) counsel to any Official Committee of Unsecured Creditors appointed by the U.S. Trustee, if any (the "Committee"); (f) counsel to the Agent and Stalking Horse Bidder, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036-8704 (Attn: Gregg M. Galardi (Gregg.Galardi@ropesgray.com), Robb Tretter (Robb.Tretter@ropesgray.com), and Leonard Klingbaum (Leonard.Klingbaum@ropesgray.com)); and (g) co-counsel to the Agent and Stalking Horse Bidder, Chipman Brown Cicero & Cole, LLP, 1313 N. Market Street Suite 5400, Wilmington, DE 19801 (Attn: Mark L. Desgrosseilliers (desgross@chipmanbrown.com)).

The term "Consultation Parties" as used in these Bidding Procedures shall mean counsel to the Committee (if any), and the Agent.

For the avoidance of doubt, any consultation rights provided to the Consultation Parties by these Bidding Procedures shall not limit the Debtors' discretion in any way and shall not include the right to veto any decision made by the Debtors in the exercise of their business judgment.

In the event that any member of any official or unofficial creditors' committee or an affiliate of any of the foregoing submits a bid that is a Qualified Bid, any information provided to the Committee will be on a professional eyes only basis and will not be shared with such bidding member of the Committee.

Reservation of Rights

Notwithstanding any of the foregoing, the Debtors, in consultation with the Consultation Parties, may (a) subject to the DIP Credit Agreement and with the consent of the Agent, extend the deadlines set forth in the Bidding Procedures Order or these Bidding Procedures, and (b) adopt,

implement, and waive such other, additional, or existing procedures or requirements that in the Debtors' discretion serves to further an orderly Auction and bid process, including, but not limited to, the imposition of a requirement that all Qualified Bidders submit sealed Qualified Bids during the Auction, all without further notice except to the Auction Participants, as appropriate.

The Debtors, in consultation with the Consultation Parties, may (a) determine which Qualified Bid, if any, is the Successful Bid, and (b) reject at any time before entry of the Sale Order approving the Successful Bid, any bid that, in the discretion of the Debtors, in consultation with the Consultation Parties, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or these Bidding Procedures, or (iii) contrary to the best interests of the Debtors' estates and their creditors. At or before the conclusion of the Auction, the Debtors, in consultation with the Consultation Parties, may impose such other terms and conditions upon Qualified Bidders as the Debtors determine to be in the best interests of the Debtors' estates in the Chapter 11 Cases.

EXHIBIT 2

Stalking Horse APA

ASSET PURCHASE AGREEMENT

by and among

AGILETHOUGHT, INC.,

and

CERTAIN SUBSIDIARIES OF AGILETHOUGHT, INC.,

as Sellers

and

[BLUE TORCH FINANCE LLC],

as Buyer

Dated as of [], 2023

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”), dated as of [], 2023, is made by and among [Blue Torch Finance LLC], a Delaware limited liability company (“**Buyer**”), AgileThought, Inc., a Delaware corporation (“**Holdings**”), and the Additional Sellers (together with Holdings, “**Sellers**” and each entity individually a “**Seller**”).

WHEREAS, Sellers and certain direct or indirect subsidiaries of Sellers commenced (the date of such commencement, the “**Petition Date**”) voluntary cases (the “**Bankruptcy Cases**”) under chapter 11 of title 11, United States Code, 11 U.S.C. 101 *et seq.* (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) on August 28, 2023;

WHEREAS, subject to the terms and conditions set forth in this Agreement and the entry of the Sale Order, (i) Sellers desire to sell to Buyer all of the Acquired Assets and to assign to Buyer all of the Assumed Liabilities, (ii) Buyer desires to purchase from Sellers all of the Acquired Assets and assume all of the Assumed Liabilities, (iii) Buyer is an Affiliate of the Agent with authority to credit bid up to the full amount of the outstanding obligations pursuant to the Pre-Petition Credit Facility and the DIP Facility, (iv) Buyer desires to credit bid for the Acquired Assets, and (v) the Parties intend to effectuate the transactions contemplated by this Agreement, upon the terms and conditions hereinafter set forth;

WHEREAS, the Acquired Assets and Assumed Liabilities shall be purchased and assumed by Buyer pursuant to the Sale Order, free and clear of all Liens (other than Permitted Liens), on the terms and subject to the conditions set forth in this Agreement (the “**Sale**”) and pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure;

WHEREAS, Sellers’ ability to consummate the transactions set forth in this Agreement is subject to, among other things, the entry of the Sale Order by the Bankruptcy Court; and

WHEREAS, the board of directors (or similar governing body) of each Seller has determined that it is advisable and in the best interests of such Seller and its constituencies to enter into this Agreement and to consummate the transactions provided for herein, subject to entry of the Sale Order, and each has approved the same.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I CERTAIN DEFINITIONS

Section 1.1 Certain Definitions. For purposes of this Agreement, the following terms shall have the respective meanings set forth below:

“Accounts Receivables” means as of the Closing Date, all accounts receivables, trade receivables, notes receivables, and other miscellaneous receivables, whether current or overdue, of any Seller.

“Acquired Assets” has the meaning set forth in Section 2.1.

“Acquired Entities” means one or more Subsidiaries of Sellers set forth on Schedule 2.1(a), as it may be amended from time to time prior to the Closing Date pursuant to the terms hereof.

“Acquired Equity Interests” has the meaning set forth in Section 2.1(a).

“Action” means any complaint, claim, charge, prosecution, indictment, action, suit, arbitration, audit, hearing, litigation, inquiry, investigation or proceeding (whether civil, criminal, administrative, investigative or informal) commenced, brought or asserted by any Person or group of Persons or Governmental Authority or conducted or heard by or before any Governmental Authority or any arbitration tribunal.

“Additional Sellers” means each of the entities set forth on Schedule A hereto, as such schedule may be amended from time to time by Buyer at its sole and absolute discretion pursuant to the terms hereof.

“Administrative Expenses” means, collectively, the administrative expenses incurred by Sellers in the Bankruptcy Cases of the kind specified in Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113 or 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code (including, subject to entry of the Final Order, Section 506(c)).

“Affiliate” of any Person means any other Person who either directly or indirectly through one or more intermediaries is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, **“control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of securities, partnership interests or by contract, assignment, credit arrangement, as trustee or executor, or otherwise, and the terms **“controls,” “controlling”** and **“controlled by”** shall have correlative meanings. With respect to Buyer, the term **“Affiliate”** shall also include its respective managers or members or similar Persons, and any other entity controlled by the same managers or members or similar Persons as Buyer (as the case may be), provided that such term shall not include any portfolio companies or managed accounts.

“Agent” means Blue Torch Finance LLC, in its capacity as Agent under the Pre-Petition Credit Facility or the DIP Facility, as the case may be.

“Agreement” has the meaning set forth in the Preamble.

“Alternative Transaction” means the sale, transfer or other disposition, directly or indirectly, including through an asset sale, equity sale, merger, amalgamation or other similar transaction, including a plan of reorganization approved by the Bankruptcy Court, or resulting

from the Auction, or otherwise in connection with the liquidation or winding up of any of Sellers, of all or a material portion of Sellers' assets or equity, in a transaction or series of transactions with one or more Person, other than Buyer or its Affiliates.

"Anti-Corruption and Trade Control Laws" means all applicable U.S. and non-U.S. Laws relating to (i) the prevention of corruption and bribery, including, the U.S. Foreign Corrupt Practices Act of 1977¹ ("FCPA"), and the Mexican General Law on Administrative Responsibilities (*Ley General de Responsabilidades Administrativas*), (ii) economic or trade sanctions, (iii) export controls and the customs and import Laws administered by U.S. Customs and Border Protection, and (iv) the anti-boycott Laws administered by the U.S. Department of Commerce and the U.S. Department of Treasury's Internal Revenue Service, or any applicable requirements of similar Laws in any jurisdiction where Sellers or the Acquired Entities or any of their respective Subsidiaries or Affiliates transact business or any other jurisdiction.

"Anti-Money-Laundering Laws" means any and all requirements of Law related to engaging in, financing, or facilitating terrorism or money laundering, including as applicable the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the PATRIOT Act), the Financial Recordkeeping and Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act", 31 U.S.C. §§5311 et seq.), the Mexican Federal Law Against Organized Crime (*Ley Federal contra la Delincuencia Organizada*), Mexican Federal Law for the Prevention and Identification of Transactions with Illegally Obtained Resources (*Ley Federal para la Prevención e Identificación de Operación con Recursos de Procedencia Ilícita*) and the Mexican National Domain Extinction Law (*Ley Nacional de Extinción de Dominio*), and any applicable requirements of similar Laws of any jurisdiction where Sellers or the Acquired Entities or any of their respective Subsidiaries or Affiliates transact business or any other jurisdiction.

"Antitrust Laws" means any applicable supranational, national, federal, state, county, local or foreign antitrust, competition or trade regulation Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening competition through merger or acquisition, including the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "**HSR Act**"), Title 15 of the United States Code §§ 1-7 (the Sherman Act), Title 15 of the United States Code §§ 12-27 and Title 29 of the United States Code §§ 52-53 (the Clayton Act), the Federal Trade Commission Act (15 U.S.C. § 41 et seq.), and the Mexican Federal Competition Law (*Ley Federal de Competencia Económica*) ("**LFCE**"), and other similar antitrust, competition or trade regulation Laws of any jurisdiction other than the United States.

"Approval Motion" has the meaning set forth in Section 7.7(b).

"Approval Order" means an Order of the Bankruptcy Court in a form and substance acceptable to Buyer approving, among other things, (i) the Bidding Procedures, (ii) the right of Buyer to proceed with the Credit Bid (as defined below) (to the extent permissible under section

¹ **Note to Buyer:** References to amendments are automatically made pursuant to Section 1.6 (Interpretation).

363(k) of the Bankruptcy Code) and (iii) the Expense Reimbursement, substantially in the form attached hereto as Exhibit A.

“**Assigned Contracts**” has the meaning set forth in Section 2.1(c).

“**Assumed Liabilities**” has the meaning set forth in Section 2.3.

“**Auction**” has the meaning set forth in the Bidding Procedures.

“**Audited Financial Statements**” has the meaning set forth in Section 5.17.

“**Balance Sheet Date**” has the meaning set forth in Section 5.17.

“**Bankruptcy Cases**” has the meaning set forth in the Recitals.

“**Bankruptcy Code**” has the meaning set forth in the Recitals.

“**Bankruptcy Court**” has the meaning set forth in the Recitals.

“**Bankruptcy-Related Default**” means any default or breach of a Contract that is not entitled to cure under section 365(b)(2) of the Bankruptcy Code, including a default or breach relating to the filing of the Bankruptcy Cases or the financial condition of Sellers.

“**Benefit Plans**” means, collectively, any bonus, pension, profit sharing, deferred compensation, incentive compensation, stock ownership, stock purchase, stock option, phantom stock, stock appreciation right, retirement, vacation, severance, pay in lieu of notice, change-of-control, disability, death benefit, hospitalization, medical, worker’s compensation, supplementary unemployment benefits, or other plan, arrangement, program or practice (whether or not written) or any employment agreement providing compensation or benefits to any current or former employee, officer, director or independent contractor of Sellers or the Acquired Entities or any beneficiary thereof or entered into, maintained or contributed to, as the case may be, by Sellers or the Acquired Entities with respect to which any of Sellers or the Acquired Entities, as applicable, have or could have any obligation or liability, including, (i) any “**employee welfare benefit plan**” (as defined in Section 3(2) of ERISA), whether or not terminated and (ii) “**employee pension benefit plan**” (as defined in Section 3(1) of ERISA), whether or not terminated; provided, however, that the term “Benefit Plan” shall not include any statutory benefit plan to which any of Sellers or Acquired Entities is required to participate in or comply with that is sponsored and administered by a Governmental Authority (such as social security).

“**Bid Direction Letters**” has the meaning set forth in Section 3.2.

“**Bidding Procedures**” means those bidding procedures set forth on Exhibit B.

“**Books and Records**” means all books, records, files, advertising materials, customer lists, cost and pricing information, business plans, catalogs, customer literature, quality control records and manuals, research and development files, records and credit records of customers (including all data and other information stored on discs, tapes or other media or in the cloud) to the extent used in or to the extent relating to the operation of the Business or the ownership of the Acquired

Assets, but excluding Sellers' (i) Fundamental Documents and stock and minute books, and (ii) any documents protected by any applicable privilege, including attorney-client or attorney work product privilege.

"BT Mexican Subsidiary" has the meaning set forth in Section 7.2.

"Business" means the business of the Company Group of providing digital transformation services and custom software development.

"Business Day" shall have the meaning provided in the Bankruptcy Code.

"Buyer" has the meaning set forth in the Preamble and shall also include any Buyer Designee.

"Buyer Advisors" has the meaning set forth in Section 7.4.

"Buyer Designee" has the meaning set forth in Section 4.2(c).

"CEO" has the meaning set forth in Section 7.3.

"Closing" has the meaning set forth in Section 4.1.

"Closing Date" has the meaning set forth in Section 4.1.

"Collective Bargaining Agreements" means any collective bargaining agreements between any Group Company and any labor union or other representative of current employees of any Group Company (including material local agreements, amendments, supplements, letters and memoranda of understanding of any kind) in any applicable jurisdiction.

"Company Group" means, collectively, Sellers, the Acquired Entities and the Excluded Subsidiaries and each of the foregoing is individually a **"Group Company"**.

"Consent" means any consent, approval, franchise, order, License, Permit, waiver or authorization, or registration, declaration or filing with or exemption, notice, application, or certification, including all Regulatory Approvals.

"Contract" means any contract, purchase order, lease or sublease, License or sublicense, agreement to settle litigation or claims, or other agreement or instrument, including, but not limited to, the Leases.

"Controlled Group Liability" means any and all liabilities under (i) Title IV of ERISA, (ii) Section 302 of ERISA, and (iii) Sections 412 and 4971 of the IRC.

"Copyrights" means all of the following now owned or hereafter adopted or acquired by any Seller: (i) all copyrights (whether registered or unregistered), all registrations thereof; and all applications in connection therewith, including all registrations, and applications in the United States Copyright Office, the Mexican National Copyright Institute (*Instituto Nacional de Derecho de Autor*) or in any similar office or agency of any other country or any political subdivision

thereof, and (ii) all extensions or renewals thereof. “Copyrights” expressly excludes copyrights in commercially available computer software licensed under a shrink wrap, click wrap or other similar commercial license.

“**Credit Bid**” has the meaning set forth in Section 3.2.

“**Credit Bid Amount**” has the meaning set forth in Section 3.2.

“**Cure Costs**” means all cash amounts that, pursuant to section 365 of the Bankruptcy Code, will be required to be paid as of the Closing Date to cure any monetary defaults on the part of Sellers under the Assigned Contracts, in each case to the extent such Contract was entered into prior to the commencement of the Bankruptcy Cases and as a prerequisite to the assumption of such Assigned Contracts under section 365 of the Bankruptcy Code; provided, however, in the case of any Contract, such Contract is executory and, in the case of any Lease, such Lease is unexpired.

“**Deposit Amount**” has the meaning set forth in Section 3.1.

“**Deposit Assignment Agreement**” means that certain deposit assignment agreement, dated as of the date hereof, by and among Sellers and Buyer, in the form attached hereto as Exhibit C.

“**Designation Deadline**” has the meaning set forth in Section 2.5(b).

“**DIP Budget**” means the 13-week cash flow forecast approved in connection with the DIP Facility, as such may be updated from time to time in accordance with the DIP Facility.

“**DIP Credit Bid**” has the meaning set forth in Section 3.2.

“**DIP Facility**” means the senior secured superpriority debtor-in-possession term loan credit facility provided to Sellers by the DIP Lenders, as may be approved by the DIP Order.

“**DIP Facility Bid Direction Letter**” has the meaning set forth in Section 3.2.

“**DIP Lenders**” means all Persons who are lenders under the DIP Facility, each in its capacity as such.

“**DIP Order**” means the interim order, substantially in the form attached hereto as Exhibit D, and then Final Order authorizing the DIP Facility, to be entered by the Bankruptcy Court.

“**DIP Reversionary Interest**” means any amount of Excluded Cash remaining only after all Administrative Expenses, other post-Petition Date expenses, and the Wind-Down Funds have been paid or otherwise satisfied but only to the extent that such amounts are in accordance with the DIP Budget, the DIP Facility, and the Escrow Agreement (as applicable).

“**Disclosure Schedules**” means the schedules to be delivered to Buyer on behalf of Sellers pursuant to Section 7.9 and incorporated in this Agreement by reference.

“Employees” has the meaning set forth in Section 5.8(a).

“Environmental Claim” means any Action, Governmental Order, Lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal, or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification, and injunctive relief) arising out of, based on, or resulting from: (i) the presence, Release of, or exposure to, any Hazardous Materials; or (ii) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“Environmental Laws” means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (i) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (ii) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq; and the Mexican General Law of Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y Protección al Ambiente*) and its regulations; the Mexican National Waters Law (*Ley de Aguas Nacionales*); and the Mexican General Law for the Prevention and Comprehensive Management of Waste (*Ley General para la Prevención y Gestión Integral de Residuos*).

“Environmental Liability” means any direct, indirect, pending or threatened indebtedness, liability, claim, loss, damage, fine, penalty, cost, expense, deficiency or responsibility, whether known or unknown, arising under or relating to any Environmental Law, Environmental Permit, or Release, whether based on negligence, strict liability or otherwise, including costs and liabilities for investigation, removal, remediation, restoration, abatement, monitoring, personal injury, property damage, natural resource damages, court costs, and reasonable attorneys’ fees.

“Environmental Notice” means any written directive, written notice of violation or infraction, or other written notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

“Environmental Permit” means any Permit, letter, clearance, consent, waiver, closure, exemption, decision, or other action required under or issued, granted, given, authorized by, or made pursuant to Environmental Law.

“Equity Securities” means (i) with respect to any corporation, all shares, interests, participations or other equivalents of capital stock of such corporation (however designated), and any warrants, options or other rights to purchase or acquire any such capital stock and any securities convertible into or exchangeable or exercisable for any such capital stock, (ii) with respect to any partnership, all partnership interests, participations or other equivalents of partnership interests of such partnership (however designated), and any warrants, options or other rights to purchase or acquire any such partnership interests and any securities convertible into or exchangeable or exercisable for any such partnership interests and (iii) with respect to any limited liability company, all membership interests, participations or other equivalents of membership interests of such limited liability company (however designated), and any warrants, options or other rights to purchase or acquire any such membership interests and any securities convertible into or exchangeable or exercisable for any such membership interests.

“ERISA” means the Employee Retirement Income Security Act of 1974.²

“ERISA Affiliate” shall mean any corporation, trade, business or entity under common control with any of Sellers within the meaning of Section 414(b), (c), (m), or (o) of the IRC or Section 4001 of ERISA.

“Escrow Agent” means an escrow agent to be mutually agreed to among Buyer and Holdings.

“Escrow Agreement” means an Escrow Agreement, to be entered into as of the Closing Date by and among Sellers, Buyer, and the Escrow Agent, in a form to be mutually agreed among Buyer and Holdings.

“Exchange Act” means the Securities Exchange Act of 1934.

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Cash” means all cash on hand and cash drawn by the Company Group under the DIP Facility, including (i) cash drawn under the DIP Facility at the Closing, sufficient to pay all Administrative Expenses or other post-Petition Date expenses of the Company Group that are accrued but unpaid as of the Closing, but only to the extent set forth in the DIP Budget then in effect and the DIP Facility and (ii) the Wind-Down Funds, but only to the extent set forth in the Escrow Agreement, which cash, in each case of clause (i) and (ii) of the definition of Excluded Cash, shall not be subject to the Liens or claims of Buyer or its Affiliates, except to the extent of the DIP Reversionary Interest.

² **Note to Buyer:** references to rules and regulations promulgated under a statute are automatically made pursuant to Section 1.6 (Interpretation).

“Excluded Contract” has the meaning set forth in Section 2.2(c).

“Excluded Employees” has the meaning set forth in Section 2.4(d).

“Excluded Liabilities” has the meaning set forth in Section 2.4.

“Excluded Subsidiaries” means the Subsidiaries of Sellers other than the Acquired Entities.

“Executory Contract” has the meaning set forth in Section 2.5(a).

“Executory Contracts List” has the meaning set forth in Section 2.5(a).

“Expense Reimbursement” has the meaning set forth in Section 10.2(a).

“Extended Contract Period” has the meaning set forth in Section 2.5(b).

“FCPA” has the meaning set forth in the definition of “Anti-Corruption and Trade Control Laws”.

“Final Order” means a final order of the Bankruptcy Court, which shall be in full force and effect and not stayed, and as to which no appeal, petition for certiorari or other proceeding for reconsideration has been timely filed, or if timely filed, such appeal, petition for certiorari or motion to reconsider has been dismissed or denied with no further appeal and the time for filing such appeal has passed, and such order shall not be reversed, vacated, amended, supplemented, or otherwise modified, in each case, without the prior written consent of the Agent or Buyer, each as applicable.

“Fundamental Documents” means the documents of a Person (other than a natural person) by which such Person establishes its legal existence or which govern its internal corporate affairs. For example, the Fundamental Documents of a corporation would be its charter and bylaws and the Fundamental Documents of a limited liability company would be its certificate of formation and operating agreement.

