

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

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In re:	:	Chapter 11
	:	
FIRST MODE HOLDINGS, INC., <i>et al.</i> , ¹	:	Case No. 24-12794 ()
	:	
Debtors.	:	(Joint Administration Requested)
	:	
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**DECLARATION OF COLIN MARK FREED
IN SUPPORT OF CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS**

I, Colin Mark Freed, hereby declare under penalty of perjury, that:

1. I have served, initially as the Chief Commercial Officer and subsequently as the Chief Financial Officer of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”) and their non-Debtor direct and indirect subsidiaries (together with the Debtors, the “**Company**” or “**First Mode**”) since January 5, 2023. Attached hereto as **Exhibit A** is a simplified organizational chart of the Company. First Mode was founded in 2018 as an engineering services consultancy business, and, in 2023, on completion of the sale of approximately 80% of the Company to Anglo American Technical & Sustainability Ltd (“**AATS**” or the “**Consenting Parent**”) (described further below), changed its focus to developing hardware products that decarbonize heavy industry, targeting specifically the decarbonization of diesel mine haul trucks and freight locomotives.

2. I am a seasoned executive with over fifteen (15) years of leadership experience across financial, commercial, and strategic roles in industries including mining, clean technology, and venture development. I am currently the Chief Financial Officer of the Company. Previously,

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: First Mode Holdings, Inc. (7177), and Synchronous LLC (1829). The Debtors’ address is 3417 1st Ave S, Seattle, WA, 98134.

I held leadership positions at Anglo American,² as Head of Commercial for Anglo American's Technical & Sustainability division and before that as Head of Market Development for Anglo American's platinum business. I have an MBA from the Gordon Institute of Business Science, as well as degrees in Mathematics and Mathematical Statistics from leading South African universities.

3. As a result of my role with the Debtors, I am familiar with the Debtors' day-to-day operations, business and financial affairs, books and records, and the circumstances that resulted in the commencement of these chapter 11 cases (the "**Chapter 11 Cases**"). I submit this declaration (this "**Declaration**") to assist the Court and parties in interest in understanding those circumstances, and in support of (a) the Debtors' petitions for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") filed on the date hereof (the "**Petition Date**") and (b) the various types of "first day relief" the Debtors have requested from the Court (collectively, the "**First Day Motions**").

4. Except as otherwise indicated, the statements in this Declaration are based upon (i) my personal knowledge, (ii) my discussions with other members of the Company's management team, employees, and advisors, (iii) my review of relevant documents and information concerning the Company's operations, financial affairs, and restructuring initiatives, and/or (iv) my opinions based upon my experience and knowledge. I am over the age of 18 and authorized to submit this Declaration on behalf of the Debtors. If called upon to testify, I could and would testify competently to the facts set forth herein on that basis.

5. The Debtors' management team, along with their advisors, have worked diligently over the last several months to address various ongoing financial and operational challenges that

² "**Anglo American**" means AATS, Anglo American Services (UK) Ltd. ("**AAS**"), Anglo American International Holdings Limited ("**AAIH**" or "**Prepetition Facility Lender**" or "**DIP Lender**"), and other affiliates thereof.

came to a head in the summer of 2024. As a result of such efforts, the Debtors reached agreement with Anglo American, the Debtors' parent, cornerstone customer, and secured lender, on the terms of a restructuring transaction that includes a sale of a material portion of the Debtors' assets. Anglo American's support for the transaction is memorialized in the RSA (as defined below), which contemplates the sale of the assets to a Stalking Horse Bidder (as defined below) and documents Anglo American's commitment to provide DIP financing in an amount sufficient to fund these Chapter 11 Cases. Most notably, the RSA also provides for Anglo American's contribution of additional funds aimed at providing general unsecured creditors a significant, if not full, recovery. As a result of such achievements, the Debtors are now poised to enter these Chapter 11 Cases with a clear path towards a value-maximizing sale followed by an efficient and orderly wind-down of the estates through a plan of liquidation.

6. In August 2024, the Company retained Latham & Watkins LLP ("**Latham**"), PJT Partners LP ("**PJT**"), and M3 Advisory Partners, LP ("**M3**")³ to assist in evaluating the Company's strategic options. In the months that followed, the Company, with the support of its advisors, undertook a concerted effort to effectuate a sale or other restructuring transaction on terms that would inure to the benefit of the Debtors' key stakeholders and be acceptable to Anglo American, as its sole secured lender. The Debtors also appointed three independent directors: Neal Goldman, Carol Flaton, and Jill Frizzley (together, the "**Independent Directors**"), each nominated by Anglo American, to the Board on August 20, 2024 to replace certain directors that were formerly nominated by Anglo American. On August 28, 2024, the Board formed a restructuring committee

³ The Debtors have since also retained Young Conaway Stargatt & Taylor, LLP ("**Young Conaway**") and Omni Agent Solutions, Inc. ("**Omni**").

comprised of the Independent Directors (the “**Restructuring Committee**”), which was charged with negotiating and recommending a potential transaction.

7. While the Company and its advisors pursued a variety of options, including various out-of-court transactions, this process culminated in the pursuit of a stalking horse bid and chapter 11 filing to maximize the value of the Debtors’ estates. Ultimately, on December 15, 2024, following the Restructuring Committee’s recommendation and the Board’s approval, the Debtors entered into that certain Asset Purchase Agreement by and among the proposed stalking horse bidder, Cummins Inc. (“**Cummins**” or the “**Stalking Horse Bidder**”), the Debtors, and certain non-Debtor direct and indirect subsidiaries (the “**Stalking Horse APA**”). The Stalking Horse APA provides that the Stalking Horse Bidder will purchase the majority of the Debtors’ assets along with various assets of certain non-Debtor affiliates for a purchase price of \$15 million, plus the assumption of certain Assumed Liabilities (as defined in the Stalking Horse APA). Importantly, the Stalking Horse APA also contemplates that a significant number of the Company’s employees will transition to Cummins following consummation of the sale.⁴

8. In connection with entry into the Stalking Horse APA and following extensive negotiations between and among AAIH, AATS, and the Debtors, on December 15, 2024, the Debtors entered into that certain Restructuring Support Agreement with AAIH and AATS attached hereto as **Exhibit B** (the “**RSA**”). The RSA provides, among other things, for the Debtors to complete the sale to the Stalking Horse Bidder, or another bidder that submits a higher or otherwise better bid, and pursue confirmation of a plan of liquidation (the “**Plan**”). The Plan contemplates a monetary contribution by Anglo American and a consensual subordination of its claims—a

⁴ Contemporaneously with the filing of this Declaration, the Debtors have filed a motion seeking approval of entry into the Stalking Horse APA, bid procedures for the sale of the Debtors’ assets, approval of certain bid protections for the Stalking Horse Bidder, and related relief.

significant compromise—that the Debtors expect will provide a significant, if not full, recovery for holders of general unsecured claims. Under the transactions contemplated by the RSA, Anglo American has also agreed to provide a \$26,000,000 DIP financing facility (the “**DIP Facility**”), which will be subordinated in accordance with the terms of the RSA and is expected to provide the Debtors with sufficient liquidity during these Chapter 11 Cases. As set forth in more detail below, the milestones set forth in the RSA and DIP Credit Agreement (as defined below) (collectively, the “**Milestones**”) require an expeditious, yet achievable, sale and Plan confirmation process, and the Debtors will file the Plan and the accompanying disclosure statement in short order to meet the Milestones. Ultimately, a quick and consensual chapter 11 proceeding will maximize recoveries for creditors and, I believe, is the best path forward for the Debtors under the circumstances.

9. In addition, concurrently with the above, the Company began preparing for the orderly, solvent wind-down of certain non-Debtor direct and indirect foreign subsidiaries⁵ of Debtor First Mode Holdings, Inc. (“**FMH**”). As part of that wind-down process, on December 9, 2024, the Debtors and such subsidiaries entered into that certain First Mode Non-U.S. Subsidiary Wind-Down Support Agreement with AAIH (the “**Wind-Down Support Agreement**”). The Wind-Down Support Agreement, among other things, provides for the solvent wind-down of First Mode SA Holdings Pty Ltd., First Mode SA Pty Ltd., First Mode IPP Ltd., and First Mode Pty Ltd. (collectively, the “**Wind-Down Non-US First Mode Parties**,” and together with First Mode Chile, the “**Non-US First Mode Parties**”), as well as certain equity contributions made by Debtor FMH to certain of the Wind-Down Non-US First Mode Parties to fund the payment of their

⁵ As set forth in the Stalking Horse APA, the equity of non-Debtor First Mode Chile SpA (“**First Mode Chile**”) is to be conveyed to the Stalking Horse Bidder, and, therefore, is not contemplated to be wound down under the Wind-Down Support Agreement (as defined below).

creditors. In order to obtain sufficient funds to make such equity contributions, the Debtors entered into an agreement with AAIH to amend the Facility Agreement (as defined below) (the “**Third Amendment**”). Under the Third Amendment, AAIH provided an additional \$6.749 million in delayed drawn term loans to the Debtors, guaranteed by each of the Non-US First Mode Parties, which will, among other things, facilitate the wind-down proceedings and a solvent liquidation of such entities.

10. To familiarize the Court with the Debtors, their business, and the circumstances leading to these Chapter 11 Cases, the remainder of this Declaration is organized as follows:

- **Part I** provides an overview of the Company’s business operations, corporate structure, history, and relationship with Anglo American;
- **Part II** describes the Debtors’ prepetition capital structure;
- **Part III** describes the circumstances leading to the commencement of these Chapter 11 Cases;
- **Part IV** describes the RSA and proposed path ahead; and
- **Part V** provides an overview of the Debtors’ First Day Motions, as more fully set forth in **Exhibit C** attached hereto.

I. GENERAL BACKGROUND

A. Company Operations and Employees

11. Since January 2023, the Company has conducted business globally, with operations in the U.S., UK, Australia, Chile, and South Africa.⁶ In the U.S., the Company’s operations are located in Washington State and the Company previously maintained a headquarters,⁷ along with

⁶ The Debtors’ operations in South Africa were effectively ceased in September 2024.

⁷ Prior to the Petition Date, the Debtors vacated their headquarters office, and, contemporaneously herewith, the Debtors have filed the *Motion of Debtors for Entry of an Order (I) Authorizing (A) Rejection of a Certain Unexpired Lease of Nonresidential Real Property and (B) Abandonment of any Remaining Personal Property Located at the Leased Premise, and (II) Granting Related Relief*, seeking to reject their unexpired headquarters lease and abandon certain property.

its primary engineering hub and global manufacturing facility, in Seattle, Washington. Nearby in Centralia, Washington, the Company leases and maintains its “Proving Grounds” facility on a portion of a coal mine undergoing reclamation. The Proving Grounds includes offices, a warehouse, and heavy equipment shops, which allow the Company to conduct on-site testing. Outside of the U.S., the Company has a corporate office in London, UK (due to be vacated at the end of 2024), operations in Santiago, Chile, and an office and R&D lab in Perth, Australia (due to be vacated as part of the wind down).⁸ The majority of the Company’s management team is based in London. The Company does not currently have a physical presence in South Africa.