“GAAP” means generally accepted accounting principles in the United States.

“General Intangibles” means all intangible assets now owned or hereafter acquired by any Seller, including all right, title and interest that such Seller may now or hereafter have in or under any Contract, all payment intangibles, rights in customer lists, Intellectual Property, interest in business associations, Licenses, permits, proprietary or confidential information, technical information, procedures, designs, knowledge, know-how, software, data bases, data, skill, expertise, experience, processes, rights in models, rights in drawings, goodwill, all rights and claims in or under insurance policies (including insurance for directors and officers, fire, damage, loss and casualty, whether covering personal property, real property, tangible rights or intangible rights, all liability, life and business interruption insurance, and all unearned premiums), uncertificated securities, checking and other bank accounts, rights to receive Tax refunds and other payments, rights to receive dividends, distributions, cash, Instruments and other property in respect

of or in exchange for pledged Equity Securities and investment property, and rights of indemnification.

“Governmental Authority” shall mean any (i) nation, state, province, tribal, county, city, town, village, district, or other jurisdiction of any nature; (ii) federal, state, local, provincial, municipal, foreign, or other government; (iii) governmental or quasi-governmental authority of any nature (including any government agency, ministry, branch, department, official, or entity and any court or other tribunal); (iv) multi-national organization or body; or (v) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination, or award entered by or with any Governmental Authority.

“Hazardous Materials” means any substance, material or waste that is regulated by, or forms the basis of liability under, any Environmental Laws, including, but not limited to, any material or substance that is (i) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “pollutant,” “contaminant,” “hazardous constituent,” “special waste,” “toxic substance” or other similar term or phrase under any Environmental Laws, or (ii) petroleum or any fraction or by-product thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls (PCBs), any radioactive substance, polyvinyl chloride, radon, lead-based paint or toxic mold.

“Holdings” has the meaning set forth in the Preamble.

“HSR Act” has the meaning set forth in the definition of “Antitrust Laws”.

“IFRS” means International Financial Reporting Standards.

“Inactive Employees” has the meaning set forth in Section 7.2(b).

“Indebtedness” shall mean, with respect to any Person, without duplication:

(a) obligations of such Person for borrowed money, or otherwise evidenced by bonds, debentures, notes or similar instruments;

(b) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person, other than any such obligation made in the ordinary course of business;

(c) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding obligations of such Person to creditors for raw materials, inventory, services and supplies or other property or services incurred in the ordinary course of such Person’s business);

(d) all obligations of such Person under leases which have been or should be treated, in accordance with GAAP, as capitalized lease obligations of such Person;

(e) all obligations of others secured by any Lien on property or assets owned or acquired by such Person pursuant to an obligation referred to in clauses (a) –(d) or (f)-(h) of this definition, whether or not the obligations secured thereby have been assumed, other than any such obligation made in the ordinary course of business;

(f) all obligations of such Person under interest rate or currency swap transactions (valued at the termination value thereof);

(g) all letters of credit issued for the account of such Person (excluding letters of credit issued for the benefit of suppliers to support accounts payable to suppliers incurred in the ordinary course of business to the extent drawn);

(h) all guarantees and arrangements having the economic effect of a guarantee of such Person of any Indebtedness of any other Person; and

(i) all accounts payable to the extent not yet paid and overdue by more than 60 days from the date originally required for payment thereof.

“Indemnification Claims” means claims for indemnification of any present or former officer, director, employee, partner or member of any Seller whether arising under bylaws, certificates of formation or other formation documents, or Contract arising prior to the Closing Date.

“Instruments” means all “instruments,” as such term is defined in the UCC, now owned or hereafter acquired by any Seller, wherever located, and, in any event, including all certificated securities, all certificates of deposit, and all promissory notes and other evidences of indebtedness, other than instruments that constitute, or are a part of a group of writings that constitute, chattel paper.

“Intellectual Property” means any and all Patents, Copyrights, Trademarks, Trade Secrets, and internet domain names, and other intellectual property of any kind, owned or licensed by any Seller and used or held for use in connection with the Business, all goodwill used in the operation of the Business, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“Inventory” means all “inventory,” as such term is defined in the UCC, now owned or hereafter acquired by any Seller, wherever located, and, without limiting the foregoing, all (i) inventory, (ii) merchandise, (iii) goods and other personal property, (iv) raw materials, work or construction in process, (v) finished goods, returned goods, or materials or supplies of any kind, nature or description and (vi) products, equipment, and appliances, whether owned or on order, including all embedded software.

“IRC” means the Internal Revenue Code of 1986.

“IRS” means the Internal Revenue Service.

“Knowledge of Sellers” means the actual knowledge of the following individuals: Carolyne Cesar, Diana Abril, Manuel Senderos and Gonzalo Mones.

“Laws” means any federal, state, provincial, local, foreign, international or supranational law (including common law), statute, treaty, ordinance, rule, regulation, Order, code, or other similar authority enacted, adopted, promulgated, or applied by any Governmental Authority.

“Leased Real Estate” means all real property leased by any Group Company and used in connection with the Business.

“Leases” has the meaning set forth in Section 5.3(b).

“LFCE” has the meaning set forth in the definition of “Antitrust Laws”.

“Liabilities” means any and all debts, losses, liabilities, claims, damages, fines, costs, royalties, proceedings, deficiencies or obligations of any nature, whether known or unknown, absolute, accrued, contingent or otherwise and whether due or to become due and any out-of-pocket costs and expenses (including reasonable attorneys’, accountants’ or other fees and expenses).

“License” means any licenses, franchises, Consents, approvals and any Permits, including Permits of or registrations with any Governmental Authority; but expressly excluding any license or sublicense of Intellectual Property.

“Liens” means any mortgage, pledge, hypothecation, security interest, encumbrance, easement, license, encroachment, servitude, consent, option, lien, put or call right, right of first refusal, voting right, charge, lease, sublease, right to possession or other restrictions or encumbrances of any nature whatsoever.

“Local Transfer Instruments” means the agreements, certificates and instruments required by applicable Law to effect the transfer of the Acquired Equity Interests in the manner contemplated by this Agreement.

“Material Adverse Effect” means any fact, condition, change, violation, inaccuracy, circumstance, effect, event, or occurrence that individually or in the aggregate has had, or would be reasonably likely to have, a material adverse change in or material adverse effect on the Acquired Assets or the Business (excluding the Excluded Assets and the Excluded Liabilities), in each case taken as a whole, but excluding (a) any change or effect to the extent that it results from or arises out of (i) the pendency of the Bankruptcy Cases, operating in bankruptcy, or the financial condition of Target Group, (ii) the execution and delivery of this Agreement or the announcement thereof or consummation of the transactions contemplated hereby, (iii) changes in (or proposals to change) Law, generally accepted accounting principles, or other accounting regulations or principles, or (iv) any action contemplated by this Agreement or taken at the request of Buyer; (b) the failure to meet any projections guidance, budgets, forecasts or estimates; provided, however, that the exception in this clause (b) shall not prevent or otherwise affect a determination that any change, event, occurrence or effect underlying such failure has resulted in, or contributed to, a Material Adverse Effect; (c) any change or effect generally applicable to (i) the industries and markets in which the Business operates or (ii) economic or political conditions or the securities or financial markets in any country or region; (d) any outbreak or escalation of hostilities or war or any act of terrorism; or (e) any occurrence, threat, or effects of a disease outbreak, epidemic,

pandemic, or similar widespread public health concern, which results in mandates or Governmental Order from Governmental Authorities to self-quarantine, or extended shutdown of certain businesses.

“**Material Contract**” and “**Material Contracts**” has the meaning set forth in Section 5.7(a).

“**Mexican Contract**” has the meaning set forth in Section 7.2(c).

“**Mexican Entities**” means AgileThought Digital Solutions SAPI de CV, Anzen Soluciones SA de CV, Faktos Inc. SAPI de CV, and any other entity formed under applicable Laws to the extent designated by Buyer pursuant to Section 2.5(f).

“**Mexican Tax Assessment**” means the tax assessment issued by the Mexican Tax Administration Service (*Servicio de Administración Tributaria*) on August 2, 2021, against AT Digital Solutions, formerly known as North American Software, S.A.P.I. de C.V., and Anzen Soluciones, S.A. de C.V. for income tax, value added tax, and employees profit sharing payables.

“**Mexico**” means the United Mexican States.

“**Multiemployer Plan**” shall have the meaning as such term is defined in Section 3(37) or Section 4001(a)(3) of ERISA.

“**Non-Recourse Parties**” has the meaning set forth in Section 12.12.

“**Omitted Contract**” has the meaning set forth in Section 2.5(c)(i).

“**Omitted Contract Designation**” has the meaning set forth in Section 2.5(c)(i).

“**Omitted Contract Notice**” has the meaning set forth in Section 2.5(c)(ii).

“**Operating Agreement**” has the meaning set forth in Section 9.2(b).

“**Operating Agreement Term Sheet**” means the Operating Agreement term sheet attached as Exhibit F.

“**Order**” means any judgment, order, administrative order, writ, stipulation, injunction (whether permanent or temporary), award, decree or similar legal restraint of, or binding settlement having the same effect with, any governmental Action.

“**Party**” or “**Parties**” means, individually or collectively, as applicable, Buyer and Sellers.

“**Patents**” means all of the following now owned or hereafter acquired by any Seller: (a) all letters patent, inventions, patents and patent rights of the United States, Mexico or of any other country, all registrations thereof, and all applications for letters patent, inventions, patents and patent rights of the United States, Mexico or of any other country, including registrations and applications in the United States Patent and Trademark Office, the Mexican Institute of Industrial Property (*Instituto Mexicano de la Propiedad Industrial*) or in any similar office or agency of the

United States, any state or territory thereof, Mexico, or any other country or any political subdivision thereof, and (b) all reissues, continuations, continuations-in-part or extensions thereof.

“Permits” means all approvals, authorizations, certificates, consents, franchises, variances, licenses, and permits issued by or in favor of any Seller by any federal, state, provincial, local, municipal or other governmental, quasi-governmental, or private authorities, districts or jurisdictions (including all applications, renewal applications, documents filed, or fees paid in connection therewith).

“Permitted Liens” means (i) any Liens specifically set forth in Section 5.3(a) of the Disclosure Schedules, (ii) statutory Liens for current and future Taxes, assessments or other governmental charges, including water and sewage charges, in each case not yet due and payable, or (other than any Taxes owed to Governmental Authorities) being contested in good faith and for which adequate reserves have been taken in accordance with GAAP but, in no case, of an amount in excess of \$1,000,000 (or local currency equivalent), (iii) mechanic’s, materialman’s, warehouseman’s, carrier’s and similar liens for labor, materials or supplies arising by operation of Law in the ordinary course of business or which could not have a Material Adverse Effect, (iv) purchase money security interests arising in the ordinary course of business and created at or about the time of acquisition of, and solely on, the asset on which such Lien exists, (v) rights of landlords or grantees in respect of any Leased Real Estate pursuant to the terms and conditions of the Leases in effect as of the date hereof, as may be modified by the Sale Order, (vi) present and future zoning, building codes and other land use Laws regulating the use or occupancy of any Leased Real Estate or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over such Leased Real Estate which are not violated by (A) the current use or occupancy of such Leased Real Estate, (B) the proposed use, occupancy or development thereof by the Business as currently contemplated or (C) the operation of the Business, or any violation of which could not have a Material Adverse Effect, (vii) easements, covenants, conditions, restrictions and other similar matters affecting title to such Leased Real Estate and other title encumbrances which encumber the Leased Real Estate as of the date hereof and which do not, individually or in the aggregate, materially impair the use, occupancy, maintenance, repair or development of such Leased Real Estate or the operation of the Business, (viii) any Lien incurred under or pursuant to the DIP Facility, (ix) any Lien that, pursuant to Section 363(f) of the Bankruptcy Code, will be released pursuant to the Sale Order, (x) any lien constituting or arising in connection with a non-exclusive Intellectual Property license or sublicense granted by a Group Company, (xi) consents by any Group Company or any former owner of the Leased Real Estate for the erection of any structure or structures on, under or above any street or streets on which the Leased Real Estate may abut, (xii) non-material variations between tax lot lines and lines of record title, (xiii) with respect to the Leased Real Estate, the terms and conditions of the Leases with respect to encumbrances to title or limitation on the tenants right to use of such Leased Real Estate, and (xiv) any valid, perfected, and unavoidable Lien having priority over the Lien securing the Pre-Petition Credit Facility but only the extent such Lien and its priority were permitted under the Pre-Petition Credit Facility.

“Person” shall be construed broadly and means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or other business entity or a Governmental Authority.

“Petition Date” has the meaning set forth in the Recitals.

“Pre-Closing Straddle Period Taxes” means (i) the amount of property and *ad valorem* Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days in the Straddle Period ending on and including the Closing Date and the denominator is the number of days in the entire Straddle Period and (ii) the amount of Taxes (other than property and *ad valorem* Taxes) for the portion of the Straddle Period ending on the Closing Date determined on an interim closing of the books basis as of the end of the Closing Date.

“Pre-Closing Tax Period” means any Tax period (or portion thereof) ending on or before the Closing Date.

“Pre-Petition Bid Direction Letter” has the meaning set forth in Section 3.2.

“Pre-Petition Credit Bid” has the meaning set forth in Section 3.2.

“Pre-Petition Credit Facility” means that certain Financing Agreement dated as of May 27, 2022 (as amended, restated, amended and restated, supplemented or modified prior to the date hereof), by and among Holdings, AN Global, as borrower, the subsidiaries of Holdings party thereto, as guarantors, the lenders party thereto from time to time, and the Agent, as administrative agent and collateral agent for the Pre-Petition Secured Lenders.

“Pre-Petition Secured Lenders” means the lenders from time to time party to the Pre-Petition Credit Facility.

“Purchase Price” has the meaning set forth in Section 3.2.

“Registered Intellectual Property” has the meaning set forth in Section 5.5(c).

“Regulatory Approvals” means all Consents and other authorizations reasonably required to be obtained from, or any filings required to be made with, any Governmental Authority that are necessary to consummate the transactions contemplated by this Agreement and the other Transaction Documents.

“Rejection Damages Claims” means all claims arising from or related to the rejection of a Contract under section 365 of the Bankruptcy Code, including any administrative expense claims arising from the rejection of Contracts previously assumed.

“Release” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing, or allowing to escape or migrate into or through the environment (including ambient air (indoor or outdoor), surface water, groundwater, land surface, or subsurface strata or within any Structure, facility, or fixture).

“Responsible Officer” means, with respect to any Person, the chief executive officer, president, chief operating officer, chief financial officer, controller and chief accounting officer, vice president of finance or treasurer of such Person.

“**Sale**” has the meaning set forth in the Recitals.

“**Sale Order**” means an Order of the Bankruptcy Court, to be issued by the Bankruptcy Court pursuant to sections 105, 363 and 365 of the Bankruptcy Code in a form and substance acceptable to Buyer approving, among other things, the Sale, to be in form and substance acceptable to Buyer.

“**Sanctioned Country**” is defined in Section 5.16(b).

“**Sanctioned Person**” means any Person that is the subject or target of sanctions or restrictions under any Anti-Corruption and Trade Control Law, including: (i) any Person listed on any applicable U.S. or non-U.S. sanctions- or export-related restricted party list, including, OFAC’s Specially Designated Nationals and Blocked Persons List; (ii) any Person that is, in the aggregate, fifty percent (50%) or greater owned, directly or indirectly, or otherwise controlled by a Person or Persons described in clause (i) above; or (iii) any national of a Sanctioned Country.

“**Securities Act**” means the Securities Act of 1933.

“**Selected Courts**” has the meaning set forth in Section 12.2(a).

“**Seller Representatives**” means Sellers’ directors, officers, employees, advisors, attorneys, accountants, consultants, financial advisors, investment bankers, or other agents or representatives.

“**Sellers**” has the meaning set forth in the Preamble.

“**Specialized Services Provider**” has the meaning set forth in Section 5.8(c).

“**Straddle Period**” means any Tax period beginning on or before and ending after the Closing Date.

“**Structures**” means, collectively, buildings, structures, and fixtures on, and other improvements to, the Leased Real Estate.

“**Subsidiary**” or “**Subsidiaries**” means for any Person, any other Person or Persons of which a majority of the outstanding voting securities or other voting equity interests are owned, directly or indirectly, by such first Person.

“**Target Group**” means, collectively, Sellers and the Acquired Entities, and each of the foregoing is individually a “**Target Company**”.

“**Tax**” or “**Taxes**” means (i) any federal, state, provincial, county, local or foreign taxes, charges, fees, levies or other assessments, including all net income, gross income, sales and use, goods and services, ad valorem, transfer, gains, profits, excise, franchise, real and personal property, gross receipt, value added, capital stock, escheat, unclaimed property, production, business and occupation, disability, employment, payroll, license, estimated, stamp, custom duties, severance, unemployment, social security, Medicare, alternative minimum or withholding taxes or charges imposed by any Governmental Authority, and includes any interest and penalties (civil or

criminal) on or additions to any such taxes and (ii) liability for items in (i) of any other person by Contract (other than any Contract the principal subject matter of which is not Taxes) or operation of Law (including Treasury Regulation Section 1.1502-6).

“Tax Proceeding” has the meaning set forth in Section 8.2.

“Tax Returns” means any return, report, election, declaration, statement, information return, schedule, or other document (including any related or supporting information) filed or required to be filed with any Governmental Authority in connection with the determination, assessment, collection or administration of any Taxes or the administration of any laws, regulations or administrative requirements relating to any Taxes or any amendment thereof.

“Title IV Plan” means each Benefit Plan subject to Title IV of ERISA, Section 302 of ERISA or Sections 412 or 4971 of the IRC.

“Trade Secrets” means all confidential and proprietary information now owned or hereafter acquired by any Seller, used in the Business for commercial advantage and not generally known or reasonably ascertainable, including³ know-how, trade secrets, manufacturing and production processes and techniques, research and development information, databases and data, including technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information.

“Trademarks” means all of the following now owned or hereafter acquired by any Seller: (i) all trademarks, trade names, corporate names, business names, trade styles, service marks, logos, slogans, brand names, and other source or business identifiers (whether registered or unregistered), all registrations thereof, and all applications in connection therewith, including registrations and applications in the United States Patent and Trademark Office, the Mexican Institute of Industrial Property (*Instituto Mexicano de la Propiedad Industrial*), or in any similar office or agency of the United States, any state or territory thereof, Mexico, or any other country or any political subdivision thereof; (ii) all reissues, extensions or renewals thereof; and (iii) all goodwill of the Business associated with or symbolized by any of the foregoing.

“Transaction Documents” means this Agreement, the Deposit Assignment Agreement, the Escrow Agreement, the Local Transfer Instruments, the Operating Agreement, and any other agreements, documents and instruments to be executed and delivered pursuant to this Agreement.

“Transaction Taxes” has the meaning set forth in Section 8.1.

“Transferred Employees” means those (a) employees of Sellers and (b) employees of the Mexican Entities, in each case, to whom Buyer extends an offer of employment and that accept such offer in accordance with, in the case of clause (a), this Agreement, and in the case of clause (b), Section 7.2.

3 **Note to Buyer:** “Without limitation” deleted throughout since covered by Interpretations Section 1.6.

“**Treasury Regulations**” means one or more Treasury regulations promulgated under the IRC by the Treasury Department of the United States.

“**UCC**” means the Uniform Commercial Code as the same may, from time to time, be enacted and in effect in the State of New York.

“**WARN Act**” means the Worker Adjustment and Retraining Notification Act or any similar state, local, provincial or foreign law.

“**Wind-Down Escrow Account**” means the account established pursuant to the Escrow Agreement into which the Wind-Down Funds will be deposited at the Closing Date in accordance with Section 7.12.

“**Wind-Down Funds**” means an amount to be used to satisfy costs and expenses of winding down Sellers’ estates following the Closing Date, as determined in accordance with Section 7.12.

Section 1.2 Headings; Table of Contents. Headings and table of contents should be ignored in constructing this Agreement.

Section 1.3 Information. References to books, records or other information mean books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm.

Section 1.4 Interpretation.

(a) When a reference is made in this Agreement to an Article, Section, Annex, Schedule, or Exhibit, such reference shall be to an Article or Section of, or an Annex, Schedule, or Exhibit to, this Agreement unless otherwise indicated. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless the context otherwise requires. The word “or” shall not be deemed to be exclusive. The word “will” shall be construed to have the same meaning as the word “shall”. References to “written” or “in writing” include in electronic form. The word “extent” and the phrase “to the extent” when used in this Agreement shall mean the degree to which a subject or other thing extends, and such word or phrase shall not mean simply “if.” All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant thereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. References in this Agreement to specific laws or to specific provisions of laws shall include all rules and regulations promulgated thereunder. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such instrument or statute as from time to time amended, modified or supplemented, including, in the case of agreements, any waiver or consent, and, in the case of statutes, by succession of comparable successor statutes, and references to all attachments thereto and instruments incorporated therein unless expressly stated

to refer to such as at a particular date, in which case such reference shall be to such agreement, instrument or statute as at that particular date. All references in this Agreement to “\$” or other monetary amounts are intended to refer to U.S. dollars. Time periods within or following which any payment is to be made or act is to be done under this Agreement shall be calculated by excluding the day on which the period commences and including the day on which the period ends. Whenever this Agreement refers to a number of days or months, such number shall refer to calendar days unless Business Days are expressly specified. References to a Person are also to its permitted successors and assigns.