12. Prior to the reductions in force beginning at the start of 2024, which are further described below, the Debtors maintained a workforce of approximately two-hundred twenty-eight (228) employees and twenty-three (23) temporary employees (including independent contractors). As of the Petition Date, the Debtors employ a core group of approximately sixty-six (66) employees to retain the essential know-how, allowing potential buyers to complete development and ultimately commercialize the First Mode product in a time frame suitable to the buyer. Critically, the Debtors are at the cutting-edge of decarbonization of heavy industry, and they maintain this infrastructure and operational knowledge to support future expansion based upon the outcome of a sale in the Chapter 11 Cases.

B. Overview of the Company’s History and Organizational Structure

13. First Mode was founded in 2018 as an engineering consultancy business. Following the acquisition of a majority stake in First Mode by Anglo American (described further below), the Company aspired to develop products to abate the use of diesel in heavy industry

⁸ As noted above, the Debtors are winding down the Wind-Down Non-US First Mode Parties pursuant to the Wind-Down Support Agreement.

applications (starting with ultra-class mine haul trucks and rail freight locomotives). These products were intended to comprise an initial product offering of zero-emissions haulage systems based on hydrogen fuel cell technology, which was diversified, based on customer feedback and infancy of the hydrogen economy, to include diesel-battery hybrid and battery electric systems. Additionally, recognizing that successful product deployment requires macro-level planning and integration, the Company provides certain services to ensure that the necessary infrastructure is also delivered as well as seamless integration with customers' existing fleets and management systems.

14. As reflected in the organizational chart attached hereto as **Exhibit A**, Debtor FMH, a Delaware limited liability company, is owned by (a) AATS (holding approx. 81.4% of outstanding equity); and (b) certain individual shareholders (holding approx. 18.6% of outstanding equity), which includes 11 founders of the Company (the "**Founders**"). Debtor Synchronous LLC ("**Synchronous**"), a Washington limited liability company, is a wholly-owned subsidiary of FMH. FMH is managed by a board of directors (the "**Board**") and Synchronous is managed by its direct Debtor parent, FMH. The Board is comprised of the Independent Directors, Julian Soles, the Chief Executive Officer of the Company, and Margaret (Maggie) Scholtz, one of the Founders.⁹

i. Relationship with Anglo American

15. Beginning shortly after it was founded, the Company began a relationship with Anglo American, resulting in First Mode becoming party to several material agreements with them.¹⁰ In or around December 2019, First Mode entered into a consultancy agreement with Anglo

⁹ As of the Petition Date, Margaret (Maggie) Scholtz is contemplating her resignation from the Board.

¹⁰ As discussed in detail below, pursuant to the Letters, Anglo American terminated certain of the agreements between the parties. The Debtors dispute and reserve all rights with respect to the assertions made in the Termination Notices (as defined below).

American under which First Mode agreed to support Anglo American's attempts to eliminate the use of diesel in ultra class haul trucks as part of its FutureSmart Mining™ program. Later, in 2021, Anglo American acquired a 10% strategic interest in First Mode, and Anglo American and First Mode entered into a multi-year joint development agreement, thereby further developing the relationship between the parties. Under both the consultancy agreement and the joint development agreement, Anglo American owned all IP rights, including know how, arising from the development work it funded.

16. On November 15, 2022, AATS and First Mode entered into a certain Business Combination Agreement (the "**Combination Agreement**"), pursuant to which the parties agreed to Anglo American's contribution of the IP it owned and the transfer of employment of certain Anglo American employees to First Mode. This allowed the Debtors and Anglo American to house both IP and the personnel with the know how to commercialize the IP in a single business and solidified their partnership around a shared vision of developing a hydrogen-powered zero-emission haulage system ("**ZEHS**") that could be made available to the broader market. Pursuant to the Combination Agreement, First Mode gained ownership of the IP and the authority to commercialize it, while Anglo American gained its controlling stake of approximately 81.4% of First Mode. This stake was acquired through contributing the IP, purchasing \$24 million of stock from existing shareholders, and making a cash injection in the Company of \$200 million. The transaction closed on January 5, 2023.

17. Also on January 5, 2023, AATS, First Mode, and the Founders entered into a Relationship Agreement governing the relationship between the parties. On the same day, pursuant to the Combination Agreement, First Mode and AAS entered into that certain Umbrella Supply Agreement (as amended from time to time, the "**Supply Agreement**"), pursuant to which

Anglo American agreed to purchase and First Mode agreed to supply certain hydrogen fuel cell retrofit kits,¹¹ undertake evaluative studies, and provide other services, as required, to AAS.

18. Thereafter, on February 15, 2023, First Mode and AAS entered a Service Level Agreement pursuant to which AAS agreed to provide or procure certain services and First Mode agreed to accept and pay for such services.

19. The parties initially designated Mogalakwena, Anglo American's flagship platinum mine in South Africa, as the first site for deployment of hydrogen haul trucks. However, by mid-2023 the initial site for first deployment was changed to Minas Rio, Anglo American's iron ore mine in Brazil, which pushed out any potential deployment from mid-2025 to 2027 or 2028. This change, and general consensus in the market that hydrogen costs would only come down to a viable level towards the end of the decade, resulted in First Mode revising its strategy to include solutions that were more cost effective in the nearer term, namely adding a battery to existing diesel trucks to create a more fuel efficient hybrid electric diesel variant or "HEV."

20. The parties reached consensus that a near term change from diesel powered vehicles to hydrogen powered trucks, as initially contemplated by the Supply Agreement, was not in the best interest of the parties and discussed modifying the Supply Agreement to include the HEV and delay introduction of hydrogen solutions toward the back end of the decade. On December 21, 2023, the parties signed an Agreement to Modify the Umbrella Supply Agreement ("**Agreement to Modify**") that set forth certain agreed upon "key commercial principles" and required the parties to, among other things, work together in good faith to agree to the amendments to the Supply Agreement required to incorporate the key commercial principles. The Agreement to Modify

¹¹ "Hydrogen fuel cell retrofit kit" refers to hydrogen fuel cell and battery hybrid power modules, which can be inserted into the engine bay of a truck following the removal of the diesel engine, together with hydrogen fuel storage tanks and related equipment.

committed the parties to sign a full form amended and restated agreement by February 28, 2024 (later extended to March 28, 2024 and April 30, 2024). The Agreement to Modify also incorporated directly therein certain amendments to the Supply Agreement, including the right for Anglo American to terminate the Supply Agreement in the event of a default, or potential default under the Facility Agreement (as defined below).

21. Concurrently with the above, and as contemplated by the Agreement to Modify, the parties executed that certain HEV Purchase Order, dated December 21, 2023 (as amended by Amendment No. 1 to the HEV Purchase Order dated April 12, 2024, the “**Purchase Order**”). Pursuant to the Purchase Order, AAS committed to pay First Mode \$25 million, which was received in January 2024, to purchase certain long-lead items required for the production of the HEV products anticipated to be delivered to Anglo American pursuant to a full form supply contract that was to be negotiated subsequently (the “**HEV Supply Agreement**”). The Purchase Order provided that, in the event the parties failed to enter into the HEV Supply Agreement by March 31, 2024 (later amended to May 31, 2024), AAS could, subject to the terms thereof, suspend or terminate the Purchase Order. Relatedly, First Mode and AAS executed that certain Security Debenture dated December 21, 2023 (the “**UK Security Agreement**”) and that certain Security Agreement dated December 21, 2024 (the “**U.S. Security Agreement**”), granting AAS a first priority security interest in the Collateral (as defined in the U.S. Security Agreement) and Charged Assets (as defined in the UK Security Agreement). Ultimately, however, the parties were unable to reach agreement on the terms of the HEV Supply Agreement.

22. Also, on December 21, 2023, the Debtors entered into the Facility Agreement (as defined below) with AAIH. Pursuant to the terms of the Facility Agreement, AAIH agreed to provide a two-tranche secured revolving loan facility in the aggregate amount of \$150 million,

which was intended to assist with the Debtors' operational liquidity needs. The Facility Agreement provided AAIH the right to accelerate the loans or cancel the agreement on ninety (90) days' notice in the event that the parties failed to agree on an amended Supply Agreement by February 28, 2024 (later extended to March 28, 2024 and then to April 30, 2024).

23. On August 20, 2024, Anglo American sent four letters to the Company, which comprised the following: (1) Notice of Termination of the Supply Agreement (the "**Supply Agreement Termination**"); (2) Notice of Termination of the Purchase Order ("**Purchase Order Termination**"); (3) Notice of Mandatory Prepayment and Event of Default pursuant to the Facility Agreement (the "**Facility Termination**," and together with the Supply Agreement Termination and the Purchase Order Termination, the "**Termination Notices**"); and (4) Notice of Forbearance (the "**Original Notice of Forbearance**" and together with the Termination Notices, the "**Letters**"). Under the Termination Notices, Anglo American asserted that either certain events of default had occurred under the relevant contracts or certain contractual conditions had not materialized, thereby permitting Anglo American to terminate the applicable agreement.¹² Under the Original Notice of Forbearance, however, Anglo American agreed to forbear from exercising some of its asserted rights and remedies under the Facility Agreement for an initial period of forty-five days, which has since been extended ten times, as noted below.

24. Separately, Anglo American Capital plc, as borrower ("**AAC**"), and First Mode Holdings Inc., as depositor (the "**Depositor**"), are party to that certain deposit agreement dated June 20, 2023 (as amended on July 18, 2023, the "**Deposit Agreement**"). The Deposit Agreement is independent from any other agreement between Anglo American and the Debtors. The Deposit Agreement states that its purpose is "to enable the Depositor to deposit its surplus cash with [AAC]

¹² The Debtors dispute and reserve all rights with respect to the assertions made in the Termination Notices.

and for [AAC] to benefit from the cash surplus of the Depositor by way of temporary advances.” First Mode maintained two separate deposits with AAC, namely: (i) its surplus operational cash pursuant to Anglo American’s treasury policy, and (ii) the \$25m deposit provided under the Purchase Order.

25. On or around August 20, 2024, AAC restricted First Mode from accessing its surplus operational cash. However, the surplus cash has since been released to FMH in full. Also, on or around that time, Anglo American permanently swept the First Mode account in which the remainder of the initial \$25 million deposit under the Purchase Order was held (including the interest accrued thereon).¹³

C. The Company’s Business Operations

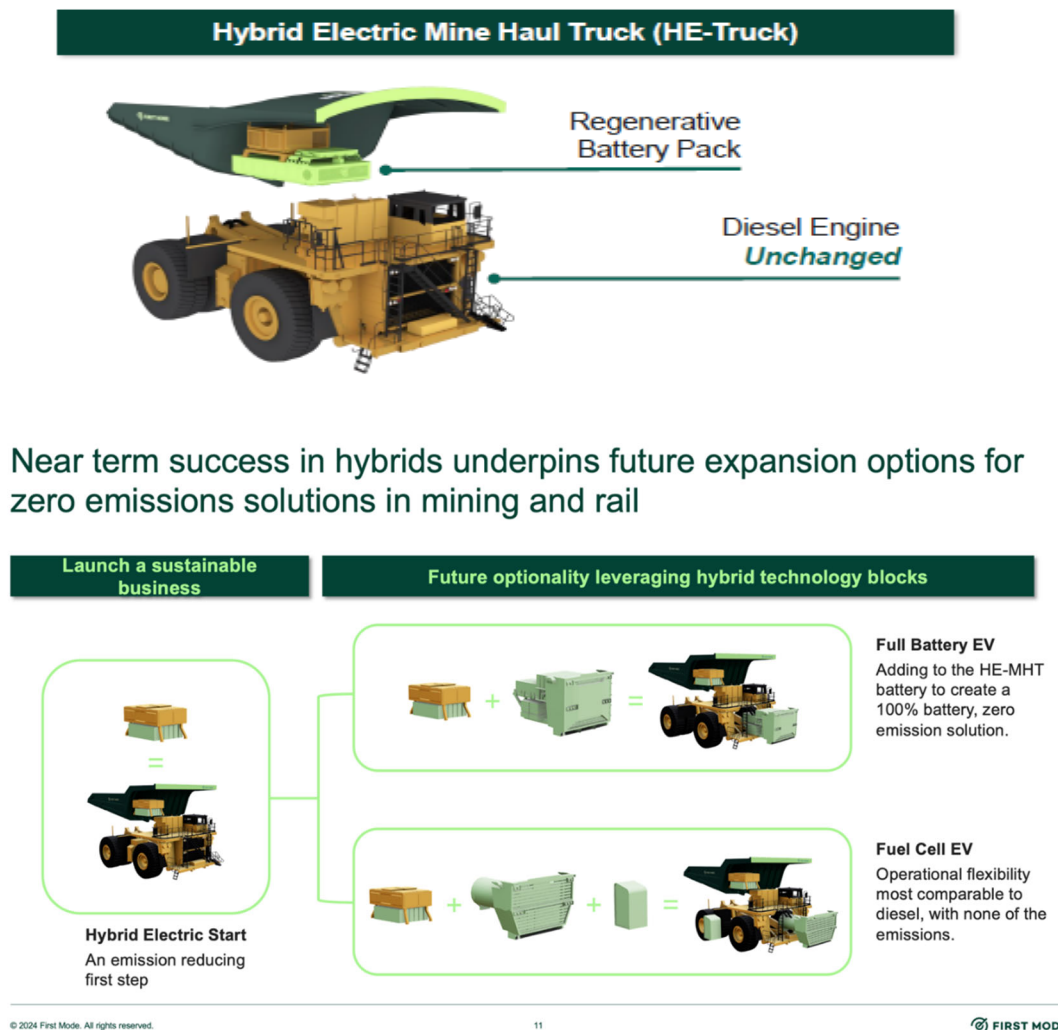
i. The Products

26. The Debtors’ products aim to solve one of heavy industry’s biggest problems—the difficulty of removing diesel from operations. As part of their Path to Zero™ Program (developed as part of the change in strategy described above in paragraph 19), the Debtors intended to offer three unique products to their customers.

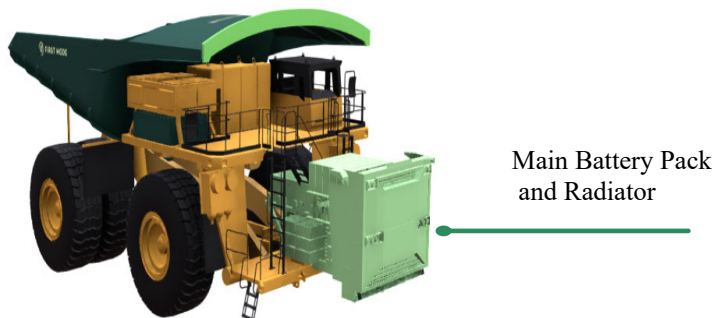
27. ***The Hybrid Electric Vehicle (“HEV”)***. The HEV fits a regenerative battery pack to the customer’s existing heavy haulage vehicle while leaving the rest of the vehicle unchanged. The regenerative unit captures the energy generated through braking (for example as the truck descends a hill) and later uses it to help power the truck. Depending on the conditions, this regenerative power can reduce fuel usage and carbon dioxide emissions by up to 25%. By July 2024, in response to the dynamics of the capital raising environment (as described further below),

¹³ Prior to this account being swept, First Mode had drawn approximately \$1.1 million of the \$25 million deposit to pay an advance to a supplier. The advance payment was contemplated by the Purchase Order.

the Debtors decided to focus almost entirely on the HEV product, a product which promised nearer term revenue and could be developed with a much reduced cost base.



28. *The Battery Electric Vehicle* (“**BEV**”). The BEV also includes the same regenerative battery pack as the HEV, and, therefore, customers can proceed to a full-battery retrofit without losing the already completed work. To convert from an HEV to a BEV, the existing diesel engine is replaced with additional battery capacity to produce a zero-emission system. The BEV’s main battery is charged through regenerative braking and supported by a static multi-megawatt rapid charge system.



29. **Fuel Cell Electric Vehicle (“FCEV”).** The FCEV’s regenerative battery pack is likewise the same as that used in the HEVs, and so customers can proceed to the FCEV retrofit without discarding prior modifications. In contrast to the BEV, in the FCEV, the diesel engine is replaced with a hydrogen fuel cell power module. The fuel cells combine hydrogen with oxygen from the air to generate electricity to drive the truck’s wheel motors. The FCEV retrofit also includes the addition of a large liquid hydrogen tank, which provides the most comparable performance and flexibility to existing diesel engines in a zero-emission vehicle. Critically, the only byproduct of this process is water, *i.e.*, no greenhouse gases are generated. In May 2023, the Debtors’ proof of concept FCEV retrofit (using gaseous, rather than liquid hydrogen) completed a full year of operational trials at Anglo American’s Mogalakwena mine in South Africa, logging 1,245 operational hours with zero-emissions.



ii. The Services

30. In addition to their products, First Mode provides studies and other services to their customers in order to assist the successful integration of the retrofitted vehicles into their customer's operations. First Mode recognizes that each mining operation is different and varies greatly in terms of the haul road system, mining strategy, location of the operation, and ease of access to low-carbon electricity sources. Accordingly, First Mode's engineers and modelling experts work closely with clients to determine the unique needs of each mine site and what technology solution best fits each customer's needs

II. THE DEBTORS' PREPETITION CAPITAL STRUCTURE

A. Debt

i. Secured Debt

31. As noted herein, the Debtors entered into that certain Facility Agreement, dated as of December 21, 2023 (as amended by that certain Amendment No. 1, dated March 11, 2024, that certain Amendment No. 2, dated April 12, 2024, and that certain Amendment No. 3, dated December 9, 2024, and as supplemented by each Deed of Accession dated as of August 4, 2024,¹⁴ the "**Facility Agreement**"), consisting of a \$150 million revolving credit facility and a \$6.749 million delayed draw term loan facility. As of December 15, 2024, the principal amount of indebtedness that the Debtors have incurred under the Facility Agreement is not less than \$69.7 million plus accrued interest, fees, expenses and other charges thereon and any other obligations owing to the Lender under the Facility Agreement (such obligations, the "**Prepetition Secured**

¹⁴ The "Deed of Accession" refers to the accession agreements entered into by First Mode SA Holdings Pty Ltd. and First Mode SA Pty Ltd., respectively, with AAIH on August 4, 2024. The Deeds of Accession were executed in connection with the Facility Agreement and made First Mode SA Holdings Pty Ltd. and First Mode SA Pty Ltd. guarantors under the Facility Agreement.

Loans”). The Debtors have also financed certain equipment in the amount of approximately \$1 million.

32. In connection with the Facility Agreement, the Debtors and the Non-US First Mode Parties entered into various security agreements with AAIH that created a first priority security interest in favor of AAIH in all or substantially all assets of the Company. Prior to the Facility Termination, the Facility Agreement had a final maturity date of December 31, 2025.

ii. Unsecured Debt

33. The Debtors have no funded unsecured debt. In the ordinary course, the Debtors incur trade debt with certain vendors and suppliers in connection with the operation of their business, which the Debtors estimate is approximately \$27 million as of the Petition Date.

B. Equity Structure

34. As of December 14, 2024, FMH has 56,001,279 shares of common stock outstanding. AATS holds approximately 81.4% of shares while the remaining 18.6% is held by individual shareholders who are, or were, employees of First Mode. Of this 18.6% of shares, the majority are held by the Founders who collectively hold approximately 16.3% of shares in First Mode.

35. First Mode also adopted a 2019 Equity Incentive Plan (“**2019 Plan**”) and a 2023 Stock Incentive Plan (“**2023 Plan**”). The 2019 Plan authorized 1,241,370 shares; however, no options or restricted stock units remain for future distribution. Meanwhile, the 2023 Plan authorized 2,808,924 shares.

III. KEY EVENTS LEADING TO THE COMMENCEMENT OF THESE CHAPTER 11 CASES

A. Challenges Leading to the Chapter 11 Cases

36. The Debtors operate in a highly competitive and capital-intensive industry. As a growth-stage company, the Debtors have invested significant resources to establish their R&D, testing and low volume production facilities, develop their technology, ramp up their operations, and grow their customer base.

37. In early 2023, the Debtors' key strategic focus was to (i) establish the requisite infrastructure, including its proving grounds and low volume production facility, and (ii) develop the technology to convert the powertrain of heavy mining haulage trucks from diesel-generated power to hydrogen-battery power in order to deliver products to Anglo American in the timeframe contemplated under the Supply Agreement. By summer 2023, however, the Debtors recognized that they were having difficulty securing customers (including securing a purchase order for the fuel cell powertrains from Anglo American) and realigned their focus to hybrid-diesel battery power. The challenge stemmed primarily from the high costs associated with hydrogen fuel procurement, the expensive liquefaction process and expensive retrofitting of a hydrogen-battery powertrain. While the Debtors were and are at the cutting edge of green technology, delays in securing purchase orders for the fuel cell variants also delayed any revenue beyond initial forecasts. In the meantime, the Debtors attempted to bridge the gap to customers by offering lower-cost, gradational retrofitting that would allow for interim use of hybrid electric vehicles. These offerings were potentially industry-changing in their own right; however, as a pre-revenue company, and in light of the circumstances, the Debtors ran out of time to realize their vision.

38. The difficulties in attracting new customers undermined the Debtors' operations, and the Debtors became unsustainably indexed on their main client relationship with Anglo

American, which had repercussions for their overall growth and long-term vision. Without the stability of multiple revenue streams or the continued support of Anglo American (which was undoubtedly instrumental to the Debtor's early growth), the Debtors were unable to explore the full potential of their technology. Recognizing the need to strengthen other relationships and raise funds from additional sources, the Company engaged in a capital raise effort with the assistance of Lazard. In light of market feedback and, and upon the recommendation of Lazard, the Company took steps to simplify its business plan to focus on the HEV product and underwent a significant cost down exercise (as discussed herein). The Company sought to raise approximately \$80 million from third-party investors. The prepetition capital raise process generated several leads, with First Mode substantially agreeing to an investment term sheet with a lead investor, reflecting the market's interest and confidence in First Mode's value proposition and growth trajectory. Any third-party investment, however, was contingent on Anglo American agreeing to the conversion of its outstanding debt to equity, among other terms. Ultimately, the deal terms could not be finalized.