(b) Each of the Parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement must be construed as if it is drafted by all the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement.

(c) In the event of any inconsistency between the provisions of this Agreement and the terms of the Approval Order or the Sale Order, this Agreement shall control.

ARTICLE II PURCHASED SALE OF ASSETS; ASSUMPTION OF LIABILITIES

Section 2.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer shall (or shall cause a Buyer Designee to) purchase, acquire and accept from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Buyer (or a Buyer Designee), pursuant to and in accordance with the Sale Order, all of Sellers’ right, title and interest in, to and under the Acquired Assets, free and clear of all Liens, claims (as defined in section 101(5) of the Bankruptcy Code) and interests other than the Permitted Liens and Assumed Liabilities. “**Acquired Assets**” means all of Sellers’ assets (other than the Excluded Assets), including the assets set forth as follows:

(a) All Equity Securities held by any Seller in any Acquired Entity listed on Schedule 2.1(a), as such schedule may be amended from time to time by Buyer pursuant to Section 2.5 (the “**Acquired Equity Interests**”).

(b) cash, cash equivalents, all prepayments (including all prepayments made to third party vendors), deferred assets, refunds, cash held in reserve, deposits made by Sellers to any third parties, credits or overpayments, except for the Excluded Cash;

(c) all Contracts listed or described on Schedule 2.1(c), as such schedule may be amended from time to time by Buyer pursuant to Section 2.5 (the “**Assigned Contracts**”);

(d) all Accounts Receivables;

(e) all Inventory;

(f) all furniture, fixtures, equipment, marketing materials, merchandise and other personal property;

(g) to the extent transferable pursuant to applicable Law, all Permits required for Sellers to conduct the Business as currently conducted or for the ownership, operation, use, maintenance, or repair of any of the Acquired Assets;

(h) all Books and Records;

(i) all Intellectual Property;

(j) all General Intangibles;

(k) all guarantees, representations, warranties and indemnities associated with the operation of the Business, including in respect of any Assumed Liabilities;

(l) all insurance policies of Sellers and any claims thereunder to the extent such policies relate to the operation of the Business or to any Assumed Liabilities except to the extent included as an Excluded Asset in Section 2.2;

(m) all goodwill associated with, or relating to, the Business or the Acquired Assets;

(n) all claims, causes of action, choses in action, rights of recovery, rights of set off, and rights of recoupment (including any such item relating to the payment of Taxes) relating to the Acquired Assets set forth in Sections 2.1(a)-(r);

(o) all claims and causes of action arising under sections 502(d), 542, 544, 545, 547, 548, 549, 550, 551, 553(b), or 724(a) of the Bankruptcy Code or any other avoidance actions under the Bankruptcy Code or applicable state-law equivalents or the proceeds of such claims, causes of action or avoidance actions;

(p) all refunds, credits or overpayments or other receivables for Taxes, including Pre-Closing Straddle Period Taxes, that may be due for Pre-Closing Tax Periods (other than any refunds, credits, overpayments, or other receivables with respect to Taxes paid by Sellers after the Closing);

(q) all claims of any Seller against any Excluded Subsidiary or other Group Company and any claim of any nature by any Seller against any present or former officer, director, employee, partner, member, Representative or agent of any member of any Seller, whether arising by way of counterclaim or otherwise; and

(r) rights with respect to proofs of claim filed by or on behalf of any of Sellers in any bankruptcy case other than the Bankruptcy Cases of Sellers.

It is acknowledged and agreed that, except where specifically provided, this Section 2.1 speaks only to the assets, properties, claims and rights of Sellers, and that, for the avoidance of doubt, no provision of this Section 2.1 shall be construed to limit the scope of the assets acquired by Buyer

indirectly through its acquisition of the Acquired Entities and the Acquired Equity Interests hereunder, it being understood that Buyer shall indirectly acquire all such assets, properties, claims and rights except as otherwise expressly provided herein.

Section 2.2 Excluded Assets. Notwithstanding anything in this Agreement to the contrary, Buyer shall not acquire and shall not be deemed to have acquired, any Excluded Assets and Sellers and their Affiliates shall retain all right, title and interest to, in and under the Excluded Assets. “**Excluded Assets**” means Sellers’ properties and assets set forth as follows:

- (a) Equity Securities of each Seller;
- (b) Any properties, rights and assets under any Benefit Plan;
- (c) any Contracts of Sellers that are not Assigned Contracts (each, a “**Excluded Contract**”);
- (d) Unless and until otherwise designated by Buyer pursuant to Section 2.1(a), (i) Equity Securities of the Excluded Subsidiaries and the Mexican Entities or (ii) any assets of the Mexican Entities;
- (e) any confidential personnel and medical records pertaining to any employee of any Seller and its Affiliates who is not a Transferred Employee;
- (f) rights of Sellers under this Agreement (including the Purchase Price);
- (g) subject to the DIP Facility, retainers held by any professional retained by Sellers, and any funds of Sellers held in escrow or reserve with respect to the fees and expenses of any professional retained by Sellers;
- (h) Sellers’ (i) Fundamental Documents and stock and minute books, and (ii) documents protected by any applicable privilege, including attorney-client or attorney work product privilege;
- (i) Excluded Cash, except to the extent of the DIP Reversionary Interest; and
- (j) Sellers’ director and officer insurance policies, fiduciary policies or employment practices policies (in each case of the foregoing, including any tail policies or coverage thereon); provided, however, that Buyer shall acquire the right of any Target Company to receive proceeds under such policies relating to derivative claims of equity holders or creditors of such Target Companies or direct claims of such Target Companies, in each case, against any of Sellers’ directors or officers.

It is acknowledged and agreed that, except where specifically provided, this Section 2.2 speaks only to the retained assets of Sellers, and that, for the avoidance of doubt, no provision of this Section 2.2 shall apply to or shall be construed to limit the scope of the assets, properties, claims and rights acquired by Buyer indirectly through its acquisition of the Acquired Entities and the Acquired Equity Interests hereunder, it being understood that Buyer shall indirectly acquire all such assets, properties, claims and rights except as otherwise expressly provided herein.

Section 2.3 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer shall (or shall cause Buyer Designee to) assume and be responsible for, effective as of the Closing, and thereafter pay, honor, perform and discharge as and when due, all of the Assumed Liabilities. “**Assumed Liabilities**” means the liabilities and obligations of Sellers set forth as follows:

(a) all Liabilities of Sellers relating to or arising under Assigned Contracts, but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date and to the extent such Liabilities do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Sellers or their Affiliates on or prior to the Closing (other than as it pertains to the Cure Costs as set forth in Section 2.3(h));

(b) all Liabilities of Sellers (other than in respect of Taxes) relating to, or arising in respect of, the Acquired Assets accruing, arising out of or relating to events, occurrences, acts or omissions occurring or existing after the Closing Date or the operation of the Business or the Acquired Assets after the Closing Date;

(c) (i) Taxes with respect to the Acquired Assets or the Business for any taxable period beginning after the Closing Date and for any Straddle Period (other than Pre-Closing Straddle Period Taxes) and (ii) the Transaction Taxes;

(d) all Liabilities of Sellers relating to Transferred Employees accruing from and after the Closing Date, to the extent arising out of or relating to their employment by Buyer or any of its Affiliates;

(e) all Liabilities of Sellers relating to accrued and unpaid vacation or paid time off obligations of Transferred Employees;

(f) to the extent lawfully transferable, all obligations, commitments and Liabilities under any Permits assigned to Buyer hereunder;

(g) undisputed post-Petition Date accrued trade payables of Sellers incurred in the ordinary course of business that are reflected in the DIP Budget with respect to the Acquired Assets to the extent not paid by Sellers at or prior to Closing and in an amount no greater in the aggregate than an amount equal to (1) \$[_____] ⁴, less (2) any amounts paid by Sellers for such Liabilities at or prior to the Closing; and

(h) any Cure Costs owed in connection with the Assigned Contracts.

It is acknowledged and agreed that, except where specifically provided, this Section 2.3 speaks only to the Liabilities assumed from Sellers, and that, for the avoidance of doubt, no provision of this Section 2.3 shall apply to or shall be construed to limit the scope of the Liabilities acquired by Buyer indirectly through its acquisition of the Acquired Entities and the Acquired Equity Interests

4 Note to Draft: To propose prior to execution of this Agreement.

hereunder, it being understood that Buyer shall indirectly acquire all such Liabilities except as otherwise expressly provided herein.

Section 2.4 Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, Buyer shall not assume, and shall be deemed not to have assumed, any Liabilities relating to the Business of Sellers or any Affiliate of Sellers and Sellers and their Affiliates shall be solely and exclusively liable with respect to all such Liabilities, other than the Assumed Liabilities (collectively, the “**Excluded Liabilities**”), including those Liabilities set forth as follows:

- (a) any Liability of any Seller relating to any Excluded Asset;
- (b) all Liabilities under Indebtedness of the type referred to in clause (a) of the definition thereof of Sellers (including any Indebtedness or accounts payable owing from any Seller to an Affiliate of such Seller);
- (c) except for any Liabilities for Taxes that are Assumed Liabilities, all Tax Liabilities for Pre-Closing Tax Periods, including Pre-Closing Straddle Period Taxes, and any Tax Liabilities of Sellers arising from the transactions contemplated by this Agreement;
- (d) all Liabilities of Sellers relating to employees of Excluded Subsidiaries and Sellers that are not Transferred Employees (“**Excluded Employees**”);
- (e) all Liabilities of Sellers arising out of, relating to or with respect to (i) the employment or performance of services, or termination of employment or services by any Seller of any employee, or independent contractor on or before the close of business on the Closing Date, (ii) employment or labor Actions accruing either directly or indirectly against Seller that relate to the period on or before the close of business on the Closing Date, irrespective of whether such claims are made prior to or after the Closing and (iii) any Benefit Plan (including all Liabilities to the IRS or Department of Labor);
- (f) all Rejection Damages Claims;
- (g) any tort Liabilities of any Seller based on any acts, omissions, or conditions occurring or existing prior to the Closing Date;
- (h) all Environmental Liabilities relating to, resulting from, caused by or arising out of ownership, operation or control of the Business, to the extent accruing, arising out of or relating to events, occurrences, acts or omissions occurring or existing prior to the Closing Date;
- (i) all Actions against each Seller, any of their respective assets, the Business and any of their past or present operations or activities;
- (j) the obligations under the Credit Agreement, dated as of November 22, 2021, by and among Holdings and AgileThought Mexico, S.A. de C.V., as borrowers, AN Global LLC, as Intermediate Holdings, the lenders party thereto from time to time, and GLAS USA LLC, as administrative agent, and GLAS Americas LLC, as collateral agent;

(k) any Tax obligations of the Mexican Entities or any other Group Company, in each case, other than the Acquired Entities and their Subsidiaries; and

(l) all Indemnification Claims.

Section 2.5 Contract Designation Rights and Acquired Entities.

(a) Schedule 2.1(c) sets forth a list (the “**Executory Contracts List**”) of all Contracts and Leases of Sellers that are subject to assumption or rejection pursuant to Section 365 of the Bankruptcy Code (each, an “**Executory Contract**”), and, following the date of this Agreement but prior to the date that is three (3) days⁵ prior to the Auction, Sellers will add thereto their good-faith estimate of the Cure Costs associated with each Executory Contract. Sellers shall supplement such Executory Contracts List prior to the Designation Deadline to add or remove any Executory Contracts inadvertently included or excluded from such schedule (and such supplement shall be acceptable (or not acceptable) to Buyer in its sole discretion) as soon as reasonably practicable following discovery of inadvertent inclusion or exclusion, but in no event later than three (3) Business Days following such discovery.

(b) At any time prior to the Closing Date (the “**Designation Deadline**”), Buyer will have the right to amend or supplement Schedule 2.1(c) to (i) designate an Executory Contract as an Excluded Contract, and upon such designation such Executory Contract will constitute an Excluded Asset, and (ii) designate an Executory Contract as an Assigned Contract and upon such designation such Executory Contract will constitute an Acquired Asset and will be conveyed to Buyer, subject to Bankruptcy Court approval, under this Agreement effective as of at Closing. All Executory Contracts that are not designated by Buyer as an Assigned Contract in Schedule 2.1(c) prior to the Designation Deadline shall not be considered Assigned Contracts or Acquired Assets and shall automatically be deemed Excluded Contracts (and for the avoidance of doubt, Buyer shall not be responsible for any related Cure Costs); provided, however, that if an Executory Contract is subject to a cure dispute or other dispute as to the assumption or assignment of such Executory Contract that has not been resolved to the mutual satisfaction of Buyer and Sellers prior to the Designation Deadline, then the Designation Deadline shall be extended (but only with respect to such Executory Contract and only while Buyer pays the ordinary course costs and expenses arising in connection with such Executory Contract) to no later than the earlier of (A) the date on which such dispute has been resolved to the mutual satisfaction of Buyer and Sellers, (B) sixty (60) days following the Closing Date, (C) the date on which such Executory Contract is either no longer permitted to be assumed or assigned or deemed rejected pursuant to 11 U.S.C. § 365(d)(2) or (4) and (D) the date required by the Bankruptcy Court and set forth in the Sale Order (the “**Extended Contract Period**”). If such Executory Contract is not expressly assumed by Buyer in writing by the end of such Extended Contract Period, such Executory Contract shall be automatically deemed an Excluded Contract.

(c) Omitted Contracts.

⁵ **Note to Buyer:** Inserted interp specifying that days equal calendar days unless otherwise specified.

(i) If following the Designation Deadline but prior to the expiration of the Extended Contract Period (to the extent applicable), it is discovered that an Executory Contract should have been listed on Schedule 2.1(c) but was not listed on Schedule 2.1(c) (any such Executory Contract, a “**Omitted Contract**”), Sellers shall, promptly following the discovery thereof (but in no event later than three (3) Business Days following the discovery thereof), notify Buyer in writing of such Omitted Contract and all Cure Costs (if any) for such Omitted Contract, and provide Buyer a copy of such Omitted Contract. Buyer shall thereafter deliver written notice to Sellers, no later than five (5) Business Days following notification of such Omitted Contract from Sellers, designating such Omitted Contract as an Assigned Contract or Excluded Contract (a “**Omitted Contract Designation**”). An Omitted Contract designated in accordance with this Section 2.5(c)(i) as an Excluded Contract, or with respect to which Buyer fails to timely deliver an Omitted Contract Designation, shall be an Excluded Contract.

(ii) If Buyer designates an Omitted Contract as an Assigned Contract in accordance with Section 2.5(c)(i), Sellers shall serve a notice (the “**Omitted Contract Notice**”) on the counterparties to such Omitted Contract notifying such counterparties of the Cure Costs with respect to such Omitted Contract and Sellers’ intention to assume and assign such Omitted Contract in accordance with this Section 2.5. The Omitted Contract Notice shall provide the counterparties to such Omitted Contract with seven (7) Business Days to object, in writing to Sellers and Buyer, to the Cure Costs or the assumption of its Contract. If the counterparty to an assumed Omitted Contract files an objection to the Cure Costs in a manner that is consistent with the Bidding Procedures, and Sellers, Buyer, and counterparty are unable to reach a consensual resolution with respect to the objection, Sellers shall seek an expedited hearing before the Bankruptcy Court to determine the Cure Costs, if any, and approve the assumption of the relevant Omitted Contract. If no objection to the Cure Costs is served on Sellers and Buyer, Sellers shall seek an order of the Bankruptcy Court, including by filing a certification of no objection, fixing the Cure Costs and approving the assumption of the Omitted Contract. In the event the Bankruptcy Court determines the Cure Costs in a manner not acceptable to Buyer, Buyer reserves the right to designate such Omitted Contract as an Excluded Contract. Buyer shall be responsible for all Cure Costs relating to the Omitted Contracts that are designated as an Assigned Contract.

(d) To the maximum extent permitted by the Bankruptcy Code and subject to the other provisions of this Agreement, on the Closing Date, Sellers shall assign the Assigned Contracts to Buyer pursuant to Sections 363 and 365 of the Bankruptcy Code and the Sale Order, subject to payment by Buyer of the Cure Costs.

(e) Nothing in this Agreement shall be construed as an attempt by Sellers to assign any Executory Contract to the extent that such Executory Contract is not assignable under the Bankruptcy Code or otherwise without the consent of the other party or parties thereto, if applicable law would require such consent, and the consent of such other party has not been given or received, as applicable. With respect to any Assigned Contract for which the consent of a party thereto to the assignment thereof shall not have been obtained at Closing and any claim, right or benefit arising thereunder or resulting therefrom, to the extent Buyer waives the condition set forth

in Section 9.2(i) (to the extent applicable), prior to the Closing Date, Sellers and Buyer shall use their reasonable good faith efforts to obtain as expeditiously as possible the written consent of the other party or parties to such Assigned Contract necessary for the assignment thereof to Buyer. Unless and until any such consent, waiver, confirmation, novation or approval is obtained, Sellers and Buyer shall cooperate to establish an arrangement reasonably satisfactory to Sellers and Buyer under which Buyer would obtain the claims, rights and benefits and assume the corresponding Liabilities and obligations thereunder (including by means of any subcontracting, sublicensing or subleasing arrangement). In such event, (i) Sellers will hold in trust for and promptly pay to Buyer, when received, all moneys received by them under any such Executory Contract or any claim, right or benefit arising thereunder and (ii) Buyer will promptly pay, perform or discharge, when due, any and all obligations and Liabilities arising thereunder, other than those being contested in good faith. Buyer acknowledges that no adjustment to the Purchase Price shall be made for any such Executory Contracts that are not assigned and that Buyer shall have no claim against Sellers in respect of such unassigned Executory Contracts. Nothing in this paragraph shall be deemed a waiver of Buyer's right to receive an effective assignment of all of the Acquired Assets at Closing nor shall any Executory Contracts covered by this paragraph be deemed to constitute Excluded Assets solely by virtue of this paragraph.

(f) Further notwithstanding anything in this Agreement to the contrary, by written notice to Sellers, Buyer may, in its sole and absolute discretion, amend or revise Schedule A and Schedule 2.1(a) at any time and from time to time prior to the date that is two (2) Business Days prior to the Closing Date, in order to add any direct or indirect Subsidiary of Sellers to such schedules (and such added Subsidiary shall be automatically included as an Additional Seller for purposes of Schedule A or an Acquired Entity for purposes of Schedule 2.1(a)), or remove any direct or indirect Subsidiary of Sellers from such schedules (and such removed Subsidiary shall be automatically deemed an Excluded Subsidiary for purposes of this Agreement). Only those Subsidiaries on the final Schedule A and Schedule 2.1(a) as of the date that is two (2) Business Days prior to the Closing Date shall be considered Additional Sellers and Acquired Entities, respectively.

ARTICLE III PURCHASE PRICE

Section 3.1 Good Faith Deposit. Simultaneous with the execution of this Agreement, Sellers, the Pre-Petition Secured Lenders (on behalf of Buyer) shall execute the Deposit Assignment Agreement, pursuant to which such Pre-Petition Secured Lenders shall contingently assign \$10,000,000 of secured claims under the Pre-Petition Credit Facility to Sellers (the "**Deposit Amount**"). The Deposit Amount shall be retained by Sellers in the following circumstances: (i) at the Closing, at which time such Deposit Amount shall be credited against the Purchase Price as set forth in Section 3.2; or (ii) if this Agreement is terminated under the circumstances set forth in Section 10.2(d). Except as described in the previous sentence, the claims under the Pre-Petition Credit Facility in the amount of the Deposit Amount shall be deemed to have been re-assigned back to Buyer (or the Pre-Petition Secured Lenders) upon termination of this Agreement.

Section 3.2 Purchase Price. On the terms and subject to the conditions hereof, at the Closing, Buyer shall (i) decrease the amount of principal due under the loans due under the Pre-

Petition Credit Facility pursuant to the credit bid of such amount, by the Agent on behalf of the Pre-Petition Secured Lenders, pursuant to an irrevocable instruction letter attached hereto as Exhibit E-1 (the “**Pre-Petition Bid Direction Letter**”) (such portion of the Purchase Price, the “**Pre-Petition Credit Bid**”), (ii) decrease the amount of obligations due under the DIP Facility by the amount under the DIP Facility as of the Closing Date pursuant to the credit bid of such amount, by the Agent on behalf of the DIP Lenders, pursuant to an irrevocable instruction letter attached hereto as Exhibit E-2 (the “**DIP Facility Bid Direction Letter**” and, together with the Pre-Petition Bid Direction Letter, the “**Bid Direction Letters**”) (such portion of the Purchase Price, the “**DIP Credit Bid**” and, together with the Pre-Petition Credit Bid, the “**Credit Bid**” and the sum of the amounts set forth in (i)-(ii), the “**Credit Bid Amount**” which shall be \$100,000,000), and (iii) assume the Assumed Liabilities as provided in Section 2.3 (the sum of (i)-(iii) above, the “**Purchase Price**”). The payment of the Purchase Price shall be subject to withholding as required by applicable Tax Law; provided, however, that Buyer shall give Sellers at least five days written notice of any Taxes that Buyer or its Affiliates intend to withhold and shall cooperate with Sellers in attempting to minimize any such withholdings. To the extent any amounts are so withheld and paid over to the appropriate Government Authority, Sellers shall be treated as receiving such amounts under this Agreement. At the Closing, the Deposit Amount shall be applied to and included in the Credit Bid.