39. Despite these efforts, the Debtors' challenges came to a head in August 2024 when Anglo American sent the Letters discussed above. The termination of the Supply Agreement and the Purchase Order resulted in a loss of a significant source of future income for the Debtors, and the cancellation of the Facility Agreement and acceleration of the debt outstanding thereunder exacerbated the Debtors' liquidity issues. The above all happening contemporaneously meant the Debtors did not have the liquidity to pay outstanding amounts and faced the possibility of immediate cessation of business. AAIH sent the Original Notice of Forbearance to the Debtors, granting a period of forbearance for forty-five (45) days. Since the Original Notice of Forbearance, AAIH has provided several extensions to the period of forbearance. The latest extension was sent

to the Debtors on December 9, 2024, and extended the forbearance up to the commencement of these Chapter 11 proceedings. Although each of the forbearances has included several unilaterally imposed limitations that restricted the Debtors' ability to manage its operations, they ultimately provided additional funding to the Debtors, allowing them to negotiate the RSA and enable the sale and wind-down process to be effectuated in these Chapter 11 Cases.

B. Reductions in Force and Other Cost-Saving Measures

40. Even prior to its receipt of the Letters, facing strong industry headwinds and shifting customer preferences, the Company had been forced to cut its workforce through a series of reductions in force (the "RIFs") in the last year. The Company first announced layoffs on January 16, 2024 and exited forty-two (42) employees, representing approximately 20% of their U.S. workforce at the time. This provided the Debtors with some cost savings, though the Debtors continued to battle changing market conditions and uncertainty over funding. As a result, the Debtors determined that further cuts were necessary in preparation for seeking new investments in their operations. The Debtors considered other options, such as revisiting non-labor costs, reducing recruitment efforts, and terminating most contracted labor, but were unable to achieve a sustainable cost basis. Accordingly, on August 5, 2024, the Debtors filed a Worker Adjustment and Retraining Notification notice with the Employee Security Department of Washington State, announcing the layoff of an additional sixty-five (65) workers. The reductions represented approximately 40% of the Debtors' Washington State workforce at the time.

41. Following the August RIF, and in the face of the requirements imposed by the Letters, the Debtors significantly limited their operations to cut expenditure including delaying payments to non-critical vendors to extend their runway to pursue a value-maximizing transaction. The Debtors retained a core group of employees to maintain the essential knowledge to allow

business operations to restart in accordance with the preferences of the Debtors' ultimate buyer once a sale is consummated.

42. Since the delivery of the Letters, the Company has remained in close coordination with Anglo American to limit expenditure while attempting to maintain the Company's attractiveness to potential buyers. Accordingly, M3, the Debtors' financial advisor, has prepared numerous budgets at Anglo American's request (and as required by the Letters). In the lead up to the filing of the Chapter 11 Cases and based upon the budgets prepared in conjunction with Anglo American, on December 6, 2024, the Debtors conducted a further reduction in force impacting approximately 16 additional employees in the US and 29 across the Company's operations in the UK, Australia and Chile.

C. The Prepetition Marketing Process

43. In the face of the foregoing challenges, the Company retained Latham, PJT, and M3 to assist in analyzing the Company's financial position and to explore potential sale options. Recognizing that an effective and efficient solution to the Company's cash-flow and liquidity concerns would require support from Anglo American, the Company worked alongside its advisors and Anglo American for a number of months to explore an out-of-court sale transaction that would permit the Company to continue operating as a going concern, preserve jobs, and maximize recoveries for all creditors or, in the alternative, a sale of the Company's assets. The Company's management, together with the assistance of its advisors (in particular, PJT), undertook a robust marketing process under the oversight of the Restructuring Committee.

44. While PJT's efforts in respect of the prepetition sale and marketing process are described in further detail in the Parr Declaration,¹⁵ the Company and its advisors hit the ground

¹⁵ *Declaration of Matthew Parr in Support of Motion of Debtors For Entry of (I) an Order (A) Approving Bid Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (B) Scheduling an Auction*

running. The Company initiated outreach to a targeted group of strategic buyers, several of which were existing, long-standing partners of the company. Operating under the timeline required by the Letters, the Company, through PJT, contacted and sent form non-disclosure agreements to nineteen (19) potential buyers. The Company invited these potential buyers to execute non-disclosure agreements. In response to the initial outreach, the Company executed non-disclosure agreements with nine (9) prospective buyers of the assets, each of which received the same package of marketing materials and which were invited to participate further in the sale process.

45. The Company then invited the nine (9) prospective buyers to submit indications of interest by September 30, 2024. Discussions were focused initially on consummating an out-of-court sale process that would be value maximizing to all key stakeholders and permit the ongoing operation of the business as a going concern. Ultimately, only Cummins provided a bid by September 30, 2024 while one other party indicated that it would submit a preliminary offer subject to substantial additional due diligence by October 15, 2024. Accordingly, the Company narrowed its focus on Cummins, and, in November 2024, the Company and Cummins, in consultation with Anglo American, pivoted to an in-court process whereby Cummins would serve as a stalking horse bidder and the Debtors could pursue a plan of liquidation following consummation of the sale.

46. Ultimately, the prepetition marketing process culminated in the execution of the Stalking Horse APA on December 15, 2024, which was approved by the Board at the

*and a Sale Hearing, (C) Approving the Form and Manner of Notice Thereof, (D) Authorizing the Debtors to Enter into the Stalking Horse APA and Related Bid Protections, (E) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (F) Granting Related Relief; and (II) an Order (A) Approving the Sale of Substantially all of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (B) Authorizing the Assumption and Assignment of Contracts and Leases, and (C) Granting Related Relief, filed contemporaneously herewith (the "**Parr Declaration**").*

recommendation of the Restructuring Committee. At all times, the Stalking Horse Bidder has been represented by separate counsel in negotiations resulting in execution of the Stalking Horse APA.

D. The Independent Investigation

47. At the beginning of November of 2024, as it became evident that the Debtors' marketing process for an out-of-court transaction might not be achievable, and that a bankruptcy filing might be necessary to maximize the Company's value, the Company initiated an investigation to determine whether, in the context of a bankruptcy, the Debtors might have potential claims against various parties and constituencies, including those affiliated with the Company, in connection with a restructuring and chapter 11 plan. Such investigations are frequently undertaken in this context.

48. To that end, the Restructuring Committee commenced an investigation into potential claims that the Company might hold against its current and former directors, officers, employees, lenders, stockholders and/or advisors (collectively, the "**Investigation Parties**"), in order to evaluate any potential claims and make a recommendation to the full Board in connection therewith. The Restructuring Committee is being advised and assisted in this investigation (the "**Investigation**") by Young Conaway. Among other things, the Investigation includes an assessment of allegations asserted by a group of the Founders as set forth in a letter to the FMH Board dated November 8, 2024.

49. In furtherance of the Investigation, Young Conaway has requested and is reviewing hundreds of relevant documents for the period of November 2020 through the present. In conjunction with its review of relevant documents, Young Conaway has also begun interviewing members of the Company's board and upper management, certain former directors and/or officers,

representatives of Anglo American, counsel for the Founders, and other appropriate parties to assess whether the Company possesses any viable claims against any Investigation Party.

IV. OVERVIEW OF THE PROPOSED PATH AHEAD

50. As noted above, in connection with entry into the Stalking Horse APA, on December 15, 2024, the Debtors entered into the RSA with Anglo American. The entry into the RSA is the product of weeks of negotiation and is a significant achievement that allows for a more orderly and streamlined chapter 11 process than would otherwise be feasible. Indeed, the RSA provides the Debtors with much-needed DIP financing as well as a significant monetary contribution from Anglo American that was sized to provide a significant, if not full recovery, to general unsecured creditors. Subject to this Court's approval, the RSA provides a clear roadmap for the Debtors to swiftly and responsibly complete a value-maximizing sale and confirm a plan of liquidation that the Debtors expect will provide significant value to general unsecured creditors.

51. Specifically, the RSA provides for certain restructuring transactions, including:

- i. The funding of the DIP Facility on the terms set forth in the DIP Credit Agreement attached to the DIP Motion as Exhibit B (the "**DIP Credit Agreement**"), by the DIP Lender;
- ii. a sale of all or substantially all of the assets of the Debtors (and certain of their non-debtor subsidiaries) pursuant to section 363 or 1123 of the Bankruptcy Code to the Stalking Horse Bidder or to such other purchaser that is the successful bidder pursuant to the bid procedures (the "**Sale Transaction**"), to be implemented through the Chapter 11 Cases; and
- iii. the Plan to be confirmed by an order of the Bankruptcy Court (the "**Confirmation Order**") that contemplates a contribution by Anglo American of \$28,870,592 *less* the amount of cash on the Debtors' balance

sheets as of the effective date of the Plan, to the Debtors to fund distributions to holders of general unsecured claims contemplated by the Plan (the “**Anglo Plan Funding**”).

52. Importantly, in addition to the Anglo Plan Funding, Anglo American has agreed to the subordination of all of its claims—including claims of the DIP Lender—as and to the extent provided in the Plan. In exchange for the foregoing consideration, the Plan provides for certain releases and exculpations to Anglo American, subject to satisfactory completion of the Investigation.

53. The RSA also incorporates various Milestones (certain of which are also embodied in the DIP Credit Agreement). The Milestones require an expeditious, yet achievable, sale and Plan confirmation process, and the Debtors will file the Plan and the accompanying disclosure statement in accordance with the Milestones. In specific, the Milestones are as follows:

Milestones for Chapter 11 Cases

- No later than December 15, 2024, the Debtors shall have commenced the Chapter 11 Cases.
- No later than one (1) calendar day after the Petition Date, the Debtors shall have filed a motion in form and substance acceptable to Anglo American seeking to establish deadlines to file proofs of claim.
- No later than the date that is nineteen (19) days following the Petition Date, the Debtors shall have filed each of the schedules and statements required pursuant to Rule 1007 of the Federal Rules of Bankruptcy Procedure.
- No later than the date that is twenty (20) days following the Petition Date, the Bankruptcy Court shall have entered an order in form and substance acceptable to Anglo American approving the deadlines by which proofs of claim are required to be filed.

Milestones for Marketing and Auction Process

- The Debtors shall have filed a motion in form and substance acceptable to Anglo American to approve bid procedures and implement a sale transaction with the Bankruptcy Court on or before the day that is one (1) day after the Petition Date.

- The Debtors shall have obtained the Bankruptcy Court’s approval of the bid procedures on or before the day that is thirty (30) days after the Petition Date, and such order shall be in form and substance acceptable to Anglo American.
- The deadline for qualified bids submitted pursuant to the bid procedures shall occur on or before the day that is thirty-six (36) days after the Petition Date (the “**Bid Deadline**”).
- The Debtors shall have commenced the Auction, if any, on or before the day that is seven (7) days after the Bid Deadline.
- The Bankruptcy Court shall have entered the Sale Order in form and substance acceptable to Anglo on or before the day that is three (3) business days after the Auction concludes.
- All conditions to closing of the Sale Transaction shall have been satisfied, and the closing of the Sale Transaction shall have occurred, on or before the day that is fifteen (15) days after entry of the Sale Order.

Milestones for Plan Confirmation

- The Debtors shall have filed the Plan and disclosure statement, each in form and substance acceptable to Anglo American, with the Bankruptcy Court on or before the day that is five (5) calendar days after the Petition Date.
- The Debtors shall have obtained the Bankruptcy Court’s approval of the Disclosure Statement and the process for solicitation of votes and noticing of Plan confirmation on or before the day that is fifty-seven (57) days after the Petition Date, and such order shall be in form and substance acceptable to Anglo American.
- The Bankruptcy Court shall have entered the Confirmation Order in form and substance acceptable to Anglo American on or before the day that is ninety-four (94) days after the Petition Date, or such date as soon thereafter as the Bankruptcy Court may be available
- The effective date of the Plan shall have occurred as to each of the Debtors on or before the day that is seven (7) days after the entry of the confirmation order.

Milestones for DIP Financing

- The Debtors shall have filed the DIP Motion in form and substance acceptable to Anglo American with the Bankruptcy Court on or before the day that is one (1) day after the Petition Date.
- The Debtors shall have obtained the Bankruptcy Court’s approval of the Interim DIP Order, in form and substance acceptable to Anglo American, on or before the day that is three (3) calendar days after the Petition Date.

- The Debtors shall have obtained the Bankruptcy Court’s approval of the Final DIP Order, in form and substance acceptable to Anglo American, on or before the day that is thirty-five (35) days after the Petition Date.

54. Also, as previously discussed, on December 9, 2024, the Debtors entered into the Wind-Down Support Agreement and the Third Amendment with AAIH. These agreements provide for, among other things, the solvent and orderly wind-down of the Wind-Down Non-US First Mode Parties’ business and operations concurrently with the progression of the chapter 11 proceedings of the Debtors.

55. The RSA and related transactions represent a tremendous achievement that includes Anglo American agreeing to subordinate its own claims, provide additional funding to fund a chapter 11 process and provide further additional funding for payment of creditors other than itself. Ultimately, a quick and consensual chapter 11 proceeding will maximize recoveries for creditors, and, I believe, is the best path forward for the Debtors under the circumstances.

V. FACTS SUPPORTING RELIEF SOUGHT IN FIRST DAY PLEADINGS

56. In furtherance of the objective of preserving value for all stakeholders, the Debtors have sought approval of the First Day Motions and related orders (the “**Proposed Orders**”) and respectfully request that the Court consider entering the Proposed Orders granting the relief requested in the First Day Motions. For the avoidance of doubt, the Debtors seek authority, but not direction, to pay amounts or satisfy obligations with respect to the relief requested in those of the First Day Motions for which such authority is sought.

57. I have reviewed and am familiar with the contents of each First Day Motion (including the exhibits attached thereto) and believe that the relief sought in each First Day Motion: (i) is necessary to enable the Debtors to operate in chapter 11 with minimum disruption or loss of productivity or value; (ii) constitutes a critical element in achieving a successful asset sale and liquidation of the Debtors; (iii) is in the best interests of the Debtors’ estates; and (iv) is, in those

instances where the requested relief includes immediate payment of prepetition amounts, necessary to avoid immediate and irreparable harm. The facts stated therein and attached hereto as **Exhibit C** are true and correct to the best of my information, knowledge, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 16, 2024

/s/ Colin Mark Freed

Colin Mark Freed
Chief Financial Officer

Exhibit A

Organizational Chart

Organizational Structure Chart

As of Petition Date

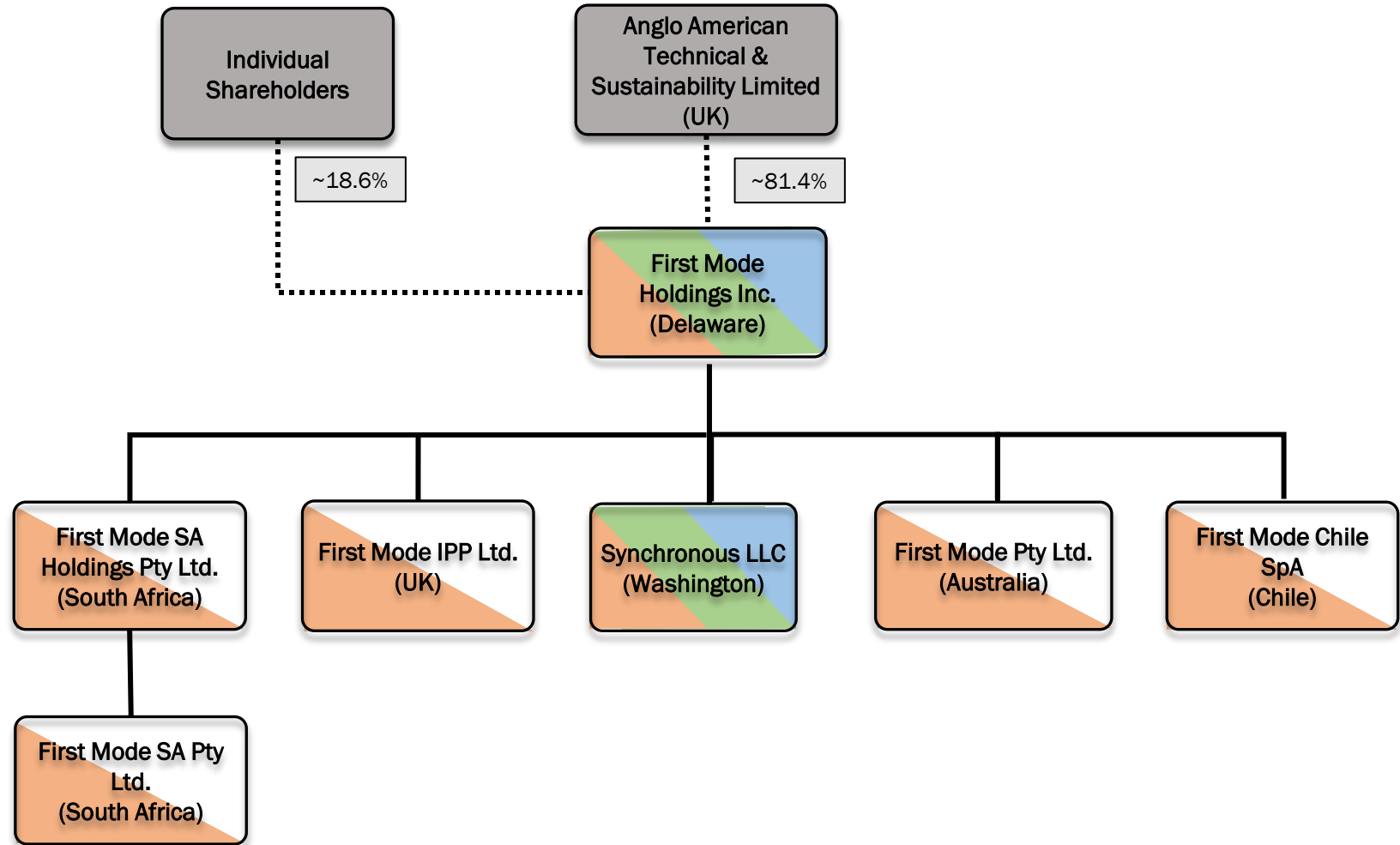
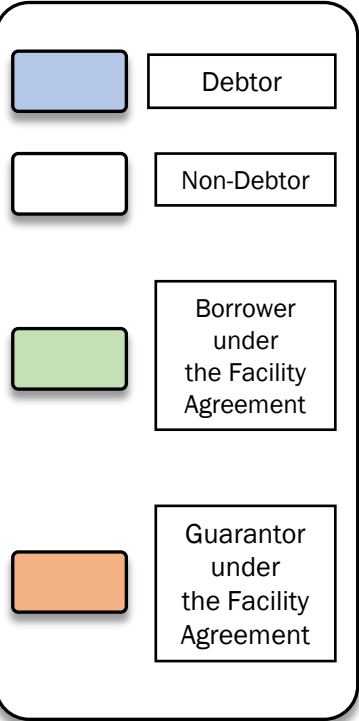


Exhibit B

Restructuring Support Agreement

THIS RESTRUCTURING SUPPORT AGREEMENT IS NOT AN OFFER OR ACCEPTANCE WITH RESPECT TO ANY SECURITIES OR A SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN WITHIN THE MEANING OF SECTIONS 1125 AND 1126 OF THE BANKRUPTCY CODE. ANY SUCH OFFER OR SOLICITATION WILL COMPLY WITH ALL APPLICABLE SECURITIES LAWS AND/OR PROVISIONS OF THE BANKRUPTCY CODE. NOTHING CONTAINED IN THIS RESTRUCTURING SUPPORT AGREEMENT SHALL BE AN ADMISSION OF FACT OR LIABILITY OR, UNTIL THE OCCURRENCE OF THE AGREEMENT EFFECTIVE DATE ON THE TERMS DESCRIBED HEREIN, DEEMED BINDING ON ANY OF THE PARTIES HERETO.

THIS RESTRUCTURING SUPPORT AGREEMENT DOES NOT PURPORT TO SUMMARIZE ALL OF THE TERMS, CONDITIONS, REPRESENTATIONS, WARRANTIES, AND OTHER PROVISIONS WITH RESPECT TO THE TRANSACTIONS DESCRIBED HEREIN, WHICH TRANSACTIONS WILL BE SUBJECT TO THE COMPLETION OF DEFINITIVE DOCUMENTS INCORPORATING THE TERMS SET FORTH HEREIN AND THE CLOSING OF ANY TRANSACTION SHALL BE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SUCH DEFINITIVE DOCUMENTS AND THE APPROVAL RIGHTS OF THE PARTIES SET FORTH HEREIN AND IN SUCH DEFINITIVE DOCUMENTS.

RESTRUCTURING SUPPORT AGREEMENT

This RESTRUCTURING SUPPORT AGREEMENT (including all exhibits, annexes, and schedules thereto, including the Plan Term Sheet, and as may be amended, supplemented, or otherwise modified from time to time, this “***Agreement***”)¹ is made and entered into as of December 15, 2024 (the “***Execution Date***”) by and among the following parties:

- a. First Mode Holdings, Inc., a limited liability company, duly incorporated and validly existing under the laws of the State of Delaware (“***FMH***”), Synchronous LLC, a limited liability company, duly incorporated and validly existing under the laws of the State of Washington (“***Synchronous***” and together with FMH, the “***Company Parties***”);
- b. Anglo American International Holdings Limited (the “***Consenting Lender***”); and
- c. Anglo American Technical & Sustainability Limited (the “***Consenting Parent***” and, collectively with the Company Parties and the Consenting Lender, the “***Parties***”).