Section 3.3 Allocation of Purchase Price. The Purchase Price (and any amounts treated as purchase price for U.S. federal income tax purposes, including the Assumed Liabilities) shall be allocated among the various Acquired Assets, in accordance with Section 1060 of the IRC and the applicable Treasury Regulations promulgated thereunder (the “**Allocation**”). Buyer shall, not later than 90 days after the Closing Date, prepare and deliver to Sellers a draft of the Allocation for Sellers’ review and comments. Sellers shall provide comments to the draft Allocation to Buyer within 30 days after delivery of the draft Allocation by Buyer and if Sellers do not provide any comments within such 30 days period, the draft Allocation prepared by Buyer shall be final and binding on the parties. If a Seller timely makes any comments to the draft Allocation, Buyer and such Seller shall work in good faith to resolve any disputes within 20 days from the date such Seller delivers its comments to Buyer. Buyer will consider in good faith any timely received reasonable comments provided by such Seller. Unless otherwise required by a final determination within the meaning of IRC Section 1313 or any equivalent provisions of non-U.S., state or local Tax Law, the Allocation, as finally determined pursuant to this Section 3.3, shall be final and binding on the Parties and Sellers and Buyer shall (a) use such Allocation, as finally determined pursuant to this Section 3.3, for the purpose of making the requisite filings under Section 1060 of the IRC, and the regulations thereunder, (b) report, and to cause their respective Affiliates to report, the federal, state, and local income and other Tax consequences of the transactions contemplated herein, and in particular to report the information required by Section 1060(b) of the IRC, and to jointly prepare Form 8594 (Asset Acquisition Statement under Section 1060 of the IRC) as promptly as possible following the Closing Date and in a manner consistent with such Allocation, and (c) promptly notify the other of the existence of any Tax audit, controversy, or litigation related to such Allocation. Notwithstanding the allocation of the Purchase Price agreed among the parties hereto pursuant to this Section 3.3 for the aforementioned Tax purposes, nothing in the foregoing shall be determinative of values ascribed to the Acquired Assets or the allocation of the value of the Acquired Assets for any other purpose.

ARTICLE IV CLOSING

Section 4.1 The Closing. Upon the terms and subject to the conditions hereof, the closing of the Sale (the “**Closing**”) shall take place remotely via the exchange of electronic documents by electronic mail at 10:00 a.m. (prevailing Eastern Time), no later than the second (2nd) Business Day after the date upon which all conditions set forth in Article IX hereof have been satisfied or (if permissible) waived (other than those conditions which by their nature are to be satisfied at the Closing, but subject to the satisfaction or (if permissible) waiver of those conditions), or at such other place, date and time as the parties may agree. The date on which the Closing occurs is referred to in this Agreement as the “**Closing Date**.”

Section 4.2 Deliveries at the Closing.

(a) Sellers shall deliver or shall cause to be delivered to Buyer (or Buyer’s Designee) the following at the Closing:

(i) bills of sale, assignment agreements and other customary transfer documents necessary to transfer to Buyer (or any of its Affiliates) all right, title and interest of Sellers to or in the Acquired Assets, in form and substance reasonably acceptable to Sellers and Buyer;

(ii) certificates of service evidencing that all notices of the assumption and assignment of the Assigned Contracts and of the assumption of the Assumed Liabilities have been given in accordance with the terms of this Agreement and the Approval Order;

(iii) a certificate signed by a Responsible Officer of each Seller (in form and substance reasonably satisfactory to Buyer) certifying that the closing conditions set forth in Section 9.2(e) , (f), and (g) have been satisfied;

(iv) a certificate signed by a Responsible Officer of each Seller to which is attached: (A) true and correct copies of the Fundamental Documents of such Seller; (B) a certificate reflecting the incumbency and true signatures of the officers of such Seller who execute on behalf of such Seller this Agreement and all other Transaction Documents to which such Seller is a party; and (C) a certificate from the Secretary of State or other applicable Governmental Authority of the State of formation or incorporation, as applicable, dated within ten (10) days of the Closing Date, or, in case of a Seller organized under the laws of Mexico, within 30 to 40 days, with respect to the existence and good standing of such Seller. The certificate required pursuant to this Section 4.2(a)(iv) shall certify that the documents referred to in clause (A) of the immediately foregoing sentence are true and correct copies, have been duly and validly adopted and have not been amended or altered except as reflected therein;

(v) a certified copy of the Sale Order as entered by the Bankruptcy Court on the docket;

(vi) a duly completed and executed IRS Form W-9 from each Seller (or its regarded owner, in the case of a Seller that is an entity treated as disregarded as separate from its owner for U.S. federal income tax purposes);

(vii) assignment agreements, duly executed by an authorized officer of each applicable Seller, required to assign any Intellectual Property included in the Acquired Assets;

(viii) the Books and Records;

(ix) a duly executed counterpart of each Local Transfer Instrument reasonably requested by Buyer;

(x) each other Transaction Document to which Sellers or Acquired Entities are a party, duly executed by Sellers or Acquired Entities, as applicable; and

(xi) such other instruments as are reasonably requested by Buyer and otherwise necessary to consummate the Sale and reasonably acceptable to Sellers.

(b) Buyer shall deliver or cause to be delivered to Sellers, or their designee(s), at the Closing:

(i) a certificate signed by a Responsible Officer of Buyer certifying that the closing conditions set forth in Section 9.3(a) and Section 9.3(b) have been satisfied;

(ii) a certificate signed by a Responsible Officer of Buyer to which is attached: (A) true and correct copies of the Fundamental Documents of Buyer; (B) true and correct copies of the resolutions of the board of directors of Buyer respecting the transactions contemplated by this Agreement and the Transaction Documents; (C) a certificate reflecting the incumbency and true signatures of the officers of Buyer who execute on behalf of Buyer this Agreement and all other Transaction Documents to which Buyer is a party; and (D) a certificate from the Secretary of State or other applicable Governmental Authority of the State of formation or incorporation, as applicable, dated within ten (10) days of the Closing Date, with respect to the existence and good standing of Buyer. The certificate required pursuant to this Section 4.2(b)(ii) shall certify that the documents referred to in clauses (A) and (B) of the immediately foregoing sentence are true and correct copies, have been duly and validly adopted and have not been amended or altered except as reflected therein;

(iii) each other Transaction Document to which Buyer or Buyer Designee is a party, duly executed by Buyer or Buyer Designee, as applicable; and

(iv) such other instruments as are reasonably requested by Sellers and otherwise necessary to consummate the Sale and reasonably acceptable to Buyer.

All such deliveries listed in Section 4.2(a) and Section 4.2(b) shall be made, to the extent applicable, subject to any requirement or in the manner provided by applicable Law, to

effectuate, formalize or consummate the transfer, conveyance or assignment of any Acquired Assets in their applicable jurisdiction.

(c) At least three (3) Business Days prior to the Closing, Buyer shall be entitled to designate, in accordance with the terms and subject to the limitations set forth in this Section 4.2(c), one or more Affiliates of Buyer to (i) purchase specified Acquired Assets; (ii) assume specified Assumed Liabilities; or (iii) employ Transferred Employees, in each case, as of the Closing Date (any Person that shall be properly designated by Buyer in accordance with this clause, a “**Buyer Designee**”); it being understood and agreed, however, that any such right of Buyer to designate a Buyer Designee is conditioned upon (x) such Buyer Designee being able to perform the applicable covenants under this Agreement and, as applicable, any other Transaction Document to which Buyer is party and demonstrate satisfaction of the requirements of Section 365 of the Bankruptcy Code (to the extent applicable), including the provision of adequate assurance for future performance with respect to the Acquired Assets and Assumed Liabilities, (y) any such designation not creating any Liability for Sellers or their Affiliates that would not have existed had Buyer purchased the Acquired Assets, assumed the Assumed Liabilities or employed Buyer employees, and which Liability is not fully reimbursed by or on behalf of Buyer and (z) such designation not being reasonably expected to cause a delay, or prevent or hinder the consummation of the transactions contemplated by this Agreement. As soon as reasonably practicable and in no event later than three (3) Business Days prior to the Closing, Buyer shall make any such designations of Buyer Designees by way of a written notice to be delivered to Sellers, and Buyer Designees shall deliver a signed counterpart to this Agreement or joinder agreement to this Agreement and each other Transaction Document to which Buyer is party. No such designation shall relieve Buyer of any of its obligations hereunder and any breach hereof by a Buyer Designee shall be deemed a breach by Buyer. Buyer and Buyer Designees shall be jointly and severally liable for any obligations of Buyer and such Buyer Designees hereunder. For the avoidance of doubt, and notwithstanding anything to the contrary herein, all Buyer Designees appointed in accordance with this Section 4.2(c) shall be included in the definition of “Buyer” for all purposes under this Agreement and all such Buyer Designees shall be deemed to have made all of the representations and warranties of Buyer set forth in this Agreement.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLERS

Subject to Bankruptcy Court approval of this Agreement and except as set forth in the Disclosure Schedules delivered by Sellers to Buyer in accordance with Section 7.9, Sellers jointly and severally represent and warrant to Buyer that:

Section 5.1 Organization, Standing and Corporate Power. Each Target Company is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated or formed and has the requisite corporate, limited liability or other applicable power and authority to carry on its business as now being conducted. Each Target Company is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary, other than in such jurisdictions where the failure to be so qualified or licensed would not have a Material Adverse Effect. Each Seller has made available to

Buyer complete and correct copies of its respective Fundamental Documents, in each case as amended to the date of this Agreement.

Section 5.2 Authority; Noncontravention.

(a) Subject to the Bankruptcy Court's entry of the Approval Order and the Sale Order, (i) each Seller has the requisite corporate, limited liability or other applicable power and authority to enter into this Agreement and the other Transaction Documents to which such Seller is or will be a party, and to consummate the transactions contemplated hereby and thereby and (ii) the execution and delivery of this Agreement by each Seller and the other Transaction Documents to which such Seller is or will be a party, and the consummation by such Seller of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of such Seller. This Agreement has been duly executed and delivered by each Seller and, assuming this Agreement constitutes a valid and binding agreement of Buyer and subject to entry of the Sale Order, constitutes a valid and binding obligation of each Seller, enforceable against such Seller in accordance with its terms, subject to (x) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally and (y) general principles of equity, regardless of whether enforcement is sought in a proceeding at law or in equity.

(b) Subject to the Bankruptcy Court's entry of the Approval Order and the Sale Order, the execution and delivery by each Seller of this Agreement and each Transaction Document to which such Seller is or will be a party does not, and the consummation by each Seller of the transactions contemplated by this Agreement or any other Transaction Documents to which such Seller is or will be a party, and compliance by each Seller with the provisions of this Agreement or any other Transaction Document to which such Seller is or will be a party, does not, conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation, modification or acceleration of any obligation or to a loss of a benefit under, or result in the creation of any Lien upon any of the properties or assets of any Target Company or Mexican Entity under (i) the Fundamental Documents of any Target Company or Mexican Entity or (ii) any judgment, order, decree, statute, Law, ordinance, rule or regulation applicable to any Seller or its respective properties or assets other than any such conflicts, violations, defaults, rights, losses or Liens that would not have a Material Adverse Effect.

(c) No Consent of any Governmental Authority, or any third party, is required by or with respect to any Seller or Acquired Entity in connection with the execution and delivery of this Agreement by any Seller and each Transaction Document to which such Seller or an Acquired Entity is or will be a party, or the consummation by such Seller or Acquired Entity of the transactions contemplated hereby and thereby, except for (i) the Consents set forth in Section 5.2(c) of the Disclosure Schedules, (ii) the entry of the Sale Order or the Approval Order by the Bankruptcy Court, (iii) compliance with any applicable requirements of the Exchange Act or Securities Act, (iv) any applicable requirements of any Antitrust Laws and (v) such other Consents as to which the failure to obtain or make would not have a Material Adverse Effect.

Section 5.3 Real Properties.

(a) The Leased Real Estate constitutes all of the real property (whether leased, subleased or licensed) used in connection with the Business. No Target Company owns any real property.

(b) Section 5.3(b) of the Disclosure Schedules lists each lease or sublease, including all amendments, modifications or supplements thereof, pursuant to which a Group Company occupies any Leased Real Estate (collectively, the “**Leases**”). Sellers have delivered (or otherwise made available) to Buyer a true, correct and complete copy of each Lease, in each case, as amended or otherwise modified and in effect subject to proper authorization and execution of applicable bankruptcy, receivership, insolvency, reorganization, moratorium, fraudulent conveyance, equitable subordination or similar Laws of general application and other Laws affecting creditors’ rights generally. None of the Target Companies has subleased or otherwise granted to any Person the right to use or occupy the Leased Real Estate or any portion thereof. Except as would not have a Material Adverse Effect, (i) there is no pending or, to the Knowledge of Sellers, threatened condemnation or other legal proceeding of any type relating to the Leased Real Estate or other matters affecting adversely the use, occupancy or value of the Leased Real Estate, except as disclosed on Section 5.6 of the Disclosure Schedules; (ii) the Leased Real Estate does not, to the Knowledge of Sellers, serve any adjoining property for any purpose inconsistent with the use of such Leased Real Estate; and (iii) to the Knowledge of Sellers, neither the current use of the Leased Real Estate nor the operation of the Business violates any instrument of record or agreement affecting the Leased Real Estate or any applicable legal requirements.

Section 5.4 Tangible Personal Property. Except as set forth in Section 5.4 of the Disclosure Schedules and other than the Excluded Assets, the Target Group has good and valid title to, or have good and valid leasehold interests in, all tangible personal property that is included in the Business, free and clear of all Liens other than Permitted Liens, except in each case as would not have a Material Adverse Effect. To the Knowledge of Sellers, such owned and leased tangible personal property is in good working order, reasonable wear and tear excepted, except as would not have a Material Adverse Effect.

Section 5.5 Intellectual Property.

(a) The operation of the Business as currently conducted and the use of the Intellectual Property in connection therewith, to the Knowledge of Sellers, do not conflict with, infringe, misappropriate, dilute, misuse or otherwise violate the intellectual property rights of any third-party. Except as is not material to the Business, no claim, action, suit, investigation, litigation or proceeding has been asserted or is pending or, to the Knowledge of Sellers, threatened against any Group Company with respect to the foregoing.

(b) The Target Group owns all right, title and interest in and to the Intellectual Property that is owned by a Group Company and, to the Knowledge of Sellers, is otherwise entitled to use all Intellectual Property material to the Business.

(c) The Intellectual Property set forth in Section 5.5(c) of the Disclosure Schedules identifies all registrations and applications for the Intellectual Property owned by each

Target Company and used or held for use by the Target Group in the Business as presently conducted (the “**Registered Intellectual Property**”).

(d) To the Knowledge of Sellers, the Registered Intellectual Property is subsisting and has not been adjudicated to be invalid or unenforceable in whole or part. To the Knowledge of Sellers, no Target Company is aware of any uses of any item of Registered Intellectual Property that could be expected to lead to such item becoming invalid or unenforceable.

(e) To the Knowledge of Sellers, no Person is engaging in any activity that infringes, misappropriates, dilutes, misuses or otherwise violates the Intellectual Property that is material to the Business or any Target Company’s rights therein. Except as set forth on Section 5.5(e) of the Disclosure Schedules, no Target Company has granted any license in settlement of an infringement, release, covenant not to sue, or non-assertion assurance to any Person with respect to any Registered Intellectual Property.

(f) No Target Company’s Registered Intellectual Property is subject to any settlement agreement, consent agreement, decree, order, injunction, judgment or ruling materially restricting the use of any Registered Intellectual Property or that would materially impair the validity or enforceability of such Registered Intellectual Property.

(g) The Internet domain names set forth on Section 5.5(c) of the Disclosure Schedules are registered and controlled by one or more Sellers.

Section 5.6 Litigation. Except for such matters listed in Section 5.6 of the Disclosure Schedules that will be discharged or that are reasonably expected to be discharged pursuant to the Sale Order and except for such environmental, health or safety matters addressed in Section 5.13, there is no Action or proceeding pending or, to the Knowledge of Sellers, threatened against any Target Company that would not have a Material Adverse Effect, nor is there any judgment, decree, injunction, rule or order of any Governmental Authority outstanding against any of the Target Companies that would have a Material Adverse Effect.

Section 5.7 Material Contracts; Debt Instruments.

(a) Section 5.7(a) of the Disclosure Schedules identifies all the following types of Contracts (each a “**Material Contract**”, and collectively with the Leases identified in Section 5.3(b) of the Disclosure Schedules, the “**Material Contracts**”) in effect as of the date hereof, which are related to the Acquired Assets or the Business generally and to which any Group Company is a party:

(i) Contracts relating to Indebtedness for borrowed money (in either case, whether incurred, assumed, guaranteed or secured by any asset) in excess of \$100,000, other than Indebtedness between or among any Target Company and accounts payable.

(ii) joint venture, partnership, limited liability company or other similar Contracts;

(iii) any Contract relating to any outstanding commitment for capital expenditures in excess of \$10,000 individually or \$30,000 in the aggregate;

(iv) Contracts (or series of related Contracts) relating to the acquisition or disposition of any Person, business or material real property or other assets (whether by merger, sale of stock, sale of assets or otherwise) for consideration in excess of \$250,000 and pursuant to which any Target Company has any remaining payment obligation, including any potential earn-out, deferred or contingent payment obligation;

(v) Contracts that (A) materially restrict the ability of any Group Company to compete in any line of business or with any Person or in any geographic area or (B) contains exclusivity obligations or restrictions binding on any Group Company;

(vi) any sales, distribution, agency and marketing Contract (or series of related Contracts) involving in excess of \$100,000 in any annual period;

(vii) any Contract (or series of related Contracts) relating to the purchase by any Sellers of any products or services under which the undelivered balance of such products or services is in excess of \$100,000;

(viii) Contracts relating to any interest rate, currency or commodity derivatives or hedging transaction in excess of \$100,000;

(ix) Contracts containing any “change of control” or similar provisions;

(x) Contracts with any current or former employee of any Seller with aggregate payments of at least \$100,000 remaining under such Contract or providing for any severance Liabilities.

(b) Except with respect to any Bankruptcy-Related Default or payment default, each Material Contract included in the Acquired Assets is a legal, valid, binding and enforceable agreement of the applicable Group Companies and is in full force and effect, and none of Group Companies or, to the Knowledge of Sellers, any other party thereto is in default or breach under the terms of, or has provided any written notice to terminate or modify, any such Material Contract. To the Knowledge of Sellers, no Group Company is a party to a Material Contract which is an oral Contract.

(c) Complete and correct copies of (i) each Material Contract (including all waivers thereunder) and (ii) all form Contracts related to the Business have been made available to Buyer.

Section 5.8 Employees; Labor Matters.

(a) Except as set forth in Section 5.8(a) of the Disclosure Schedules, no Group Company is a party to or bound by any Collective Bargaining Agreement and there are no labor unions representing any employees employed by any Group Company (“**Employees**”). Within the past three (3) years there has not occurred or, to the Knowledge of Sellers, been threatened, any material strike, slowdown, picketing, work stoppage, concerted refusal to work or other similar

material labor protest by any Employees. Except as set forth in Section 5.8(a) of the Disclosure Schedules, there are no material labor disputes currently subject to any grievance, arbitration, or Action, or, to the Knowledge of Sellers, threatened, by any Employees or any union representing the Employees. Within the past three (3) years, no Seller has engaged in unfair labor practices within the meaning of the Mexican Federal Labor Law (*Ley Federal de Trabajo*) that could, individually or in the aggregate, directly or indirectly, result in a material Liability to the Target Group or the Acquired Assets taken as a whole. Within the past three (3) years, no Target Company has received written notice of the intent of any Governmental Authority responsible for the enforcement of labor and employment laws to conduct an investigation with respect to or relating to the Business which could, individually or in the aggregate, directly or indirectly, result in a material Liability to the Target Group or the Acquired Assets taken as a whole and, to the Knowledge of Sellers, no such investigation is in progress.

(b) To the Knowledge of Sellers, each Target Company is in material compliance with all material foreign, Mexico and United States Laws governing their employment practices, terms and conditions of Employees' employment, wages and hours, equal opportunity, civil rights, social security rights, labor relations, occupational health and safety, subcontracting and outsourcing practices, and obligation to withhold Employee payroll taxes or any other applicable taxes, including the Immigration and Reform Control Act, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the Federal Age Discrimination in Employment Act, the Mexican Federal Labor Law (*Ley Federal de Trabajo*), the Mexican Social Security Law (*Ley del Seguro Social*) and any federal, state, provincial or local law governing labor and employment. In the past three (3) years, none of the Target Companies has received a written complaint, demand letter, or written charge issued by a Mexico or U.S. federal, state, provincial or local agency or other Governmental Authority that alleges a material violation by any Target Company of any applicable material Law governing their employment practices, terms and conditions of Employees' employment, wages and hours, equal opportunity, civil rights, social security rights, labor relations, occupational health and safety, or obligation to withhold Employee payroll taxes or any other applicable taxes. None of the Target Companies (i) have engaged in any plant closing, work force reduction, or other reduction in force that, to the Knowledge of Sellers, has resulted or could reasonably be expected to result in material Liability under the Workers Adjustment and Retraining Notification Act or any other applicable United States or Mexico Law or local, provincial, state Law with respect to the Employees, or (ii) have been issued any written notice that any such Action is to be brought in the future with respect to the Employees. To the Knowledge of Sellers, the Target Companies are in material compliance with all applicable requirements of the Immigration Reform and Control Act and the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Mexican Immigration Law (*Ley de Migración*) with respect to the Employees.