RECITALS

WHEREAS, the Parties have in good faith and at arm’s length negotiated certain restructuring transactions with respect to the Company Parties’ assets and liabilities on the terms set forth in this Agreement (the “***Restructuring***”) and as specified in the term sheet attached as **Exhibit A** hereto (as may be amended, supplemented, or otherwise modified from time to time

¹ Capitalized terms used but not defined in the preamble and recitals to this Agreement have the meanings ascribed to them in Section 1, the Plan Term Sheet (as defined herein) and attached hereto as Exhibit A, or the DIP Credit Agreement (as defined herein) and attached hereto as Exhibit B, as applicable.

pursuant to this Agreement, the “*Plan Term Sheet*,” and such transactions as described in this Agreement and the Plan Term Sheet, the “*Restructuring Transactions*”);

WHEREAS, the Company Parties will implement the Restructuring Transactions through the commencement by the Company Parties of voluntary cases under chapter 11 of the Bankruptcy Code in the Bankruptcy Court (such cases, the “*Chapter 11 Cases*”);

WHEREAS, as of the date hereof, the Consenting Parent directly or indirectly holds 81.1804% of the aggregate issued and outstanding equity interests in FMH;

WHEREAS, the Company Parties, certain affiliates of the Company Parties, as guarantors thereto, and the Consenting Lender are parties to that certain Facility Agreement dated as of December 21, 2023, as amended pursuant to an Amendment No. 1 to Facility Agreement dated as of March 11, 2024, an Amendment No. 2 to Facility Agreement dated as of April 12, 2024, and an Amendment No. 3 to Facility Agreement dated as of December 9, 2024 (the “*Facility Agreement*”);

WHEREAS, the Consenting Lender has provided the Notice of Tenth Extension of Forbearance (the “*Forbearance Notice*”) dated as of December 9, 2024, pursuant to which the Consenting Lender is, subject to the terms and conditions therein, forbearing from exercising rights and remedies under the Facility Agreement;

WHEREAS, the Company Parties, certain affiliates of the Company Parties party thereto (the “*Non-US FM Entities*,” and together with the Company Parties, the “*FM Wind Down Entities*”), and the Consenting Lender have entered into that certain First Mode Non-U.S. Subsidiary Wind-Down Support Agreement (the “*Wind Down Agreement*”) dated as of December 9, 2024, by which the Company Parties and the Consenting Lender agreed to take certain actions in support of the wind-down of certain subsidiaries of the Company Parties organized outside of the United States; and

WHEREAS, the Parties have agreed to take certain actions in support of the Restructuring Transactions on the terms and conditions set forth in this Agreement and the Plan Term Sheet.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party, on a several but not joint basis, intending to be legally bound hereby, agrees as follows:

AGREEMENT

Section 1. Definitions and Interpretation.

1.01. Definitions. The following terms shall have the following definitions:

“*Affiliate*” means an affiliate as defined in section 101(2) of the Bankruptcy Code.

“Agreement Effective Date” means the first date on which the conditions set forth in Section 2 have been satisfied or waived by the appropriate Party or Parties in accordance with this Agreement.

“Agreement Effective Period” means, with respect to a Party, the period from the Agreement Effective Date to the Termination Date applicable to that Party.

“Alternative Restructuring” means any reorganization, restructuring, new-money investment, merger, amalgamation, acquisition, consolidation, dissolution, debt investment, equity investment (including any equity commitment), liquidation, share issuance, tender offer, exchange offer, rights offering, consent solicitation, recapitalization, business combination, joint venture, partnership, financing (debt or equity), plan proposal, recapitalization, plan of reorganization, or other transaction of similar effect involving any of the FM Wind Down Entities, any sale or disposition of a material portion of any of their assets, or the debt, equity, or other material interests in any one or more FM Wind Down Entities, that is inconsistent with the Restructuring Transactions or the Wind Down Agreement.

“Alternative Restructuring Proposal” means any plan, inquiry, proposal, offer, bid, term sheet, discussion, or agreement with respect to any Alternative Restructuring.

“Business Day” means any day, other than a Saturday, Sunday, or a “legal holiday,” as defined in Rule 9006(a) of the Federal Rules of Bankruptcy Procedure.

“DIP Credit Agreement” means that certain Senior Secured Superpriority Debtor-in-Possession Facility Agreement attached hereto as **Exhibit B**.

“DIP Documents” means the DIP Credit Agreement and any and all other agreements, documents, notes, pledges, collateral agreements, loan and security agreements, mortgages, control agreements, deeds of trust, intercreditor agreements, and instruments (including any amendments, restatements, supplements, or modifications of any of the foregoing) delivered or executed in connection with the DIP Facility.

“Disclosure Statement” means the disclosure statement in respect of the Plan, including all exhibits and schedules thereto, as approved or ratified by the Bankruptcy Court pursuant to sections 1125 and 1126 of the Bankruptcy Code, which shall be in form and substance acceptable to the Consenting Lender.

“First Day Orders” means the orders of the Bankruptcy Court granting the First Day Pleadings, which shall be in form and substance acceptable to the Consenting Lender.

“First Day Pleadings” means the first day pleadings that the Company Parties, with the consent of the Consenting Lender, determine are necessary or desirable to file with the Bankruptcy Court upon the commencement of the Chapter 11 Cases.

“Law” means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court).

“Person” means any “person” as defined in section 101(41) of the Bankruptcy Code, including any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or other entity.

“Plan Supplement” means any compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan filed by the Company Parties with the Bankruptcy Court, which shall be in form and substance acceptable to the Consenting Lender and the Company Parties.

“Relationship Agreement” means that certain Relationship Agreement, dated as of January 5, 2023, by and among the Consenting Parent, FMH and certain other stockholders of FMH party thereto.

“Solicitation Materials” means any materials used in connection with the solicitation of votes on the Plan, including the Disclosure Statement, and any procedures established by the Bankruptcy Court with respect to solicitation of votes on the Plan, which shall be in form and substance acceptable to the Consenting Lender.

“Termination Date” means, with respect to any Party, the date on which termination of this Agreement as to such Party is effective in accordance with Section 11.

1.02. Interpretation. For purposes of this Agreement:

(a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender;

(b) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form;

(c) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(d) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit shall mean such document, schedule, or exhibit, as it may have been or may be amended, restated, amended and restated, supplemented, or otherwise modified or replaced from time to time; *provided* that any capitalized terms herein which are defined with reference to another agreement, are defined with reference to such other agreement as of the date of this Agreement, without giving effect to any termination of such other agreement or amendments to such capitalized terms in any such other agreement following the date hereof;

(e) unless otherwise specified, all references herein to “Sections” are references to Sections of this Agreement;

(f) the words “herein,” “hereof,” and “hereto” refer to this Agreement in its entirety rather than to any particular portion of this Agreement;

(g) captions and headings to Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Agreement;

(h) references to “shareholders,” “directors,” and/or “officers” shall also include “members” and/or “managers,” as applicable, as such terms are defined under the applicable limited liability company Laws;

(i) the use of “include” or “including” is without limitation, whether stated or not;

(j) the phrase “counsel to the Company Parties” refers in this Agreement to each counsel specified in Section 13.10(a);

(k) the phrase “counsel to the Consenting Lender” refers in this Agreement to each counsel specified in Section 13.10(b); and

(l) the phrase “counsel to the Consenting Parent” refers in this Agreement to each counsel specified in Section 13.10(c).

Section 2. Effectiveness of this Agreement. This Agreement shall become effective and binding upon each of the Parties at 12:00 a.m., prevailing Eastern Time, on the Agreement Effective Date, which is the first date on which all of the following conditions have been satisfied or waived by the applicable Party or Parties in accordance with this Agreement:

(a) each of the Company Parties shall have executed and delivered counterpart signature pages of this Agreement to counsel to each of the Parties;

(b) the Consenting Lender shall have executed and delivered a counterpart signature page of this Agreement to counsel to each of the Parties; and

(c) the Consenting Parent shall have executed and delivered a counterpart signature page of this Agreement to counsel to each of the Parties.

Section 3. Definitive Documents.

3.01. The Plan Term Sheet is expressly incorporated herein and made a part of this Agreement as if fully set forth herein. The terms and conditions of the Restructuring are set forth in the Plan Term Sheet; *provided, however*, that the Plan Term Sheet is supplemented by the terms and conditions of this Agreement. In the event of any inconsistencies between the terms of this Agreement and the Plan Term Sheet, the terms of the Plan Term Sheet shall govern.

3.02. The Definitive Documents governing the Restructuring Transactions shall include all agreements, instruments, pleadings, orders, forms, questionnaires, and other documents (including all exhibits, schedules, supplements, appendices, annexes, instructions, and attachments thereto) that are utilized to implement or effectuate, or that otherwise relate to, the Restructuring Transactions.

3.03. Each of the Definitive Documents and related motions and orders shall (a) be consistent in all material respects with this Agreement, the Plan Term Sheet and the DIP Credit Agreement, and (b) otherwise be in form and substance acceptable to the Company Parties and the Consenting Lender and, to the extent any provision of any Definitive Document affects the treatment, rights, obligations, claims or interests of the Consenting Parent or the releases given by or received by the Consenting Parent, such provision shall be reasonably acceptable to the Consenting Parent. The definitions of each of the Definitive Documents, and such definitions where used in this Agreement (including the Plan Term Sheet), are deemed to incorporate the requirements of the foregoing sentence, including the consent rights. The Definitive Documents not executed as of the Execution Date remain subject to negotiation and completion. The Definitive Documents and every other document, deed, agreement, filing, notification, letter, or instrument related to the Restructuring Transactions shall be subject to the consent rights set forth herein and shall contain terms, conditions, representations, warranties, and covenants consistent with the terms of this Agreement and the Plan Term Sheet, as they may be modified, amended, or supplemented in accordance with Section 12.

3.04. The Company Parties acknowledge and agree that they will provide advance initial draft copies of the Definitive Documents to counsel to the Consenting Lender and counsel to the Consenting Parent as soon as reasonably practicable and will provide such documents no later than two (2) Business Days prior to the date when any Company Party intends to file the applicable Definitive Documents with the Bankruptcy Court. The Company Parties further acknowledge and agree that, to the extent practicable, they will provide advance initial draft copies of any substantive pleadings other than the Definitive Documents to counsel to the Consenting Lender and counsel to the Consenting Parent no later than two (2) Business Days prior to the date when any Company Party intends to file the applicable substantive pleadings with the Bankruptcy Court.

Section 4. Commitments of the Consenting Lender.