(c) To the extent any Group Company subject to Mexican jurisdiction receives or renders specialized services in terms of Article 13 of the Mexican Federal Labor Law (*Ley Federal del Trabajo*), such Group Company is in material compliance with all Laws for subcontracting and specialized services matters, including (i) that it has entered into a valid specialized services agreement which includes the minimum statutory requirements as provided by applicable Law, (ii) that it has obtained the documentation that evidences that the specialized services provider (the "**Specialized Services Provider**") is registered before the Registry of

Specialized Services and Specialized Works Providers of the Mexican Department of Labor and Social Welfare, and (iii) has reasonably confirmed that the Specialized Services Provider has informed the applicable Governmental Authority about the execution of the specialized services agreement and that such Specialized Services Provider has complied with all applicable labor and social security Laws with respect to the employees that render the specialized services in favor of such Group Company and that the execution of such specialized services agreements with such Specialized Services Providers should not result in any labor or social security Liability for the Group Company.

(d) Sellers have made available to Buyer a true, correct and complete list setting forth the name, title, description of position, place of employment, current annual salary, most recent or expected bonus, and the to the extent applicable, deferred or contingent compensation, accrued vacation and sick days, severance and other like benefits paid or payable (in cash or otherwise) for the years 2022 and 2023, for each current salaried employee, officer, directors, consultant or agent of each Group Company. All Employees have been directly hired by a Group Company. The Parties agree that (i) the employee information disclosed to Buyer pursuant to the present paragraph is necessary for Buyer's determination to enter into this Agreement and proceed with the transactions contemplated hereby and for the parties to proceed with the Closing, and (ii) such information will only be used for such purposes for which it was initially collected from or in respect of such employee.

Section 5.9 Benefits Plans and ERISA Compliance.

(a) Section 5.9(a) of the Disclosure Schedules contains a list of all material Benefit Plans.

(b) To the Knowledge of Sellers, there does not now exist, and there are no existing circumstances that could reasonably be expected to result in, any Controlled Group Liability that would be a liability of Buyer or any of its Affiliates following the Closing.

(c) Except as set forth in Section 5.9(c) of the Disclosure Schedules, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby shall (either alone or in conjunction with any other event) result in, cause the accelerated vesting or delivery of, or increase the amount or value of, any payment or benefit to any employee of any Target Company.

(d) No Benefit Plan is a Multiemployer Plan, nor have any Group Company, nor any Group Company's respective ERISA Affiliates, been obligated to contribute or have any liability with respect to any Multiemployer Plan.

Section 5.10 Permits. Section 5.10 of the Disclosure Schedules contains a true and correct list of all material Permits that are held by Sellers as of the date hereof and that are necessary for Sellers to operate the Business in all material respects. To the Knowledge of Sellers, all such Permits are in full force and effect, as of the date hereof, and Sellers are not, as of the date hereof, in default (or with the giving of notice or lapse of time or both, would be in default) under any such Permits, except as would not have a Material Adverse Effect. There are no proceedings pending or, to the Knowledge of Sellers, threatened in writing that seek the revocation,

cancellation, suspension or adverse modification of any such Permits. All required filings with respect to such Permits have been timely made and all required applications for renewal thereof have been timely filed except where the failure to make any such filing or application would not have a Material Adverse Effect.

Section 5.11 Restrictions on Business Activities. With the exception of any Material Contracts identified pursuant to Section 5.7(a)(v), there is no Contract (non-compete or otherwise), commitment, judgment, injunction, order or decree binding upon any Seller or to which any Seller is a party, that by its terms prohibits or impairs any business practice of any Seller, any acquisition of property by any Seller or the conduct of the Business in any geographic region. No Seller has entered into any Contract under which it is restricted from selling, licensing or otherwise distributing any of its products to or providing services to, customers or potential customers or any class of customers, in any geographic area, during any period of time or in any segment of the market.

Section 5.12 Insurance. Section 5.12 of the Disclosure Schedules sets forth all material insurance policies maintained by each Group Company that cover (or relate to) the Target Group, the Business, the Acquired Assets or Assumed Liabilities. All such policies are in full force and effect and the Target Group has complied with the terms thereof in all material respects.

Section 5.13 Environmental Matters. Except as set forth in Section 5.13 of the Disclosure Schedules:

(a) To the Knowledge of Sellers, the business and operations of the Target Group are in material compliance with all applicable Environmental Laws and all Permits issued pursuant to Environmental Laws, and there is no condition, event or circumstance at any of the Leased Real Estate that contravenes any Environmental Law or, with the passage of time, may result in a material Environmental Notice or a material Environmental Claim;

(b) To the Knowledge of Sellers, the Target Group has obtained all material Permits required under all applicable Environmental Laws necessary to operate their business and operations in all material respects and possess and use the Acquired Assets, subject to renewal of such Permits in the ordinary course of business;

(c) To the Knowledge of Sellers, no Group Company is the subject of any material outstanding Liability or Environmental Claim respecting violation of Environmental Laws, or any Action based thereon or arising therefrom;

(d) To the Knowledge of Sellers, no Group Company has received any material Environmental Claim or other written communication alleging that any Group Company, the Business, or any Acquired Assets may be in violation of any applicable Environmental Law or any Permit issued pursuant to Environmental Law, which was received in the last two (2) years prior to the date of this Agreement or, without regard to date of receipt, remains pending or unresolved or is the source of ongoing obligations or requirements as of the date hereof; and

(e) There is no condition, event, or circumstance concerning the Release or regulation of Hazardous Materials by any Target Company or any Affiliates of any Target

Company or to the best of the Knowledge of Sellers by any other Person, in contravention of Environmental Law that might, after the Closing Date, materially prevent, impede, or increase the costs associated with the ownership, lease, operation, performance, or use of the Acquired Assets, the Business, to the best of the Knowledge of Sellers, any of the Leased Real Estate, or any other assets of Sellers as currently conducted. To the Knowledge of Sellers, no Target Company has received an Environmental Notice that any of the Acquired Assets, the Business, or real property currently or formerly owned, leased or operated by any Target Company in connection with its business operations (including soils, groundwater, surface water, and Structures located thereon) has been contaminated with any Hazardous Materials which could reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or the terms of any Environmental Permit by, a Target Company or any of the Acquired Assets.

Section 5.14 No Brokers. Except for any Person retained or anticipated to be retained by Sellers to act as their financial advisor or investment banker in connection with the Bankruptcy Cases or as otherwise set forth in Section 5.14 of the Disclosure Schedules, no Person has acted, directly or indirectly, as a broker or financial advisor for Sellers in connection with the transactions contemplated by this Agreement and no Person is entitled to any fee or commission or like payment in respect thereof.

Section 5.15 Taxes. Except as set forth in Section 5.15 of the Disclosure Schedules, (i) all income and other material Tax Returns required to be filed by any Group Company with respect to the Business or the Acquired Assets have been filed, and all such Tax Returns are true, correct and complete in all material respects, (ii) all material Taxes due and payable by any Group Company, whether or not shown on any such Tax Return, have been paid, (iii) there are no Tax liens with respect to the Acquired Assets, other than Permitted Liens, (iv) no Group Company, with respect to the Business or the Acquired Assets, is the subject of any Tax audit or proceeding, and (v) each Group Company, with respect to the Business or the Acquired Assets, has timely withheld and paid, or caused to be paid, all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, shareholder or other third party.

Section 5.16 Compliance with Laws.

(a) Each Target Company is, and for the past two years has been, in compliance and has not been in violation of any Law applicable to the Acquired Assets, the Assumed Liabilities or the conduct of the Business, except for violations or instances of non-compliance, which do not or would not reasonably be expected to be material to the Business, the Acquired Assets or the Assumed Liabilities, taken as a whole. None of the Business, the Acquired Assets, the Assumed Liabilities nor any Target Company is subject to any Order (other than, for the avoidance of doubt, any Orders entered by the Bankruptcy Court).

(b) No Group Company, nor, to the Knowledge of Sellers, any Persons acting on behalf of any Group Company, nor the Business, is currently, or has been in the past five years (i) a Sanctioned Person; (ii) organized, resident or located in any country or region that is subject or target of a comprehensive embargo under applicable Anti-Corruption and Trade Control Laws (a “**Sanctioned Country**”); (iii) engaged in any dealings or transactions with any Sanctioned Person or in any Sanctioned Country, in violation of Anti-Corruption and Trade Control Laws;

(iv) engaged in any export, re-export, transfer or provision of any goods, technology, or service without, or exceeding the scope of, any required or applicable licenses or authorizations under all applicable Laws, except as would not reasonably be expected to be material to the Business, the Acquired Assets or the Assumed Liabilities, taken as a whole; or (v) otherwise in violation, in any material respect, of applicable Anti-Corruption and Trade Control Laws. In the past five years, no Group Company has (A) received from any Governmental Authority or any other Person any notice, inquiry, or internal or external allegation, (B) made any voluntary or involuntary disclosure to a Governmental Authority or (C) conducted any internal investigation or audit, in each case, concerning any actual or potential violation or wrongdoing related to Anti-Corruption and Trade Control Laws.

(c) To the Knowledge of Sellers, in the past 5 years no Group Company, nor any Person acting on any such Group Company's behalf or on behalf of the Business, has made, directly or indirectly, any payment or promise to pay, or gift or promise to give or authorized such a promise or gift, of any money or anything of value, directly or indirectly, to (i) any foreign official (as such term is defined in the FCPA) for the purpose of influencing any official act or decision of such official or inducing him to use his influence to affect any act or decision of a foreign government, or any agency or subdivision thereof; or (ii) any foreign political party or official thereof or candidate for foreign political office for the purpose of influencing any official act or decision of such party, official or candidate or inducing such party, official or candidate to use his, her or its influence to affect any act or decision of a foreign government or agency or subdivision thereof, in the case of both clauses (i) and (ii) above in order to assist a Group Company or the Business to obtain or retain business for or direct business to a Group Company or the Business and under circumstances which would subject any Group Company to material liability under any Anti-Corruption and Trade Control Laws. The internal accounting controls of each Group Company are adequate in all material respects to detect any of the foregoing.

(d) The operations of each Group Company are, and for the past five years have been, conducted at all times in all material respects with all applicable financial recordkeeping and reporting requirements and Anti-Money-Laundering Laws, and no legal proceeding by or before any Governmental Authority involving any Group Company with respect to Anti-Money-Laundering Laws is pending or, to the Knowledge of Sellers, threatened in writing. The internal accounting controls of each Group Company are adequate in all material respects to detect any of the foregoing.

Section 5.17 Financial Statements. Section 5.17 of the Disclosure Schedules sets forth (i) the audited, consolidated balance sheets and the related audited, consolidated statements of operations and comprehensive loss of members' equity and cash flows of Holdings and its Subsidiaries (which include all of the Target Companies for the fiscal years ended December 31, 2021 and 2022 (the "**Audited Financial Statements**")) and (ii) the consolidated interim unaudited balance sheet and consolidated profit and loss statement of Holdings and its Subsidiaries, each as of July 31, 2023 (the "**Balance Sheet Date**"). Such financial statements have been prepared based on the books and records of the Company Group, have been prepared in conformity with GAAP or IFRS (as applicable) consistently applied (except for the absence of footnotes and customary year-end adjustments), and present fairly the financial position, results of operations and cash flows of the Business and the Company Group as of their respective dates and for the respective

periods covered thereby. No Acquired Entity is subject to any material liability which is not shown or which is in excess of amounts shown or reserved for in the balance sheet of the applicable Acquired Entity as of the Balance Sheet Date, other than liabilities of the same nature as those set forth in the balance sheet of the applicable Acquired Entity as of the Balance Sheet Date and reasonably incurred in the ordinary course of business after the Balance Sheet Date.

Section 5.18 Confidentiality. The Target Group has taken all steps reasonably necessary to preserve the confidential nature of all material confidential information (including any trade secrets and other proprietary information) with respect to the Business.

Section 5.19 Accounts Receivable. Since the Balance Sheet Date, the Target Group has not adversely modified payment terms for Accounts Receivable in such a manner as would reasonably be expected to result in an Accounts Receivable portfolio that, in amount or character, is materially and adversely different than that maintained by the Target Group in the ordinary course of business.

Section 5.20 No Other Representations. Except as and to the extent set forth in this Agreement, Sellers do not make any representation or warranty whatsoever to Buyer, and Sellers hereby disclaim all liability and responsibility for any representation, warranty, statement or information not included in this Agreement that was made, communicated or furnished (orally or in writing) to Buyer or any of its Affiliates or representatives.

ARTICLE VI REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Sellers that:

Section 6.1 Corporate Existence and Qualification. Buyer is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated or formed and has the requisite corporate, limited liability or other applicable power and authority to carry on its business as now being conducted. Buyer is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary, except where the failure to be so qualified would not reasonably be expected to prevent, hinder or impair the ability of Buyer to perform its obligations under this Agreement or the other Transaction Agreements to which Buyer is or will be a party.

Section 6.2 Authority; Noncontravention.

(a) (i) Buyer has the requisite corporate, limited liability or other applicable power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is or will be a party, and to consummate the transactions contemplated hereby and thereby and (ii) the execution and delivery of this Agreement by Buyer and the other Transaction Documents to which Buyer is or will be a party, and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer and, assuming this Agreement constitutes a valid and binding agreement of Sellers and subject to entry of the Sale

Order, constitutes a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to (x) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally and (y) general principles of equity, regardless of whether enforcement is sought in a proceeding at law or in equity.

(b) The execution and delivery by Buyer of this Agreement and each Transaction Document to which Buyer is or will be a party does not, and the consummation by Buyer of the transactions contemplated by this Agreement or any other Transaction Documents to which Buyer is or will be a party, and compliance by Buyer with the provisions of this Agreement or any other Transaction Document to which Buyer is or will be a party, does not, conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation, modification or acceleration of any obligation or to a loss of a benefit under, or result in the creation of any Lien upon any of the properties or assets of Buyer under (i) the Fundamental Documents of Buyer or (ii) any judgment, order, decree, statute, Law, ordinance, rule or regulation applicable to Buyer or its properties or assets other than any such conflicts, violations, defaults, rights, losses or Liens that would not reasonably be expected to prevent, hinder or impair the ability of Buyer to perform its obligations under this Agreement or the other Transaction Agreements to which Buyer is or will be a party.

(c) Assuming the accuracy of the representations and warranties in Article V with respect to the Target Companies and the Business, no Consent of any Governmental Authority, or any third party, is required by or with respect to Buyer in connection with the execution and delivery of this Agreement by Buyer and each Transaction Document to which Buyer is or will be a party, or the consummation by Buyer of the transactions contemplated hereby and thereby, except for (i) the Consents set forth in Section 5.2(c) of the Disclosure Schedules or Schedule 6.2(c), (ii) the entry of the Sale Order or the Approval Order by the Bankruptcy Court, (iii) compliance with any applicable requirements of the Exchange Act or Securities Act, (iv) any applicable requirements of any Antitrust Laws and (v) such other Consents as to which the failure to obtain or make would not reasonably be expected to prevent, hinder or impair the ability of Buyer to perform its obligations under this Agreement or the other Transaction Agreements to which Buyer is or will be a party.

Section 6.3 Financial Ability.

(a) Buyer has, and on the Closing Date will have, sufficient cash on hand to allow Buyer to perform all of its obligations under this Agreement, including payment of (i) Cure Costs and other Assumed Liabilities under this Agreement; and (ii) all fees and expenses to be paid by Buyer related to the transactions contemplated by this Agreement. Buyer is capable of satisfying the conditions contained in sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to adequate assurance of future performance under the Assigned Contracts.

(b) Buyer was formed by the Agent for the benefit and at the direction of the Pre-Petition Secured Lenders for the purpose of assisting with the Credit Bid, and Buyer has the legal right to direct the Agent and has directed (or caused to be directed) the Agent, on behalf of the Pre-Petition Secured Lenders, to make a credit bid pursuant to section 363 of the Bankruptcy

Code in order to pay the Credit Bid portion of the Purchase Price, pursuant to the Bid Direction Letters.

Section 6.4 Credit Bid. The Bid Direction Letters have been duly authorized and executed and delivered by the Agent and the lenders under the Pre-Petition Credit Facility and the DIP Facility, as holders of outstanding indebtedness thereunder, and fully authorizes Buyer to, among other things, enter into and perform and comply with this Agreement and consummate the Closing, including the credit bid contemplated in Section 3.2.

Section 6.5 No Brokers. No Person has acted, directly or indirectly, as a broker or financial advisor for Buyer in connection with the transactions contemplated by this Agreement and no Person is entitled to any fee or commission or like payment in respect thereof.

Section 6.6 Investigation by Buyer. Buyer has conducted its own independent review and analysis of the Acquired Assets and the Assumed Liabilities and the Business and acknowledges that Seller has provided Buyer and its Affiliates and representatives with access to the personnel, properties, premises and records of the Business for this purpose. In entering into this Agreement, Buyer has relied solely upon its own investigation and analysis, and Buyer (i) acknowledges that neither Sellers nor any Affiliates of Sellers or any of their respective Responsible Officers or any of the Seller Representatives or other Person on behalf of Sellers or any Affiliates of Sellers makes or has made any representation or warranty, either express or implied, as to the accuracy or completeness of any of the information provided or made available to Buyer or its Affiliates or Responsible Officers, except for the representations and warranties contained in Article V hereof (which are subject to the limitations and restrictions contained in this Agreement, and as modified by the Disclosure Schedules); and (ii) agrees, to the fullest extent permitted by Law, that none of Sellers, Sellers' Affiliates or any of their respective Responsible Officers or any of the Seller Representatives or other Person on behalf of Sellers or any Affiliates of Sellers shall have any liability or responsibility whatsoever to Buyer or its Affiliates or Responsible Officers on any basis (including in contract or tort, under federal or state securities Laws or otherwise) based upon any information provided or made available, or statements made, to Buyer or its Affiliates or Responsible Officers (or any omissions therefrom).

Section 6.7 Warranties Exclusive. Buyer acknowledges that the representations and warranties contained in Article V are the only representations or warranties given by Sellers and that all other express or implied representations and warranties are disclaimed. Without limiting the foregoing, Buyer acknowledges that neither Sellers nor their Affiliates or Responsible Officers nor any of the Seller Representatives or other Person on behalf of Sellers or any Affiliates of Sellers have made any representation or warranty concerning (i) any use to which the Acquired Assets may be put, or (ii) any future revenues, costs, expenditures, cash flow, results of operations, collectability of accounts receivable, financial condition or prospects that may result from the ownership, use or sale of the Acquired Assets or the assumption of the Assumed Liabilities. Nothing in this Section 6.7 shall limit Buyer's or its Affiliates' rights in the case of fraud with respect to determining whether the closing condition set forth in Section 9.2(e) has been satisfied.

ARTICLE VII COVENANTS

Section 7.1 Conduct of Business Pending Closing.

(a) Except (i) as otherwise expressly contemplated by this Agreement or the other Transaction Documents, including Section 7.2, (ii) as required to comply with any applicable Laws (including by Order or directive of the Bankruptcy Court), or (iii) with the prior written consent of Buyer, during the period from and after the date hereof until the earlier of the valid termination of this Agreement pursuant to Article X or the Closing Date, Sellers shall (A) use commercially reasonable efforts to conduct the Business in all material respects in the ordinary course of business, including meeting all post-Petition Date obligations relating to the Business as they become due, (B) use commercially reasonable efforts to preserve and maintain their relationships with their customers, suppliers, unions, partners in the lessors, licensors, licensees, contractors, distributors, agents, directors, officers, and employees and other Persons with which they have significant business relationships material to the Business except in relation to the Contracts of the Business that are determined not to become Assigned Contracts in accordance with this Agreement; provided, however, that nothing herein shall prevent Sellers from commencing or defending any Action against or by any such Person in connection with the claims of such Person in the Bankruptcy Cases; (C) use commercially reasonable efforts to preserve and maintain the Acquired Assets; (D) use commercially reasonable efforts to preserve the ongoing operations of the Business; (E) maintain the Books and Records in all material respects in the ordinary course of business; (F) comply in all material respects with all applicable Laws; (G) not enter into any business, arrangement or otherwise take any action that would reasonably be expected to have a material adverse impact on the ability of Sellers or Buyer to obtain any approvals of any Governmental Authority for this Agreement and the transactions contemplated hereby; and (H) use their commercially reasonable efforts to keep available the services of Sellers' current officers and directors and not modify or terminate the duties and responsibilities of any such officers or directors without the prior written consent of Buyer; provided, however, that no action by a Seller or another Group Company with respect to matters specifically addressed by any provision of Section 7.1(b) shall be deemed a breach of this Section 7.1(a) unless such action constitutes a breach of a provision of Section 7.1(b).

(b) Without limiting the generality of the foregoing, except as otherwise expressly contemplated by this Agreement, the other Transaction Documents, or with the prior written consent of Buyer or approval of the Bankruptcy Court, during the period from and after the date hereof until the earlier of the valid termination of this Agreement pursuant to Article X or the Closing Date, each Group Company shall not do any of the following:

- (i) with respect to the Equity Securities of Holdings and its direct and indirect Subsidiaries, declare, set aside or pay any dividends (payable in cash, stock, property or otherwise) on, or make any other distributions in respect of its capital stock;
- (ii) issue, deliver, sell, pledge or otherwise encumber or subject to any Lien the Equity Securities of Holdings and its direct and indirect Subsidiaries;
- (iii) amend their Fundamental Documents;

(iv) acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial equity interest in or a substantial portion of the assets of, or by any other manner, any business of another Person;

(v) other than with respect to Permitted Liens, sell, assign, license, transfer, convey, lease or otherwise dispose of any Acquired Assets, other than sales of inventory, products or services in the ordinary course of business;

(vi) other than with respect to the DIP Facility, incur any Indebtedness for borrowed money;

(vii) pay, loan or advance any amount to, or sell, transfer or lease any properties or assets (real, personal or mixed, tangible or intangible) to, or purchase any properties or assets from, or enter into any Material Contract with, any of Sellers' executive officers or directors (or immediate family members thereof), other than payment of compensation and benefits in the ordinary course of business, including reimbursement of otherwise reimbursable legal fees and expenses of Sellers' directors;

(viii) other than in accordance with Section 2.5, without Buyer's consent, assume or reject or amend, restate, supplement, modify, waive or terminate any Material Contract, material Permit or unexpired Lease or enter into any settlement of any claim that (A) is outside the ordinary course of business, (B) delays the Closing, (C) relates to a Material Contract or (D) subjects any Seller to any material non-compete or other similar material restriction on the conduct of its Business that would be binding following the Closing;

(ix) adopt or change any method of accounting (except as required by changes in GAAP), make, change or revoke any Tax election, change any annual Tax accounting period, file any amended Tax Return, enter into any closing agreement, settle any Tax claim or assessment, surrender any right to claim a Tax refund, consent to the extension or waiver of the limitations period applicable to any Tax claim or assessment, or take or omit to take any other action if such action or omission would have a material effect on any Seller or in Sellers' reasonable belief, except as required by Law or as expressly contemplated by this Agreement;

(x) with respect to Transferred Employees, except as may be required by applicable Laws or any Contract or Benefit Plan, (A) grant any material increase or acceleration in compensation or benefits, except in the ordinary course of business; (B) grant any material increase in severance or termination pay (including the acceleration in the exercisability of any options or in the vesting of shares of common stock (or other property)); (C) enter into any material employment, deferred compensation, severance or termination agreement with or for the benefit of any such Transferred Employee; (D) pay or provide to any Transferred Employee any benefit not provided for under a Benefit Plan as in effect on the date hereof to which such Transferred Employee is a beneficiary of as of the date hereof, other than the payment of base compensation, pay in lieu of notice or severance (but only to the extent that such severance is (x) paid after reasonable notice to Buyer and (y) not otherwise prohibited by this Agreement) in each case, in the ordinary

course of business; (E) establish, adopt, enter into, terminate or amend any Collective Bargaining Agreement or other labor union contract (except as required by Law or except as may be expressly required or allowed by the terms of this Agreement); or (F) take any action to accelerate or dilute any material rights or benefits, including vesting and payment, under any Collective Bargaining Agreement;

(xi) form a new Subsidiary unless (A) all Equity Securities of such entity are owned by one or more Loan Parties (as defined in the DIP Facility credit agreement) that are US-domiciled Persons in accordance with applicable Laws and (B) any such Equity Securities are pledged to the Agent for the benefit of the DIP Lenders in accordance with the DIP Facility;

(xii) take any action that would reasonably be expected to cause the failure of any condition set forth in Section 9.1 or Section 9.2; or

(xiii) agree to take any of the foregoing actions.

Section 7.2 Covenants Related to Mexican Entities. Notwithstanding anything to the contrary in this Agreement, during the period from and after the date hereof until the earlier of the valid termination of this Agreement pursuant to Article X or the Closing Date:

(a) Sellers shall, and shall cause their Subsidiaries (including the Mexican Entities), to assist Buyer (and any of its Affiliates including, for the avoidance of doubt, any Buyer Designee), as reasonably requested by Buyer, with the establishment of a new Mexican entity to be formed by Buyer (the “**BT Mexican Subsidiary**”), including, but not limited to, assisting Buyer and the BT Mexican Subsidiary with setting up local bank accounts for the BT Mexican Subsidiary, obtaining all licenses, permits and approvals required for such entity’s operations in Mexico.

(b) Sellers shall cause the Mexican Entities to deliver to Buyer on the Thursday of the second full week following the Petition Date, and every second Thursday thereafter, a report in form and substance reasonably satisfactory to Buyer that will include, among other information reasonably requested by Buyer from time to time, (i) a status update on each active project serviced by the Mexican Entities under any Mexican Contract, including the expected date of completion for each such project and expected termination or expiration date for each Mexican Contract, (ii) the identity of employees servicing active projects under any Mexican Contract, and (iii) the identity of employees who are no longer servicing active projects under any Mexican Contract (the “**Inactive Employees**”). Sellers shall cause the Mexican Entities to deliver the final report to Buyer no later than the date that is five (5) Business Days before the Closing Date. Sellers shall not prohibit Buyer or the BT Mexican Subsidiary from making offers of employment to those employees set forth on Schedule 7.2 (which shall be mutually agreed upon by Sellers and Buyer prior to the Closing Date) or any such employees that have been identified as Inactive Employees prior to the Closing Date, at Buyer’s and the BT Mexican Subsidiary’s own and absolute discretion. Sellers shall not cause any of the Mexican Entities to (1) terminate the employment of any Employee, (2) transfer any Employee to another Group Company or any other Person, or (3) hire any Employee, in each case without the prior written consent of Buyer; provided, however, notwithstanding the foregoing clauses (1) and (2), the Mexican Entities may terminate and transfer

Inactive Employees to AgileThought, LLC, AgileThought, S.A.P.I. de C.V., Cuarto Origen, S. de R.L. de C.V. and AgileThought Mexico, S.A. de C.V. following the date of this Agreement.

(c) With respect to any contracts, statements of work, projects, service agreements and any other similar arrangements, whether oral or written, with customers to which any of the Mexican Entities is a party as of the date of this Agreement (the “**Mexican Contracts**”), Sellers shall (i) cause the Mexican Entities to perform their obligations in the ordinary course of business, and (ii) use commercially reasonable efforts to procure the applicable counterparty’s consent to assign any such Mexican Contract to AgileThought, LLC or, if such counterparty prefers, any of AgileThought, S.A.P.I. de C.V., AgileThought Cuarto Origen, S. de R.L. de C.V. and AgileThought Mexico, S.A. de C.V.; provided, however, that no active statement of work or other project under a Mexican Contract that has already been commenced by a Mexican Entity shall be transferred and such statement of work or project shall be completed by the applicable Mexican Entity.

(d) Sellers shall cause the Mexican Entities to not enter into any new Contracts with customers other than statements of work under Mexican Contracts or renewals or extensions of, or amendments to, Mexican Contracts, without Buyer’s prior written consent (not to be unreasonably withheld, conditioned or delayed).

(e) Following the date of this Agreement, AgileThought, LLC, AgileThought, S.A.P.I. de C.V., Cuarto Origen, S. de R.L. de C.V. and AgileThought Mexico, S.A. de C.V. shall not be permitted to hire any Employees of the Mexican Entities other than the Inactive Employees.

Section 7.3 Covenants of the CEO. Until the earlier of the valid termination of this Agreement pursuant to Article X or the Closing Date, the Company Group shall cause the Chief Executive Officer of Holdings (the “**CEO**”) to: (a) support, and not oppose in any material respect, the Sale, including (if a vote is required) voting in favor of the Sale in the CEO’s capacity as an officer, director or shareholder of any of the Group Companies; (b) not support any transaction, other than the Sale, or interfere with the Sale, unless otherwise consented to by Buyer (which consent will be deemed given by Buyer if such other transaction would result in cash proceeds therefrom to pay in full all obligations owed under the Pre-Petition Credit Facility and the DIP Facility); (c) use best efforts to cause Sellers, their Subsidiaries, and employees of Sellers and their Subsidiaries to operate in the ordinary course of business, except as otherwise required by this Agreement, the other Transaction Documents, or with the prior written consent of Buyer or approval of the Bankruptcy Court, the DIP Facility, or the Bidding Procedures; and (d) not disparage Buyer or any of its Affiliates; provided, however, that, in the case of clauses (a), (b) or (c), the CEO will be permitted to take any action contrary to such clause if (x) the CEO determines in good faith, upon written advice of counsel, that his fiduciary duties require the CEO to act in such manner or (y) such action is necessary to support the highest or best Qualified Bid (as defined in the Bidding Procedures) at the Auction (if any) or any other plan of reorganization or sale of the Company Group that is reasonably expected to pay in-full in-cash all outstanding obligations under the DIP Facility and Pre-Petition Credit Facility.

Section 7.4 Access to Information. Until the earlier of the valid termination of this Agreement pursuant to Article X or the Closing Date, Sellers shall (a) afford to the officers, employees, attorneys, financial advisors, financing sources, Affiliates and other representatives of

Buyer (collectively, the “**Buyer Advisors**”), reasonable access during normal business hours and upon reasonable advance notice to the Acquired Assets and Sellers’ properties, respectively, (including access to existing environmental reports), Books and Records and Contracts; (b) make available to Buyer Advisors copies of all such Contracts, Books and Records and other existing documents and data as Buyer Advisors may reasonably request, including any financial data filed with the Bankruptcy Court or otherwise provided to any lender under any Indebtedness of Sellers; and (c) make available to Buyer Advisors during normal business hours and upon reasonable advance notice the appropriate management personnel of Sellers (and shall, where appropriate, use commercially reasonable efforts to cause their relevant attorneys, accountants and other professionals to be made available) for discussion of the Business, the Acquired Assets, the Assumed Liabilities and personnel as Buyer may reasonably request, in each case so long as such access does not unreasonably interfere with the operations of Sellers; provided, however, that nothing in this Section 7.4 or otherwise (i) shall require Sellers or their advisors to furnish to Buyer Advisors any confidential materials prepared by Sellers’ financial advisors or legal advisors or any other materials subject to any attorney-client or other privilege or confidentiality obligations to the extent disclosure thereof would result in a violation of Law or breach of an agreement or other obligation, or (ii) shall be construed to create any obligation on any of the aforementioned Seller Representatives to take or refrain from taking any action, absent an express contractual requirement to do so.

Section 7.5 Consents. Sellers shall use commercially reasonable efforts to cooperate with Buyer’s efforts to solicit and obtain all Consents (including any consent required under the HSR Act, LFCE or Antitrust Laws), waivers, approvals, authorizations or orders required for the consummation of transactions contemplated by this Agreement and the other Transaction Documents, including with respect to any Contracts designated to be Assigned Contracts in accordance with Section 2.5.

Section 7.6 Further Assurances.

(a) At any time and from time to time after the date hereof, Sellers and Buyer agree to use their respective reasonable efforts to cooperate with each other and (a) at the reasonable request of the other party, execute and deliver any instruments or documents and (b) take, or cause to be taken, all such further action as the other party may reasonably request in order to evidence or effectuate the consummation of the transactions contemplated hereby and to otherwise carry out the intent of the parties hereunder as promptly as practicable, including in order for Sellers to deliver and assign to Buyer (or Buyer Designee) any assets of Sellers that should have been an Acquired Asset, but were not so delivered and assigned on the Closing Date.

(b) Following the Closing, for the purposes of Sellers (i) preparing or reviewing Tax Returns or participating in any Tax Proceeding, (ii) monitoring or enforcing rights or obligations under this Agreement, (iii) defending third-party lawsuits or complying with the requirements of any Governmental Authority, or (iv) any other reasonable business purpose, including assistance with the wind-down and closing of the Bankruptcy Cases, the dissolution of Sellers, and related tax and other administrative matters, (x) upon reasonable notice, Buyer shall permit Sellers, their counsel, and other professionals reasonable access to all premises, information, properties, personnel, Books and Records, and Contracts or Leases, which access shall include (1) the right to copy such documents and records as they may request, and (2) Buyer’s

copying and delivering such documents or records as requested, (y) Buyer shall provide reasonable access to Buyer's personnel during regular business hours to assist Sellers' in their post-Closing activities (including preparation of Tax Returns and requirements in the Bankruptcy Cases), provided that such access does not unreasonably interfere with Buyer's operations and (z) Buyer shall provide reasonable access to Buyer's employees and systems during regular business hours, at no expense to Sellers, to assist Sellers in managing payments and benefits to non-Transferred Employees.

Section 7.7 Bankruptcy Covenants.

(a) Approval of the Expense Reimbursement. Sellers acknowledge and agree that Buyer has expended considerable time and expense in connection with this Agreement and the negotiation thereof and the identification and quantification of assets of Sellers. In consideration therefor, Sellers shall file with and seek the approval of the Bankruptcy Court of the Approval Motion, including the Expense Reimbursement, and the entry by the Bankruptcy Court of the Approval Order approving the payment of the Expense Reimbursement on the earlier of (x) twenty (20) days after the entry of a Bankruptcy Court Order approving the Alternative Transaction and (y) upon the consummation of any such Alternative Transaction, in accordance with Section 10.2 and deeming any permitted claims for the Expense Reimbursement as administrative priority expenses under sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code. Notwithstanding anything to the contrary herein, the Expense Reimbursement shall be immediately due and payable to Buyer if Buyer terminates this Agreement pursuant to Section 10.1(e).

(b) Bidding Procedures. Not later than September 1, 2023, Sellers shall file a motion seeking entry of the Approval Order with the Bankruptcy Court (the "**Approval Motion**"). Sellers shall use commercially reasonable efforts to obtain entry by the Bankruptcy Court of the Approval Order (with such changes thereto as Buyer shall approve or request in its reasonable discretion) within twenty-six (26) days after the Petition Date. Sellers shall comply with all of the terms and conditions contained in the Bidding Procedures, including the occurrence of the events by the dates and times listed therein which are expressly incorporated by reference herein as if set forth at length. From the time of execution and delivery by each Seller and Buyer of this Agreement until its termination, Sellers and Seller Representatives shall not be subject to any restrictions with respect to the solicitation or encouragement of any entity concerning an Alternative Transaction in accordance with the Bidding Procedures.

(c) Bid Deadline. The Bid Deadline (as defined in the Approval Order) shall take place no later than the date set forth in the Approval Order.

(d) Auction. The Auction (as defined in the Approval Order), if necessary, shall have been held pursuant to the Approval Order and in accordance with the timing set forth therein.

(e) Sale Order. Sellers shall use commercially reasonable efforts to obtain entry by the Bankruptcy Court of the Sale Order no later than the date set forth in the Approval Order.

(f) Other Bankruptcy Covenants.

(i) If the Approval Order or Sale Order or any other orders of the Bankruptcy Court relating to this Agreement shall be appealed by any party (or a petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to any such order), Sellers shall diligently defend against such appeal, petition or motion and shall use their commercially reasonable efforts to obtain an expedited resolution of any such appeal, petition or motion; provided, however, that Sellers consult with Buyer at Buyer's reasonable request regarding the status of any such proceedings or Actions.

(ii) Sellers shall use commercially reasonable efforts to consult with Buyer and its representatives upon Buyer's reasonable request concerning the Approval Order and the Sale Order, any other orders of the Bankruptcy Court, and the Bankruptcy Cases in connection therewith and provide Buyer with copies of requested applications, pleadings, notices, proposed orders and other documents relating to such proceedings as soon as reasonably practicable prior to any submission thereof to the Bankruptcy Court. Sellers further covenant and agree that, after the Closing, the terms of any reorganization plan it submits to the Bankruptcy Court for confirmation or sanction shall not conflict with, supersede, abrogate, nullify or restrict the terms of this Agreement, or in any way prevent or interfere with the consummation or performance of the transactions contemplated by this Agreement, including any transaction contemplated by or approved pursuant to the Approval Order or the Sale Order.

(iii) Each of Sellers and Buyer, as applicable, shall use commercially reasonable efforts to assign, or cause to be assigned, the Assigned Contracts to Buyer, including taking all actions required by the Bankruptcy Court to obtain an Order containing a finding that the proposed assumption and assignment of the Assigned Contracts to Buyer satisfies all applicable requirements of Section 365 of the Bankruptcy Code.

(iv) Any motions filed by Sellers with, and any proposed orders submitted by Sellers to, the Bankruptcy Court seeking authorization after the date hereof to assume or reject any Executory Contracts shall be satisfactory in form and substance to Buyer in its reasonable discretion. Sellers shall consult with, and give due consideration to the views and concerns of, Buyer prior to compromising or commencing any Action with respect to any material payment required to be made under the Bankruptcy Code to effectuate the assumption of any such Executory Contract, including using commercially reasonable efforts to provide five (5) days' notice of any such compromise or Action to Buyer.

Section 7.8 Employee Matters.

(a) By no later than the Closing Date, Buyer shall offer employment to substantially all of Sellers' employees as of the Closing Date. Buyer shall have no Liability for any pay, benefits, or similar claims of any Transferred Employees earned or accrued prior to the Closing Date. Each employee of Sellers or the Mexican Entities who is not a Transferred Employee, including those who are not active employees as of the Closing Date, shall remain the sole responsibility of Sellers and the Mexican Entities, as applicable. Buyer shall have no obligation to provide any severance, payments, or benefits to any employees of Sellers or the

Mexican Entities, other than the Transferred Employees. Sellers acknowledge that Sellers are alone responsible for (i) issuing, serving, and delivering all orders and notices required, if any, pursuant to applicable Laws, in connection with the termination of employees or contractors, and (ii) any financial obligations and Liabilities in connection therewith or otherwise required in connection with the termination of such employees or contractors. From and after the Closing Date, Sellers and their Subsidiaries shall, except to the extent otherwise expressly provided in this Agreement or the Operating Agreement, retain and be solely responsible for all obligations and liabilities with respect to the employment of all employees of Sellers and their Subsidiaries prior to the Closing Date. Sellers and their Subsidiaries shall be responsible for providing any notice required pursuant to the WARN Act or the Mexican Federal Labor Law (*Ley Federal de Trabajo*), as applicable, with respect to a layoff or “plant closing” (*i.e.*, a closing of Sellers’ facilities to the extent deemed to have occurred by the WARN Act) relating to the Business that occurs prior to or on the Closing Date, and Buyer shall be responsible for providing any notice required pursuant to the WARN Act, or the Mexican Federal Labor Law (*Ley Federal de Trabajo*), as applicable, with respect to a layoff or “plant closing” effectuated by Buyer relating to the Business that occurs after the Closing Date.

(b) Buyer shall cooperate in good faith with any members of management of Sellers who are to become Transferred Employees to establish a new management incentive plan for the benefit of the employees of Buyer and its Subsidiaries, in form and substance acceptable to Buyer in its sole discretion.

(c) From the Closing Date to at least December 31, 2023, Buyer shall provide each Transferred Employee with base wages, annual base salary, target annual cash bonus potential, and employee benefits that are substantially similar in the aggregate to such compensation and benefits provided to the Transferred Employee immediately prior to the Closing Date.

Section 7.9 Certain Schedules. The Parties acknowledge that (a) Schedules A (Additional Sellers), 2.1(a) (Acquired Equity Interests), 2.1(c) (Assigned Contracts), and 7.2 (Mexican Entity Employees) may be completed and/or updated after the date hereof but no later than the applicable dates set forth herein, in each case subject to the express terms of this Agreement, (b) Schedules 6.2(c) (Consents and Approvals) and 9.2(i) (Consents) shall be delivered by Buyer to Sellers no later than three (3) days prior to the Auction and, in case of Schedule 9.2(i) (Consents), shall not contain any Consents not listed in Section 5.2(c) of the Disclosure Schedules, and (c) the Disclosure Schedules shall be delivered by Sellers to Buyer no later than (3) days prior to the hearing on the Approval Order; provided, however, that to the extent a disclosure relating to qualification of a representation, warranty or covenant (as opposed to listing items required by a representation, warranty or covenant) included therein would cause the conditions set forth in Sections 9.2(e), (f) or (g) to be unsatisfied had such disclosures not been made, the Buyer shall have the option to terminate this Agreement pursuant to Section 10.1(e)(i). Notwithstanding the foregoing, the disclosure of the Mexican Tax Assessment shall not cause Sections 9.2(e), (f) or (g) to be unsatisfied.

Section 7.10 Non-Compete. Following Closing, each Seller (including their respective Subsidiaries and Affiliates) that is not an Acquired Entity will be prohibited from directly or indirectly competing with Buyer (or any affiliate of Buyer) with respect to the products and

services set forth on Section 7.10 of the Disclosure Schedules in any country where such Seller (or its Subsidiaries and Affiliates) maintains commercial operations until the earlier of (a) the date the entity is dissolved or (b) a period of two (2) years after the Closing Date; provided, however, that the Mexican Entities will perform all of their obligations under Mexican Contracts pursuant to the Operating Agreement.

Section 7.11 Use of Name. Each Seller agrees, and agrees to cause each of its Affiliates, as of, and after, the Closing, to (a) amend their respective certificates of incorporation or other appropriate documents (including in connection with the Bankruptcy Cases or in any other legal case or proceeding in which any Seller is a party and for the purpose of winding up Sellers and their estates) which are required to change their respective corporate name to a new name that is, in Buyer's reasonable judgment, sufficiently dissimilar to their respective present name so as to avoid confusion and make their respect present name available to Buyer and (b) not use the name "AgileThought" or any name confusingly similar thereto for any purpose.