4.01. Affirmative Commitments. Subject to Section 5 of this Agreement, during the Agreement Effective Period, the Consenting Lender hereby covenants and agrees that it shall:

(a) subject to entry of the Confirmation Order and satisfaction or waiver of the conditions precedent to the occurrence of the Effective Date of the Plan, provide the Anglo Funding Amount to the Company Parties on the Effective Date;

(b) notwithstanding anything to the contrary in the Interim DIP Order, the Final DIP Order, or the DIP Documents, agree, consent to, support, and not object to the treatment of the DIP Claims set forth in the Plan Term Sheet;

(c) timely vote, following commencement of the solicitation of the Plan, all of its claims (or claims under its control) that are entitled to vote on the Plan, including, without limitation, any claims that are impaired under the Plan and entitled to vote on the Plan, to accept the Plan and not change or withdraw (or cause to be changed or withdrawn) any such vote; *provided* that the Consenting Lender shall have the right to change or withdraw its vote if the Termination Date occurs;

(d) to the extent it is permitted to elect whether to opt in to the releases set forth in the Plan, elect to opt in to the releases set forth in the Plan;

(e) give any notice, order, instruction, or direction to any Affiliate necessary to give effect to the Restructuring Transactions;

(f) negotiate in good faith and use commercially reasonable efforts to timely execute, deliver, and implement the Definitive Documents (as applicable);

(g) use commercially reasonable efforts to cooperate and coordinate activities with the Company Parties and the Consenting Parent and use commercially reasonable efforts to support and consummate the Restructuring Transactions; and

(h) upon the reasonable written request of the Debtors, timely oppose, including by way of joinder, any objections against any approval, including, without limitation, from the Bankruptcy Court, of any of the Definitive Documents.

4.02. Negative Commitments. Subject to Section 5 of this Agreement, during the Agreement Effective Period, the Consenting Lender hereby covenants and agrees that it shall not directly or indirectly:

(a) take any action that would be materially inconsistent with this Agreement or be likely to result in a material impediment or material detriment to, or materially interfere with, the Restructuring (including encouraging another Person to undertake any action prohibited by this Agreement);

(b) object to, delay, impede, or take any other action to interfere with the Restructuring Transactions, the Chapter 11 Cases, Confirmation, implementation of the Plan, or approval of any Definitive Document;

(c) otherwise take any action that would in any material respect interfere with, delay, or postpone consummation of the Plan;

(d) sell, transfer, or enter into any transaction in connection with its claims against any Company Party, except to an affiliate of the Consenting Lender who agrees to be bound by the terms of this Agreement;

(e) direct any Affiliate to take any action inconsistent with the Consenting Lender's obligations under this Agreement or the Plan Term Sheet;

(f) object to, delay, impede, or take any other action to interfere with the Company Parties' ownership and possession of their assets, wherever located, or interfere with the automatic stay arising under section 362 of the Bankruptcy Code; *provided, however*, that nothing in this Agreement shall limit the right of any Party to exercise any right or remedy provided under this Agreement, the Confirmation Order, or any other Definitive Document;

(g) to the extent it is permitted to elect whether to opt out of the releases set forth in the Plan, elect to opt out of the releases set forth in the Plan;

(h) vote for any plan that does not contain the releases consistent with this Agreement;
or

(i) commence, support, or join any litigation or adversary proceedings against the Company Parties.

Section 5. Additional Provisions Regarding the Consenting Lender's Commitments.
Notwithstanding anything contained in this Agreement, nothing in this Agreement shall:

(a) affect the ability of the Consenting Lender to consult with the Company Parties, their Affiliates, or any other party in interest in the Chapter 11 Cases (including, but not limited to, any committee appointed in the Chapter 11 Cases, if applicable, and the United States Trustee for the District of Delaware);

(b) be construed to prevent the Consenting Lender from enforcing this Agreement, or any Definitive Document, or contesting whether any matter, fact, or thing is a breach of, or is materially inconsistent with, this Agreement, or any Definitive Document;

(c) be construed to prevent the Consenting Lender from exercising any consent rights provided herein or in the Definitive Documents or its rights or remedies specifically reserved herein or in the Definitive Documents;

(d) be construed to prohibit or limit the rights of the Consenting Lender in the Chapter 11 Cases, including the right to appear as a party in interest in any matter to be adjudicated in the Chapter 11 Cases, so long as, from the Agreement Effective Date until the occurrence of a Termination Date, such appearance and the positions advocated in connection therewith are not inconsistent with this Agreement, are not prohibited by this Agreement, and are not for the purpose of hindering, delaying, or preventing the consummation of the Restructuring;

(e) except as expressly provided in this Agreement, in any manner waive, limit, impair, or restrict the ability of the Consenting Lender to protect and preserve its rights, remedies, and interests, including its claims against any of the other Parties (or their respective Affiliates or subsidiaries), or its full participation in the Chapter 11 Cases;

(f) prevent the Consenting Lender from taking any action which is required by applicable Law; *provided* that, if the Consenting Lender proposes to take any action that is otherwise materially inconsistent with this Agreement in order to comply with applicable Law, the Consenting Lender shall, to the extent permitted by applicable Law and to the extent reasonably practicable, provide at least three (3) Business Days' advance written notice to the Company Parties and the Consenting Parent prior to taking any such action;

(g) require the Consenting Lender to take any action which is prohibited by applicable Law or to waive or forego the benefit of any applicable legal professional privilege;

(h) require the Consenting Lender to provide any information that it determines, in its reasonable discretion, to be commercially sensitive or confidential, other than as expressly set forth in this Agreement;

(i) prohibit the Consenting Lender from taking any action that is not inconsistent with this Agreement;

(j) require the Consenting Lender, other than (i) as expressly set forth and agreed to in this Agreement or any other Definitive Document (including with respect to the DIP Facility and the Anglo Funding Amount) or (ii) costs and expenses that a Company Party has agreed to reimburse on terms satisfactory to such Consenting Lender, to (x) incur, assume, become liable in respect of or suffer to exist any expenses, liabilities, or other obligations, (y) agree to or become bound by any commitments, undertakings, concessions, indemnities, or other arrangements that could result in expenses, liabilities, or other obligations to the Consenting Lender;

(k) obligate the Consenting Lender to deliver a vote to support the Plan or prohibit a Consenting Lender from changing such vote, in each case from and after the Termination Date. For the avoidance of doubt, upon the Termination Date, the Consenting Lender's vote shall automatically be deemed void *ab initio* and such Consenting Lender shall have a reasonable opportunity to cast a new vote; or

(l) prevent the Consenting Lender from taking any customary perfection step or other action as is necessary to preserve or defend the validity or existence of its Claims and Interests in the Company (including the filing of proofs of claim).

Section 6. Commitments of the Company Parties.

6.01. Affirmative Commitments. Subject to Section 7 of this Agreement, during the Agreement Effective Period, the Company Parties agree to:

(a) (i) act in good faith and use best efforts to support and successfully complete solicitation of the Plan, and (ii) do all things reasonably necessary and desirable in furtherance of confirming the Plan and consummating the Restructuring (including the execution of the Definitive Documents) in accordance with and within the time frames contemplated by this Agreement and the Plan Term Sheet;

(b) consult with the Consenting Lender, the Consenting Parent, and their counsel as to:

(i) the status and progress of the negotiations of the Definitive Documents and discussions with the Company's other stakeholders;

(ii) any potential rejection, termination, breach, assumption, renegotiation, or other modification with respect to any of the Company Parties' contracts or entry into any new contracts by the Company Parties;

(iii) strategy concerning the maximization of tax efficiencies;

(iv) the claims reconciliation process;

(v) the status of obtaining any necessary or desirable authorizations (including any consents) with respect to the Restructuring from any competent judicial body, governmental authority, banking, taxation, supervisory, or regulatory body or any stock exchange; and

(vi) operational and financial performance matters (including liquidity), collateral matters, contract and lease matters, and the general status of ongoing operations;

(c) use best efforts to obtain any and all required governmental, regulatory and/or third-party approvals for the Restructuring Transactions;

(d) inform counsel to the Consenting Lender and counsel to the Consenting Parent within no more than one (1) Business Day after becoming aware of:

(i) any matter or circumstance which they know, or reasonably expect is likely, to be a material impediment to the implementation or consummation of the Restructuring;

(ii) any notice of commencement of any material involuntary insolvency proceedings, legal suit for payment of debt or securement of security from or by any person in respect of any Company Party;

(iii) a material breach of this Agreement by any Company Party;

(iv) any representation made or deemed to be made by any Company Party under this Agreement which is or proves to have been incorrect or misleading in any material respect when made or deemed to be made; and

(v) any notice, including from any governmental authority, of any material proceeding commenced or of any material complaints, litigations, investigations, or hearings, or, to the knowledge of the Company Parties, threatened in writing against the Company Parties, relating to or involving the Company Parties;

(e) to the extent any legal or structural impediment arises that would prevent, hinder, impede, or delay the consummation of the Restructuring Transactions, take all steps reasonably necessary and desirable to address any such impediment, and negotiate in good faith any appropriate additional or alternative provisions or agreements to address any such impediment;

(f) cooperate in good faith with the Consenting Lender and the Consenting Parent to structure and implement the Restructuring Transactions in a tax efficient manner, as provided in the Plan Term Sheet;

(g) if any Company Party receives an Alternative Restructuring Proposal, (i) promptly notify counsel to the Consenting Lender and counsel to the Consenting Parent of such Alternative Restructuring Proposal (in each case, no later than one (1) Business Day after the receipt of such Alternative Restructuring Proposal), (ii) provide the Consenting Lender and the Consenting Parent with a true and complete copy of the Alternative Restructuring Proposal no later than one (1) Business Day after the receipt of such Alternative Restructuring Proposal, and (iii) use its best efforts to promptly provide any diligence or access to the Company Parties' advisors and management reasonably requested by the Consenting Lender and the Consenting Parent with respect to the Alternative Restructuring Proposal;

(h) provide, and direct their employees, officers, advisors, and other representatives to provide, to the Consenting Lender and the Consenting Parent, (i) reasonable access to the

Company Parties' books and records during normal business hours on reasonable advance notice to the Company Parties' representatives, (ii) reasonable access to the management and advisors of the Company Parties on reasonable advance notice to such persons, and (iii) such other information as reasonably requested by the Consenting Lender and the Consenting Parent, in all cases, subject to the appropriate agreement on use and confidentiality; and

(i) timely file a formal objection, after consultation in good faith with the Consenting Lender, to any motion, application, or pleading filed with the Bankruptcy Court by a third party:

(i) seeking the appointment of a trustee or examiner (with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code);

(ii) seeking conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code;

(iii) seeking dismissal of the Chapter 11 Cases;

(iv) seeking appointment of an equity committee, whether pursuant to section 1102(a)(2) of the Bankruptcy Code or otherwise, in the Chapter 11 Cases;

(v) seeking modification or termination of the Company Parties' exclusive right to file and/or solicit acceptances of a plan of reorganization, as applicable;

(vi) seeking any relief that is inconsistent with this Agreement or any Definitive Document;

(vii) seeking any relief that would, or would be reasonably expected to, frustrate the purposes of this Agreement or any Definitive Document, including by preventing the consummation of the Restructuring Transactions; or

(viii) challenging the validity, enforceability, perfection, or priority of, or seeking avoidance, disallowance or subordination of, any portion of the Prepetition Secured Loan Claims or the DIP Facility Claims, or the liens securing such Claims, or the Equity Interests of the Consenting Parent.