Section 7.12 Wind-Down. Following the date of this Agreement but no later than three (3) days before the Auction, Sellers shall provide the DIP Lenders with a reasonably detailed budget for the Wind-Down Funds setting forth the expenses projected to be incurred by Sellers to effectuate a winding down of their estates, such budget to be negotiated in good faith by the Parties, but shall in any case not exceed (x) \$500,000 or (y) such greater amount as agreed by Buyer, in its sole discretion, following review of a budget prepared by Sellers to fund the wind down and dissolution of Sellers' estates (including, for the avoidance of doubt, the necessary professional fees) following the Closing Date, which shall be funded into the Wind-Down Escrow Account on the Closing Date.

ARTICLE VIII TAX MATTERS

Section 8.1 Transaction Taxes. Any sales, use, value added, goods and services, gross receipts, stamp, duty, stamp duty, transfer, documentary, registration, business and occupation and other similar Taxes imposed by any Governmental Authority with respect to the transactions contemplated by this Agreement ("**Transaction Taxes**") that are not eliminated through the application of section 1146(a) of the Bankruptcy Code shall be paid by Buyer and Buyer shall file any Tax Return that must be filed in connection with any Transaction Taxes, where applicable. Buyer shall be responsible for (i) administering the payment of such Transaction Taxes; and (ii) defending or pursuing any proceedings related thereto.

Section 8.2 Cooperation on Tax Returns and Tax Proceedings. Buyer and Sellers shall cooperate fully as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns and any audit, litigation or other proceeding with respect to Taxes (each a "**Tax Proceeding**") imposed on or with respect to the Acquired Assets. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such Tax Return or Tax Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Sellers' obligations under this Section 8.2 shall terminate on the date that is the earlier of (a) ninety (90) days after the Closing Date and (b) dissolution of Sellers. If Holdings so requests, Buyer will reasonably cooperate and cause its

Affiliates to reasonably cooperate in making any election under Section 1.245A-5(e)(3)(i) of the Treasury Regulations with respect to the acquisition of an Acquired Entity hereunder.

ARTICLE IX CONDITIONS

Section 9.1 Conditions to Each Party's Obligations. The respective obligations of Buyer and Sellers to consummate the Sale shall be subject to the satisfaction at or prior to the Closing of each of the following conditions unless waived, to the extent permitted by applicable Law, by both Sellers and Buyer in writing:

(a) Approvals. Any waiting period (and extensions thereof) applicable to the Sale under the HSR Act and LFCE shall have expired or been terminated and any other required approvals, consents or clearances under any Antitrust Laws shall have been obtained without the imposition of any conditions.

(b) No Injunctions or Restraints. No temporary restraining order, preliminary or permanent injunction or other order issued by any Governmental Authority preventing consummation of the Sale shall be in effect. No Law shall be in effect which prohibits the transactions contemplated by the Sale.

(c) Continuing Effectiveness. This Agreement shall continue to remain in full force and effect.

Section 9.2 Conditions to the Obligations of Buyer. The obligation of Buyer to consummate the Sale shall be subject to the satisfaction, at or prior to the Closing, of each of the following conditions unless waived in writing, in whole or in part, by Buyer:

(a) Formation of BT Mexican Subsidiary. Buyer shall have formed the BT Mexican Subsidiary.

(b) Operating Agreement. Buyer and Sellers shall have entered into a reverse transition services agreement substantially on the terms set forth on Exhibit F (the "**Operating Agreement**"), in form and substance satisfactory to Buyer and Sellers, pursuant to which Buyer or its Affiliates will provide certain transitional services to the Mexican Entities.

(c) Entry of Orders. The Bankruptcy Court shall have entered the Approval Order and the Sale Order, and each shall be a Final Order and reasonably acceptable to Buyer.

(d) Governmental Proceedings. There shall be no proceeding before any Governmental Authority pending or threatened in any jurisdiction wherein an unfavorable order could prevent or adversely affect the consummation of the Closing or the operation of the Business and ownership of the Acquired Assets thereafter, including the assertion by any Governmental Authority that Buyer or any of its Affiliates have any tax liability relating to the Mexican Entities or their operations for any taxable period ending on or prior to the Closing Date, result in any of the transactions related to the Sale being declared unlawful or rescinded, require Buyer or any

affiliate thereof to pay any damages or penalty as a result thereof or have any obligation or liability in connection therewith, or have a Material Adverse Effect, and no such order shall be in effect.

(e) Representations and Warranties of Sellers. The representations and warranties of Sellers set forth in this Agreement qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, as of the date of this Agreement and as of the Closing as though made at and as of the Closing, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, on and as of such earlier date).

(f) No Material Adverse Effect. Since the date of this Agreement, there shall not have occurred any Material Adverse Effect.

(g) Performance of Obligations. Each of Sellers shall have performed in all material respects all material obligations required to be performed by it under this Agreement at or prior to the Closing.

(h) Deliverables. Buyer shall have been furnished with the documents set forth in Section 4.2(a).

(i) Consents. Buyer shall have received all Consents set forth in Schedule 9.2(i), which Schedule shall have been delivered by Buyer to Sellers in accordance with Section 7.9.

Section 9.3 Conditions to the Obligations of Sellers. The obligation of Sellers to consummate the Sale shall be subject to the satisfaction at or prior to the Closing of each of the following conditions unless waived in writing, in whole or in part, by Sellers:

(a) Representations and Warranties of Buyer. The representations and warranties of Buyer set forth in this Agreement qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, as of the date of this Agreement and as of the Closing as though made at and as of the Closing, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, on and as of such earlier date).

(b) Performance of Obligations. Buyer shall have performed in all material respects all material obligations required to be performed by it under this Agreement at or prior to the Closing.

(c) Excluded Cash. Sellers shall have received the Excluded Cash, free and clear of all Liens and claims, including the Liens and claims of Buyer, DIP Lenders, and Pre-Petition Secured Lenders, other than the DIP Reversionary Interest.

(d) Deliverables. Sellers shall have been furnished with the documents set forth in Section 4.2(b).

ARTICLE X TERMINATION PROCEDURES

Section 10.1 Termination. This Agreement may be terminated and the Sale contemplated in this Agreement may be abandoned at any time prior to the Closing Date, notwithstanding the fact that any requisite authorization and approval of the Sale shall have been received, as follows:

- (a) by the mutual written consent of Buyer and Sellers;
- (b) by Buyer or Sellers, if the Closing has not occurred by the date that is 90 days after the Petition Date; provided, however, that the right to terminate this Agreement under this Section 10.1(b) shall not be available to any party whose breach of this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur by such date;
- (c) by Buyer or Sellers, if there shall be any applicable Law that makes consummation of the Sale illegal or otherwise prohibited or if any Governmental Authority with competent jurisdiction shall have issued an order, decree, ruling or taken any other action restraining, enjoining or otherwise prohibiting the consummation of the Sale and such order, decree, ruling or other action shall have become final and non-appealable; provided, however, that the right to terminate this Agreement under this Section 10.1(c) shall not be available to any party whose breach of this Agreement shall have been the cause of, or shall have resulted in the Law, order, decree, ruling or other action that restrains, enjoins or prohibits the consummation of the Sale;
- (d) by Buyer or Sellers upon the Bankruptcy Court's approval of Sellers' entry into or pursuit of an Alternative Transaction; provided, however, that Sellers shall have the right to terminate this Agreement pursuant to this Section 10.1(d) only if they have complied in all material respects with the requirements of Section 7.7(b); provided further, however, that notwithstanding anything to the contrary set forth in this Agreement, including Section 10.1(b), if Buyer has consented to be the Back-Up Bidder (as defined in the Bidding Procedures), Buyer cannot terminate this Agreement, pursuant to this Section 10.1(d) or Section 10.1(b) or otherwise, until the later of (i) the closing of the transaction with the Successful Bidder (as defined in the Bidding Procedures) and (ii) November 27, 2023.
- (e) by (i) Buyer, if any Seller has materially breached any of its material obligations under this Agreement, and such breach cannot be or has not been cured within fifteen (15) Business Days after the giving of written notice thereof to Sellers; or (ii) Sellers, if Buyer has materially breached any of its material obligations under this Agreement, and such breach cannot be or has not been cured within fifteen (15) Business Days after the giving of written notice thereof to Buyer; provided, however, that the right to terminate this Agreement pursuant to this Section 10.1(e) shall not be available to any party who at such time is in material breach of any of its material obligations hereunder;
- (f) by Buyer if

(i) Buyer is not then in material breach of any provision of this Agreement that would give rise to the failure of a condition set forth in Section 9.1 or Section 9.2 and (x) there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Sellers pursuant to this Agreement that would, either individually or in the aggregate, if occurring or continuing on the Closing Date, give rise to the failure of any of the conditions specified in Section 9.1 or Section 9.2 and (y) such breach, inaccuracy or failure to perform is not curable or has not been cured within fifteen (15) Business Days' written notice thereof to Sellers;

(ii) the Bankruptcy Cases are converted to cases under chapter 7 of the Bankruptcy Code, a trustee or examiner with expanded powers is appointed pursuant to the Bankruptcy Code or the Bankruptcy Court enters an order pursuant to section 362 of the Bankruptcy Code lifting the automatic stay with respect to any material portion of the Acquired Assets;

(iii) an Event of Default (as defined under the DIP Facility) has occurred and is continuing and has not been cured in accordance with the DIP Facility;

(iv) the Approval Order has not been entered by the Bankruptcy Court no later than twenty-six (26) days after the Petition Date;

(v) the Sale Order has not been entered by the date set forth in the Approval Order;

(vi) for any reason Buyer is unable, pursuant to section 363(k) of the Bankruptcy Code, to Credit Bid in payment of all or any portion of the Credit Bid Amount; or

(vii) the Approval Order (including the Bidding Procedures and Expense Reimbursement) or the Sale Order is modified in any respect without the consent of Buyer.

In the event of termination of this Agreement as permitted by Section 10.1, this Agreement shall become void and of no further force and effect, except for the provisions of Section 3.1 (relating to the Deposit Amount), Section 10.2 (relating to fees and expenses) and Article XII, which shall remain in full force and effect, and nothing in this Agreement shall be deemed to release or relieve any party from any Liability for any fraud or willful breach by such party of the terms and provisions of this Agreement. Notwithstanding anything to the contrary set forth in this Agreement, except in the event of fraud or willful breach by Sellers, (i) Sellers' aggregate Liability for money damages in the event that the Closing has not occurred or does not occur for any reason whatsoever, without regard to whether Buyer elects to terminate this Agreement pursuant to this Section 10.1, shall be limited to the Expense Reimbursement if and to the extent payable in accordance with Section 10.2 and (ii) the Expense Reimbursement, if and to the extent payable in accordance with Section 10.2, shall be the sole and exclusive remedy of Buyer, whether at Law or in equity, in the event that Closing has not occurred or does not occur for any reason whatsoever, without regard to whether Buyer elects to terminate this Agreement pursuant to this Section 10.1.

Section 10.2 Expense Reimbursement and Deposit Amount.

(a) The documented out-of-pocket fees and expenses incurred by Buyer and its Affiliates prior to termination of this Agreement in connection with this Agreement, the other Transaction Documents, the Approval Order, the Sale Order, and the transactions contemplated hereby and thereby, including the fees and expenses of legal counsel, financial advisors, consultants and any other advisors that Buyer engages in its reasonable discretion shall be payable in cash pursuant to this Section 10.2 in an amount not to exceed an aggregate of \$2,500,000, to the extent applicable and subject to approval of the Bankruptcy Court (the “**Expense Reimbursement**”). The Expense Reimbursement shall be payable to Buyer if this Agreement is terminated for any reason; provided, however, that (1) at the time of any such termination, any Alternative Transaction, as applicable, has been proposed in writing or announced, (2) a binding agreement is entered into with respect to such Alternative Transaction on or prior to the date that is three (3) months following the date of termination of this Agreement, and (3) Buyer is not in material breach of any of its material obligations under this Agreement at the time of such termination. Notwithstanding anything to the contrary herein, the Expense Reimbursement shall be immediately due and payable to Buyer if Buyer terminates this Agreement pursuant to Section 10.1(e).

(b) Upon the occurrence of the events set forth in the foregoing, the Expense Reimbursement shall be payable to Buyer, provided that such Expense Reimbursement shall be paid to Buyer on the later of (x) three (3) Business Days from the date of the occurrence of the events set forth in the foregoing and (y) twenty (20) days after the entry of a Bankruptcy Court Order approving the Alternative Transaction.

(c) Any obligation to pay the Expense Reimbursement hereunder shall be absolute and unconditional; such payment shall constitute an allowed administrative expense claim against each of Sellers under sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code and shall be payable as specified herein, and not subject to any defense, claim, counterclaim, offset, recoupment, or reduction of any kind whatsoever. Sellers and Buyer agree that the Expense Reimbursement was a material inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby and shall be payable as specified herein and not subject to any defense, claim, counterclaim, offset, recoupment, or reduction of any kind whatsoever.

(d) In the event (i) Sellers terminate this Agreement pursuant to Section 10.1(e)(ii) or (ii) Buyer or Sellers terminate this Agreement pursuant to Section 10.1(b) and, as of the date of such termination pursuant to Section 10.1(b) all of the conditions set forth in Section 9.1 and Section 9.2 have been satisfied and continue to be satisfied (other than those conditions that by their nature are to be satisfied at the Closing), then the Deposit Amount shall be payable to Sellers. Sellers agree (i) that Buyer’s aggregate Liability for money damages in such circumstances shall be limited to the Deposit Amount and (ii) the Deposit Amount constitutes the sole and exclusive remedy of Sellers, whether at Law or in equity, in the event that this Agreement is terminated under such circumstances, except in the event of Buyer’s fraud or willful breach. Sellers and Buyer agree that the Deposit Amount was a material inducement to Sellers to enter into this Agreement and to consummate the transactions contemplated hereby and shall be payable as

specified herein and not subject to any defense, claim, counterclaim, offset, recoupment, or reduction of any kind whatsoever.

(e) Except as set forth above in this Section 10.2, all fees and expenses incurred in connection with this Agreement and the other Transaction Documents shall be paid by the party incurring such expenses, whether or not the Sale is consummated.

(f) This Section 10.2, and the rights and obligations created hereunder, shall survive termination of this Agreement.

ARTICLE XI NO SURVIVAL OF REPRESENTATIONS AND WARRANTIES AND CERTAIN COVENANTS

Section 11.1 No Survival of Representations and Warranties and Certain Covenants. None of the representations and warranties of Sellers or Buyer contained in Article V and Article VI, respectively, including the Disclosure Schedules or any certificate or instrument delivered in connection herewith at or prior to the Closing, and none of the covenants contained in Article VII to be performed on or prior to the Closing shall survive the Closing. The Parties' respective covenants and agreements set forth herein that by their specific terms contemplate performance after Closing shall survive until fully performed or until such covenant or agreement expires by its terms.

ARTICLE XII MISCELLANEOUS

Section 12.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Bankruptcy Code and, to the extent not inconsistent with the Bankruptcy Code, the laws of the State of New York without giving effect to conflicts of law principles thereof.

Section 12.2 Jurisdiction; Forum; Service of Process; Waiver of Jury. With respect to any Action arising out of or relating to this Agreement, each of Sellers and Buyer hereby irrevocably:

(a) consents to the exclusive jurisdiction of the Bankruptcy Court, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement. After Sellers are no longer subject to the jurisdiction of the Bankruptcy Court, each of Sellers and Buyer irrevocably submits to the exclusive jurisdiction of the courts of the State of New York and of the United States of America, in each case located in Manhattan, ("**Selected Courts**") for any Action arising out of or relating to this Agreement or the other Transaction Documents and the transactions contemplated hereby and thereby (and agrees not to commence any Action relating hereto or thereto except in such courts) and waives any objection to venue being laid in the Selected Courts whether based on the grounds of forum non conveniens or otherwise;

(b) consents to service of process in any Action by the mailing of copies thereof by registered or certified mail, postage prepaid, or by recognized international express carrier or

delivery service, to Sellers or Buyer at their respective addresses referred to in Section 12.6 hereof; provided, however, that nothing herein shall affect the right of any party hereto to serve process in any other manner permitted by law, and

(c) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS.

Section 12.3 Disclosure Schedules. The Disclosure Schedules shall be construed with, and as an integral part of, this Agreement to the same extent as if set forth verbatim herein. Any item disclosed on any particular Schedule or in any particular part or section of the Disclosure Schedules shall be deemed to be disclosed on all Schedules and in all parts or sections of the Disclosure Schedules if the relevance of such item to such other section of the Disclosure Schedules is reasonably apparent on its face, notwithstanding that such section does not state “except as set forth in Section ‘___’ of the Disclosure Schedule” or words of similar effect.

Section 12.4 Successors and Assigns. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors by operation of law and permitted assigns of the parties hereto. No assignment of this Agreement may be made by any party at any time, whether or not by operation of law, without the other party’s prior written consent; provided, however, that Buyer may, without the consent of the other parties hereto, assign any of its rights, interests and obligations under this Agreement to one or more Affiliate(s) of Buyer, which assignment, in either case, will not relieve Buyer of any obligations hereunder. Except as specifically provided for herein, only the parties to this Agreement or their permitted assigns shall have rights under this Agreement.

Section 12.5 Entire Agreement; Amendment. This Agreement and the other Transaction Documents constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and supersede all prior agreements relating to the subject matter hereof. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, modified, supplemented, waived, discharged or terminated other than by a written instrument signed by Sellers and Buyer expressly stating that such instrument is intended to amend, modify, supplement, waive, discharge or terminate this Agreement or such term hereof. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision hereof (whether or not similar).

Section 12.6 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and given (i) by reputable international overnight courier, (ii) e-mail (or like transmission) with confirmation of transmission by the transmitting equipment or (iii) personal delivery, in each case, at such Party’s address, e-mail address set forth below, or other address or e-mail address as such Party may hereafter specify by notice to the other Parties given in accordance herewith. Any such notice or other communication shall be deemed to have been duly given as of the date so personally delivered or transmitted by e-mail or like transmission (or, if delivered or transmitted after normal business hours, on the next Business Day), on the third Business Day when sent by reputable international overnight courier;

or upon actual receipt by the Party to whom such notice is required or permitted to be given. The address for such notices and communications (unless changed by the applicable Party by like notice) shall be as follows:

- (a) if to Sellers or Seller, to:

AgileThought, Inc.
222 W. Las Colinas Boulevard, Suite 1650E
Irving, Texas 75039
Attention: Diana P. Abril, Chief Legal Officer
Email: diana.abril@agilethought.com

with a copy (which shall not constitute notice) to:

Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, NY 10004-1482
Attention: Kathryn A. Coleman; Charles A. Samuelson; Christopher Gartman
Email: katie.coleman@hugheshubbard.com;
chuck.samuelson@hugheshubbard.com;
chris.gartman@hugheshubbard.com

- (b) if to Buyer, to:

[Blue Torch Finance LLC]
c/o Blue Torch Capital
150 East 58th Street, 39th Floor
New York, NY 10155
Attention: []
Email: BlueTorchAgency@alterdomus.com

with a copy (which shall not constitute notice) to:

Ropes & Gray LLP
1211 Avenue of the Americas
New York, New York 10036
Attention: Gregg Galardi; Leonard Klingbaum; Robb Tretter
Email: gregg.galardi@ropesgray.com;
leonard.klingbaum@ropesgray.com; robb.tretter@ropesgray.com

Section 12.7 Delays or Omissions. Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to Sellers or Buyer upon any breach or default of any party under this Agreement, shall impair any such right, power or remedy of Sellers or Buyer nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter

occurring. Any waiver, permit, consent or approval of any kind or character on the part of Sellers or Buyer of any breach or default under this Agreement, or any waiver on the part of any such party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law, in equity, or otherwise afforded to Sellers or Buyer shall be cumulative and not alternative.

Section 12.8 Counterparts. This Agreement may be signed in any number of counterparts, including by facsimile or other electronic transmission each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by all of the other parties hereto. Until and unless each party hereto has received a counterpart hereof signed by the other parties hereto, this Agreement shall have no effect and no party hereto shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). The exchange of a fully executed Agreement (in counterparts or otherwise) by electronic transmission in .PDF format or by facsimile shall be sufficient to bind the parties hereto to the terms and conditions of this Agreement.

Section 12.9 Severability. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provisions; provided, however, that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party. Any provision held invalid or unenforceable only in part or degree will remain in full force to the extent not held invalid or unenforceable.

Section 12.10 No Public Announcement. Absent the prior written consent of the other party, such consent not to be unreasonably withheld, delayed or conditioned, neither Sellers nor Buyer shall make any press release, public announcement or securities filing with any Governmental Authority concerning the transactions contemplated by the Transaction Documents, except as and to the extent that any such party shall be obligated to make any such disclosure by this Agreement or by applicable Law, and then only after giving the other party hereto adequate time to review such disclosure and consider in good faith the comments of the other party hereto and consultation as to such comments with such party as to the content of such disclosure, provided, however, that nothing in this Section 12.10 shall restrict the parties hereto from making disclosures to the Bankruptcy Court or in filings in the Bankruptcy Court; provided, however, that, to the extent practicable, the disclosing party provides the non-disclosing party with copies of all such filings or disclosures concerning the transactions contemplated by the Transaction Documents, to be delivered to such non-disclosing party at least two (2) days in advance of any such filing or disclosure and that the disclosing party shall consider in good faith any comments made by the non-disclosing party to such filings or disclosures. Notwithstanding anything to the contrary herein, the parties hereto and each of their respective employees, representatives or other agents, are permitted to disclose to any and all Persons, without limitations of any kind, the tax treatment and tax structure of the transactions and all materials of any kind (including opinions or other tax analyses) that are or have been provided to such parties related to such tax treatment and tax structure; provided, however, that the foregoing permission to disclose the tax treatment and tax structure does not permit the disclosure of any information that is not relevant to understanding

the tax treatment or tax structure of the transactions (including the identity of any party and the amounts paid in connection with the transactions); provided further, however, that the tax treatment and tax structure shall be kept confidential to the extent necessary to comply with federal or state securities laws.

Section 12.11 Specific Performance. Sellers and Buyer agree that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached, including if any of the Parties fails to take any action required of it hereunder to consummate the transactions contemplated by this Agreement. It is accordingly agreed that (a) Sellers or Buyer will be entitled to an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the parties' respective covenants and agreements under this Agreement that survive the Closing, without the requirement of posting a bond or other security, and without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Agreement, and (b) the right of specific performance and other equitable relief is an integral part of the transactions contemplated by this Agreement and without that right, neither Sellers nor Buyer would have entered into this Agreement. The remedies available to Sellers pursuant to this Section 12.11 will be in addition to any other remedy to which they were entitled at law or in equity, and the election to pursue an injunction or specific performance will not restrict, impair or otherwise limit any Seller from seeking to collect or collecting damages. In no event will this Section 12.11 be used, alone or together with any other provision of this Agreement, to require any Seller to remedy any breach of any representation or warranty of any Seller made herein.

Section 12.12 Non-Recourse. All claims, obligations, liabilities, or causes of action that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to this Agreement, the negotiation, execution or performance of this Agreement (including any representation or warranty made in connection with or as an inducement to this Agreement) or the transactions contemplated hereby may be made only against (and are those solely of) the Persons that are expressly identified as parties to this Agreement. No other Person, including any of the Parties' Affiliates or any of their or their Affiliates' directors, officers, employees, incorporators, members, partners, managers, stockholders, agents, attorneys, representatives, or any of their respective investment bankers, financial advisors or lenders (collectively, the "**Non-Recourse Parties**") shall have any liabilities for any claims, causes of action, obligations, or liabilities arising under, out of, in connection with, or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, or breach.

Section 12.13 Action by Sellers. Holdings shall be entitled to act on behalf of each Seller for any action required or permitted to be taken by any Seller under this Agreement.

Section 12.14 Third Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other Person, other than for purposes of Section 12.12, the Non-Recourse Parties.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed as of the date first above written.

SELLERS:

AgileThought, Inc.

By: _____
Name
Title:

AN Global LLC

By: _____
Name
Title:

IT Global Holding LLC

By: _____
Name
Title:

AgileThought, LLC

By: _____
Name
Title:

4th Source Holding Corp.

By: _____
Name
Title:

4th Source, LLC

By: _____
Name
Title:

Signature Page to AgileThought APA

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed as of the date first above written.

4TH Source Mexico, LLC.

By: _____
Name
Title:

QMX Investment Holdings USA, Inc

By: _____
Name
Title:

AGS Alpama Global Services USA, LLC

By: _____
Name
Title:

Entrepids Technology Inc.

By: _____
Name
Title:

AN USA

By: _____
Name
Title:

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed as of the date first above written.

BUYER:

[Blue Torch Finance LLC]

By:_____

Name:

Title:

Signature Page to AgileThought APA

EXHIBIT A
FORM OF APPROVAL ORDER

EXHIBIT B
FORM OF BIDDING PROCEDURES

EXHIBIT C

FORM OF DEPOSIT ASSIGNMENT AGREEMENT

EXHIBIT D
FORM OF DIP ORDER

EXHIBIT E-1

FORM OF PRE-PETITION CREDIT FACILITY BID DIRECTION LETTER

EXHIBIT E-2

FORM OF DIP FACILITY BID DIRECTION LETTER

EXHIBIT F
OPERATING AGREEMENT TERM SHEET

Schedule A
Additional Sellers

- AN Global LLC
- IT Global Holding LLC
- AgileThought, LLC
- 4th Source Holding Corp.
- 4th Source, LLC
- 4TH Source Mexico, LLC
- QMX Investment Holdings USA, Inc
- AGS Alpama Global Services USA, LLC
- Entrepids Technology Inc.
- AN USA

Schedule 2.1(a)
Acquired Entities

- AgileThought Mexico, S.A. de C.V.
- AN Evolution S. de R.L. de C.V.
- Tarnow Investment, S.L.
- AgileThought Argentina, S.A.
- AgileThought Brasil-Consultoria Em Tecnologia LTDA
- AgileThought Brasil Servicios de Consultoria em Software, LTDA
- AgileThought Costa Rica SA
- AgileThought S.A.P.I. de C.V.

Schedule 2.1(c)
Assigned Contracts

[attached]

EXHIBIT 3

Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

AN GLOBAL LLC, et al.,¹

Debtors.

Chapter 11

Case No. 23-11294 (JKS)

(Jointly Administered)

**NOTICE OF STALKING HORSE BID, BIDDING
PROCEDURES, AUCTION, AND SALE HEARING**

PLEASE TAKE NOTICE that, on September 1, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of: (I) an Order (A) Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (B) Approving Certain Bidding Procedures, Bidding Protections, and Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, (C) Authorizing the Debtors to Enter Into the Stalking Horse APA, and (D) Granting Related Relief; and (II) an Order (A) Approving Asset Purchase Agreement, (B) Authorizing the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, (C) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (D) Granting Related Relief* [Docket No. ●] (the “Sale Motion”)² with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) seeking entry of an order, (a) approving the Bidding Procedures in connection with the sale of substantially all of the Debtors’ assets, as attached to the Bidding Procedures Order as Exhibit 1, (b) approving the form and manner of this notice, (c) scheduling an auction and sale hearing to consider approval of the proposed Transaction, (d) establishing procedures for the assumption and assignment of executory contracts and unexpired leases of the Debtors, (e) approving the sale of the Debtors’ assets free and clear, and (f) granting related relief.

1. The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number or registration number in the applicable jurisdiction, are: AN Global LLC (5504); AgileThought, Inc. (2509); 4th Source Holding Corp. (9629); 4th Source Mexico, LLC (7552); 4th Source, LLC (7626); AgileThought Brasil-Consultoria Em Tecnologia LTDA (01-42); AgileThought Brasil Servicos de Consultoria Em Software (01-20); AgileThought Costa Rica S.A. (6822); AgileThought Digital Solutions, S.A.P.I. de C.V. (3KR0); AgileThought México S.A. de C.V. (7E46); AgileThought, LLC (7076); AgileThought Servicios Administrativos, S.A. de C.V. (4AG1); AgileThought Servicios México S.A. de C.V. (8MY5); AgileThought, S.A.P.I. de C.V. (No Tax ID); AGS Alpama Global Services USA, LLC (0487); AN Data Intelligence, S.A. de C.V. (8I73); AN Extend, S.A. de C.V. (1D80); AN Evolution, S. de R.L. de C.V. (7973); AN USA (5502); AN UX, S.A. de C.V. (7A42); Cuarto Origen, S. de R.L. de C.V. (0IQ9); Entrepids México, S.A. de C.V. (OCYA); Entrepids Technology Inc. (No Tax ID); Facultas Analytics, S.A.P.I. de C.V. (6G37); Faktos Inc., S.A.P.I. de C.V. (3LLA); IT Global Holding LLC (8776); and QMX Investment Holdings USA, Inc. (9707). The Debtors’ headquarters are located at 222 W. Las Colinas Boulevard, Suite 1650E, Irving, Texas 75039.

2. Capitalized terms used in this notice but not otherwise herein defined have the meanings given to such terms in the Sale Motion or Bidding Procedures, as applicable.

PLEASE TAKE FURTHER NOTICE that the Debtors are soliciting offers for the purchase of the Assets consistent with the bidding procedures (the “Bidding Procedures”) approved by the Bankruptcy Court by entry of an order on September [●], 2023 [Docket No. ●] (the “Bidding Procedures Order”). All interested bidders should carefully read the Bidding Procedures and Bidding Procedures Order.³ Any interested bidder should contact Stephen Preefer (Stephen.Preefer@guggenheimpartners.com), Jim Suprenant (Jim.Suprenant@guggenheimpartners.com), and Scott Green (Scott.Green@guggenheimpartners.com) at Guggenheim Securities, LLC, the Debtors’ investment banker. A separate notice will be provided to counterparties to executory contracts and unexpired leases with the Debtors that may be assumed, assigned, and sold in connection with the Sale.

PLEASE TAKE FURTHER NOTICE that, if the Debtors receive qualified competing bids within the requirements and timeframe specified by the Bidding Procedures, the Debtors will conduct an auction (the “Auction”) of the Assets on **November 13, 2023 at 11:00 a.m. (prevailing Eastern time)** at the offices of Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, NY 10004 or on such other date and/or at such other location as determined by the Debtors in accordance with the Bidding Procedures and as to which the Debtors shall notify all Qualified Bidders.

PLEASE TAKE FURTHER NOTICE that the Debtors will seek approval of the Sale at a hearing scheduled to commence on or before **November 16, 2023 at [●] [a.m./p.m.] (prevailing Eastern Time)** (the “Sale Hearing”) before the Honorable J. Kate Stickles, United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at 824 North Market Street, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that, except as otherwise set forth in the Bidding Procedures Order with respect to any objections to the Sale of the Assets, including any objections to the adequate assurance of future performance by the Stalking Horse Bidder in connection with the assumption, assignment and sale of Assigned Contracts, or any other objections to the relief requested in the Sale Motion ***must***: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Bankruptcy Court and served so as to be **actually received on or before [November 2], 2023 at 4:00 p.m. (prevailing Eastern Time)** by the following parties and any other party that has filed a notice of appearance in these Chapter 11 Cases:

3. To the extent of any inconsistencies between this notice and the Bidding Procedures or the Bidding Procedures Order, the Bidding Procedures or the Bidding Procedures Order, as applicable, shall govern in all respects.

Counsel to the Debtors	The United States Trustee
<p>Hughes Hubbard & Reed LLP One Battery Park Plaza, 16th Floor New York, NY 10004 Attn: Kathryn A. Coleman, Christopher Gartman & Elizabeth A. Beitler katie.coleman@hugheshubbard.com, chris.gartman@hugheshubbard.com & elizabeth.beitler@hugheshubbard.com</p> <p>Potter Anderson & Corroon LLP 1313 North Market Street, Sixth Floor P.O. Box 951 Wilmington, DE 19801-6108 Attn: Jeremy W. Ryan jryan@potteranderson.com</p>	<p>Office of the United States Trustee for the District of Delaware 844 King Street, Suite 2207, Lockbox 35 Wilmington, DE, 19801 Attn: Benjamin Hackman benjamin.a.hackman@usdoj.gov</p>
Counsel to the Agent and Stalking Horse Bidder	Counsel to the Committee (if any)
<p>Ropes & Gray LLP 1211 Avenue of the Americas New York, NY 10036-8704 Attn: Gregg M. Galardi, Robb Tretter & Leonard Klingbaum Gregg.Galardi@ropesgray.com, Robb.Tretter@ropesgray.com & Leonard.Klingbaum@ropesgray.com</p> <p>Chipman Brown Cicero & Cole, LLP 1313 N. Market Street, Suite 5400 Wilmington, DE 19801 Attn: Mark L. Desgrosseilliers desgross@chipmanbrown.com</p>	<p>[TBD]</p>

CONSEQUENCES OF FAILING TO TIMELY MAKE AN OBJECTION:

ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS SET FORTH IN THE APPLICABLE PURCHASE AGREEMENT.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion, the Bidding Procedures, the Bidding Procedures Order, as well as all related exhibits, including the Stalking Horse Purchase Agreement and the proposed Sale Order, are available free of charge on the Debtors' restructuring website, <https://www.kccllc.net/AgileThought>.

[Remainder of page intentionally left blank]

Dated: [●], 2023
Wilmington, Delaware

Respectfully submitted,

/s

Jeremy W. Ryan (No. 4057)

Gregory J. Flasser (No. 6154)

Sameen Rizvi (No. 6902)

POTTER ANDERSON & CORROON LLP

1313 North Market Street, 6th Floor

Wilmington, Delaware 19801

Telephone: (302) 984-6000

Facsimile: (302) 658-1192

E-mail: jryan@potteranderson.com

gflasser@potteranderson.com

srizvi@potteranderson.com

and

Kathryn A. Coleman

Christopher Gartman

Jeffrey S. Margolin

Elizabeth A. Beitler

HUGHES HUBBARD & REED LLP

One Battery Park Plaza

New York, NY 10004-1482

Telephone: (212) 837-6000

Facsimile: (212) 422-4726

Email: katie.coleman@hugheshubbard.com

chris.gartman@hugheshubbard.com

jeff.margolin@hugheshubbard.com

elizabeth.beitler@hugheshubbard.com

Proposed Counsel for the Debtors and Debtors-in-Possession

EXHIBIT 4

Notice of Assumption, Assignment and Sale

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re

AN GLOBAL LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11294 (JKS)

(Jointly Administered)

**NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT WITH RESPECT
TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF THE DEBTORS**

PLEASE TAKE NOTICE THAT:

The above-captioned debtors and debtors-in-possession (the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), on August 28, 2023, in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The Debtors are seeking to assume and assign certain of their executory contracts and unexpired leases in connection with the sale (the “Sale”) of all or substantially all of their assets (the “Assets”), free and clear of all free and clear of all liens, claims, interests, and encumbrances other than assumed liabilities and permitted encumbrances. In connection with the Sale, the Debtors have entered into an Asset Purchase Agreement dated as of [●], 2023 (the “Stalking Horse APA”) with [Blue Torch Finance LLC] (the “Stalking Horse Bidder”), subject to the Debtors’ acceptance of higher or otherwise better offers in accordance with the Bidding Procedures.

By order, dated September [●], 2023 [Docket No. ●] (the “Bidding Procedures Order”),² the Bankruptcy Court approved certain relief requested in the related motion [Docket No. ●] (the “Bidding Procedures Motion”), and certain “Bidding Procedures” that govern the sale of the Assets

1. The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number or registration number in the applicable jurisdiction, are: AN Global LLC (5504); AgileThought, Inc. (2509); 4th Source Holding Corp. (9629); 4th Source Mexico, LLC (7552); 4th Source, LLC (7626); AgileThought Brasil-Consultoria Em Tecnologia LTDA (01-42); AgileThought Brasil Servicos de Consultoria Em Software (01-20); AgileThought Costa Rica S.A. (6822); AgileThought Digital Solutions, S.A.P.I. de C.V. (3KR0); AgileThought México S.A. de C.V. (7E46); AgileThought, LLC (7076); AgileThought Servicios Administrativos, S.A. de C.V. (4AG1); AgileThought Servicios México S.A. de C.V. (8MY5); AgileThought, S.A.P.I. de C.V. (No Tax ID); AGS Alpama Global Services USA, LLC (0487); AN Data Intelligence, S.A. de C.V. (8I73); AN Extend, S.A. de C.V. (1D80); AN Evolution, S. de R.L. de C.V. (7973); AN USA (5502); AN UX, S.A. de C.V. (7A42); Cuarto Origen, S. de R.L. de C.V. (0IQ9); Entrepids México, S.A. de C.V. (OCYA); Entrepids Technology Inc. (No Tax ID); Facultas Analytics, S.A.P.I. de C.V. (6G37); Faktos Inc., S.A.P.I. de C.V. (3LLA); IT Global Holding LLC (8776); and QMX Investment Holdings USA, Inc. (9707). The Debtors’ headquarters are located at 222 W. Las Colinas Boulevard, Suite 1650E, Irving, Texas 75039.
2. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Bidding Procedures Order (as defined below).

to the highest or otherwise best bidders. Copies of the Bidding Procedures Motion, the Bidding Procedures Order, the Bidding Procedures and the Stalking Horse APA are available for download at <http://www.kccllc.net/AgileThought> (the “Case Website”).

You are receiving this Notice because you or one of your affiliates may be a party to an unexpired lease or an executory contract that *may* be assumed and assigned (collectively, the “Contracts”) in connection with such Sale. A list of the Contracts is attached hereto as Exhibit A.

To the extent that a Counterparty to a Contract objects to adequate assurance of performance by the Stalking Horse Bidder, the Counterparty must file and serve an objection (a “Sale Objection”). Any Sale Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 by [November 2], 2023 at 4:00 p.m. (ET) (the “Sale Objection Deadline”), and proof of service of such Sale Objection upon the Objection Notice Parties (as defined below) shall be filed with the Court as and when required by the Local Rules; (iv) be served upon the Objection Notice Parties; and (v) state with specificity the grounds for such objection.

****Any objections to adequate assurance of future performance by a Successful Bidder other than the Stalking Horse Bidder shall be filed not later than [November 15], 2023 at 10:00 a.m. (ET).****

The “Objection Notice Parties” are:

Counsel to the Debtors	The United States Trustee
<p>Hughes Hubbard & Reed LLP One Battery Park Plaza, 16th Floor New York, NY 10004 Attn: Kathryn A. Coleman, Christopher Gartman & Elizabeth A. Beitler katie.coleman@hugheshubbard.com, chris.gartman@hugheshubbard.com & elizabeth.beitler@hugheshubbard.com</p> <p>Potter Anderson & Corroon LLP 1313 North Market Street, Sixth Floor P.O. Box 951 Wilmington, DE 19801-6108 Attn: Jeremy W. Ryan jryan@potteranderson.com</p>	<p>Office of the United States Trustee for the District of Delaware 844 King Street, Suite 2207, Lockbox 35 Wilmington, DE, 19801 Attn: Benjamin Hackman benjamin.a.hackman@usdoj.gov</p>
Counsel to the Agent and Stalking Horse Bidder	Counsel to the Committee (if any)
<p>Ropes & Gray LLP 1211 Avenue of the Americas New York, NY 10036-8704 Attn: Gregg M. Galardi, Robb Tretter & Leonard Klingbaum Gregg.Galardi@ropesgray.com, Robb.Tretter@ropesgray.com & Leonard.Klingbaum@ropesgray.com</p>	<p>[TBD]</p>

Chipman Brown Cicero & Cole, LLP 1313 N. Market Street, Suite 5400 Wilmington, DE 19801 Attn: Mark L. Desgrosseilliers desgross@chipmanbrown.com	
--	--

If no timely objection is received as to adequate assurance of future performance with respect to a Contract, the non-Debtor party to such Contract shall be deemed to have consented to the Court determining that adequate assurance of future performance has been sufficiently demonstrated and shall be forever barred and estopped from asserting or claiming that the requirement of adequate assurance of future performance is not satisfied or demonstrated.

Subject to the terms of the Bidding Procedures Order, an auction (the “Auction”) for the Assets, including the Contracts, will be conducted on **November 13, 2023 at 11:00 a.m. (prevailing Eastern Time)** at the offices of Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, NY 10004, or virtually via telephone and/or video conference pursuant to information to be timely provided by the Debtors to the Auction Participants. After the Auction, the Debtors will file and serve a notice that identifies the Successful Bidder for the Assets, including any Contracts.

The Debtors will seek to assume and assign the Contracts that have been selected by the Successful Bidder (which, for the avoidance of doubt, may be the Stalking Horse Bidder) (collectively, the “Selected Purchased Contracts”) at a hearing before the Honorable J. Kate Stickles, United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at 824 North Market Street, Wilmington, Delaware 19801 on [November 16], 2023 at [●] [a.m./p.m.] (prevailing Eastern Time), subject to the Bankruptcy Court’s availability, or such other date as determined by the Debtors, in consultation with the Stalking Horse Bidder or, in the event the Stalking Horse Bidder is not the Successful Bidder, then in consultation with the Successful Bidder and the DIP Agent, in accordance with the terms of the Bidding Procedures Order.

[Remainder of Page Intentionally Left Blank]

Nothing contained herein shall obligate the Debtors or the Successful Bidder to assume any Contracts, and all rights of the Debtors and the Winning Bidder with respect to such Contracts are reserved. Moreover, the Debtors explicitly reserve their rights, in their reasonable discretion, to seek to reject or assume each Contract pursuant to section 365(a) of the Bankruptcy Code and in accordance with the procedures allowing the Debtors or the Successful Bidder, as applicable, to designate any Contract as either rejected or assumed on a post-closing basis.

Dated: [●], 2023
Wilmington, Delaware

Respectfully submitted,

/s

Jeremy W. Ryan (No. 4057)

Gregory J. Flasser (No. 6154)

Sameen Rizvi (No. 6902)

POTTER ANDERSON & CORROON LLP

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and

Kathryn A. Coleman

Christopher Gartman

Jeffrey S. Margolin

Elizabeth A. Beitler

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New York, NY 10004-1482

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Email: katie.coleman@hugheshubbard.com

chris.gartman@hugheshubbard.com

jeff.margolin@hugheshubbard.com

elizabeth.beitler@hugheshubbard.com

Proposed Counsel for the Debtors and Debtors-in-Possession

EXHIBIT A TO ASSUMPTION NOTICE