6.02. Negative Commitments. Subject to Section 7 of this Agreement, during the Agreement Effective Period, each of the Company Parties shall not (except with the prior written consent of the Consenting Lender, and with respect to Section 6.02(g), the Consenting Parent) directly or indirectly:

(a) take any action or fail to take any action that would be materially inconsistent with this Agreement or the Definitive Documents or that would frustrate, interfere, delay, or impede with or that would be reasonably expected to frustrate, interfere, delay, or impede the Restructuring Transaction (including encouraging another Person to undertake any action prohibited by this Agreement);

(b) incur any liens or security interest, other than those existing immediately prior to the date hereof or otherwise permitted by the Interim DIP Order or Final DIP Order;

(c) modify (in whole or in part) the Plan or any document requiring the Consenting Lender's consent in a manner that is not consistent with this Agreement or the Plan Term Sheet in all respects;

(d) commence, support, or join any litigation or adversary proceedings against the Consenting Lender, the Consenting Parent or any of their Affiliates;

(e) except as contemplated by this Agreement, the Plan, or pursuant to the Restructuring Transactions, issue, sell, pledge, dispose of or encumber any additional shares of, or any options, warrants, conversion privileges or rights of any kind to acquire any shares of, any of its interests, including capital stock or limited liability company interests;

(f) except pursuant to the Sale Transaction, transfer any material asset or right of any Debtor to any Person outside the ordinary course of business;

(g) take any action that would cause a change in the U.S. federal income tax classification of any Debtor;

(h) object to, delay, impede, or take any other action to interfere with acceptance, implementation, or consummation of the Restructuring Transactions;

(i) engage in any merger, consolidation, material disposition, material acquisition, investment, dividend, incurrence of indebtedness, or other similar transaction outside of the ordinary course of business other than the Restructuring Transactions;

(j) enter into any material contract or agreement, or amend, waive, or terminate any material contract or agreement;

(k) enter into or amend any employee benefit, deferred compensation, incentive, retention, bonus, transition services, or other compensatory arrangements, policies, programs, practices, plans (including key employee incentive programs, key employee retention plans, or plans of similar nature), or agreements, including offer letters, employment agreements, consulting agreements, severance agreements, or change in control agreements with respect to the Company Parties' employees, except as disclosed to and consented to by the Consenting Lender and Consenting Parent prior to the date hereof;

(l) take any action that is inconsistent in any material respect with, or is intended to frustrate or impede approval, implementation, and consummation of the Restructuring Transactions described in, this Agreement or the Plan;

(m) seek, solicit, encourage, propose, file, support, consent to, or vote for any Alternative Restructuring Proposal; or

(n) file any motion, pleading, or Definitive Document with the Bankruptcy Court or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with the terms of this Agreement or the Plan.

Section 7. Additional Provisions Regarding Company Parties' Commitments.

7.01. Nothing in this Agreement shall require any Company Party or any directors, officers, managers, or members of any Company Party, each in its capacity as a director, officer, manager, or member of such Company Party, to take any action or to refrain from taking any action, to the extent inconsistent with its or their fiduciary duties under applicable Law (as determined by them after consultation with legal counsel); *provided, however*, that this Section 7.01 shall not impede any Party's right to terminate this Agreement pursuant to Section 11; *provided, further*, that the Company Parties shall give the Consenting Lender and the Consenting Parent notice of such determination, including any determination that that either Company Party will not support, pursue, or grant the releases set forth in the Plan Term Sheet, not later than two (2) Business Days following such determination (a "***Fiduciary Out Notice***") following such determination.

7.02. Notwithstanding anything to the contrary in this Agreement, each Company Party and its respective directors, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives shall have the right to: (a) consider, respond to, and facilitate unsolicited Alternative Restructuring Proposals that may be received by the Company Parties; (b) provide access to nonpublic information concerning any Company Party to any Entity or enter into confidentiality agreements or nondisclosure agreements with any Entity; *provided* that such agreements shall not impair the Company Parties' obligation to share information regarding any Alternative Restructuring Proposal with the Consenting Lender, including pursuant to Section 6.01(g); (c) maintain, or continue discussions or negotiations with respect to Alternative Restructurings; (d) otherwise cooperate with, assist, participate in, or facilitate any inquiries, proposals, discussions, or negotiation of unsolicited Alternative Restructuring Proposals that may be received by the Company Parties; and, (e) enter into or continue discussions or negotiations with any party in interest, or any other Entity regarding the Restructuring Transactions or Alternative Restructurings.

7.03. Nothing in this Agreement shall: (i) impair or waive the rights of any Company Party to assert or raise any objection permitted under this Agreement in connection with the Restructuring Transactions or (ii) prevent any Company Party from enforcing this Agreement, or any Definitive Document, or contesting whether any matter, fact, or thing is a breach of, or is materially inconsistent with, this Agreement, or any Definitive Document.

Section 8. Commitments of the Consenting Parent.

8.01. Affirmative Commitments. Subject to Section 8.03 of this Agreement, during the Agreement Effective Period, the Consenting Parent shall:

(a) act in good faith to support, approve, implement, reasonably cooperate with each of the Parties, and take all commercially reasonable actions reasonably necessary, or reasonably requested by any other Party to facilitate the implementation and consummation of the Restructuring Transactions in accordance with this Agreement and the Plan Term Sheet, including taking all steps reasonably necessary (and within its control) to consummate the Restructuring in accordance with this Agreement;

(b) vote and exercise any powers or rights available to it (including in any meeting or process requiring voting or approval in which it is legally entitled to participate) in favor of any matter requiring approval to the extent necessary to implement the Restructuring;

(c) cooperate in good faith with the Company Parties and the Consenting Lender to structure and implement the Restructuring Transactions in a tax efficient manner, as provided in the Plan Term Sheet;

(d) to the extent it is permitted to elect whether to opt in to the releases set forth in the Plan, elect to opt in to the releases set forth in the Plan;

8.02. Negative Commitments. Subject to Section 8.03 of this Agreement, during the Agreement Effective Period, the Consenting Parent hereby covenants and agrees that it shall not directly or indirectly:

(a) sell, transfer, or enter into any transaction in connection with its equity interests in FMH, except to an affiliate of the Consenting Parent who agrees to be bound by the terms of this Agreement;

(b) to the extent it is permitted to elect whether to opt out of the releases set forth in the Plan, elect to opt out of the releases set forth in the Plan;

(c) object to, delay, impede, or take any other action to interfere with the Restructuring Transactions, the Chapter 11 Cases, Confirmation, implementation of the Plan or approval of any Definitive Document;

(d) take any action that is inconsistent in any material respect with, or is intended to frustrate or impede approval, implementation, and consummation of the Restructuring described in this Agreement or the Plan Term Sheet.

8.03. Additional Provisions Regarding the Consenting Parent's Commitments. Notwithstanding anything contained in this Agreement, nothing in this Agreement shall:

(a) be construed to prohibit or limit the rights of the Consenting Parent in the Chapter 11 Cases, including the right to appear as a party in interest in any matter to be adjudicated in the Chapter 11 Cases, so long as, from the Agreement Effective Date until the occurrence of a Termination Date, such appearance and the positions advocated in connection therewith are not inconsistent with this Agreement, are not prohibited by this Agreement, and are not for the purpose of hindering, delaying, or preventing the consummation of the Restructuring;

(b) prevent the Consenting Parent from enforcing this Agreement, or any Definitive Document, or contesting whether any matter, fact, or thing is a breach of, or is materially inconsistent with, this Agreement, or any Definitive Document;

(c) except as otherwise provided in this Agreement, be construed to limit the Consenting Parent's rights, directly or indirectly, with respect to any claim or equity interest in FMH;

(d) affect the rights of the Consenting Parent to consult with the Company Parties, their affiliates, the Consenting Lender or any other party in interest in the Chapter 11 Cases (including, but not limited to, any committee appointed in the Chapter 11 Cases, if applicable, or the United States Trustee for the District of Delaware);

(e) prevent the Consenting Parent from taking any action which is required by applicable Law (as determined by the Consenting Parent in good faith after consultation with legal counsel); *provided* that, if the Consenting Parent proposes to take any action that is otherwise materially inconsistent with this Agreement in order to comply with applicable Law, the Consenting Parent shall, to the extent permitted by applicable Law and to the extent reasonably practicable, provide at least three (3) Business Days' advance written notice to the Company Parties and the Consenting Lender prior to taking any such action;

(f) require the Consenting Parent to take any action which is prohibited by applicable Law or to waive or forego the benefit of any applicable legal professional privilege (as determined by them in good faith after consultation with legal counsel);

(g) be construed to prevent the Consenting Parent from exercising any consent rights provided with respect to the Consenting Parent or its rights or remedies specifically reserved herein or in the Definitive Documents; or

(h) require the Consenting Parent, other than (i) as expressly set forth and agreed to in this Agreement or any other Definitive Document (including with respect to the Anglo Funding Amount) or (ii) costs and expenses that a Company Party has agreed to reimburse on terms satisfactory to such Consenting Parent, to (x) incur, assume, become liable in respect of or suffer to exist any expenses, liabilities, or other obligations, (y) agree to or become bound by any commitments, undertakings, concessions, indemnities, or other arrangements that could result in expenses, liabilities, or other obligations to the Consenting Parent.

Section 9. Representations and Warranties of Consenting Lender. The Consenting Lender represents and warrants that, as of the date it executes and delivers this Agreement:

(a) it is the legal and beneficial owner of the Prepetition Secured Loan Claims free and clear of any and all claims, liens, and encumbrances; and

(b) it has the power and authority to act on behalf of, vote and consent to matters concerning the Prepetition Secured Loan Claims in respect to matters relating to the Restructuring Transactions contemplated by this Agreement and dispose of, convert, assign, and transfer such claims.

Section 10. Mutual Representations, Warranties, and Covenants. Each of the Parties represents, warrants, and covenants to each other Party, as of the date such Party executed and delivers this Agreement, that:

(a) it is validly existing and in good standing (or equivalent) under the Laws of the jurisdiction of its organization, and this Agreement is a legal, valid, and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited

by applicable Laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;

(b) it has all requisite corporate, partnership, limited liability company, or similar authority to execute this Agreement and carry out the transactions contemplated hereby and perform its obligations contemplated hereunder, and the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized by all necessary corporate, partnership, limited liability company, or other similar action on its part;

(c) the execution, delivery, and performance by such Party of this Agreement and each of the Definitive Documents to which such Party is a party or will be a party following the execution and delivery thereof, does not and shall not (i) violate (a) any provision of Law, rule, or regulation applicable to it or (b) its charter or bylaws (or other similar governing documents), or (ii) to the knowledge of such Party, conflict with, result in a breach of, or constitute a default under (with or without notice or lapse of time or both) any contractual obligation to which it is a party or it or its assets are bound, in each case, other than any such violation, conflict, breach, or default with respect to which a waiver has been obtained prior to the Agreement Effective Date and which waiver has not been subsequently revoked; and

(d) the execution and delivery by a Party of this Agreement does not require any authorization of, filing with, registration of or before, consent from, approval of, or other action by or notice to any federal, state, or other governmental authority or regulatory body, in each case, other than any such authorization, filing, registration, consent, approval, action, or notice which has been obtained, provided, or otherwise satisfied prior to the Agreement Effective Date and which authorization, filing, registration, consent, approval, action, or notice has not been subsequently revoked (excluding, as to performance, applicable approval of the Bankruptcy Court);

(e) it has been represented by legal counsel of its choosing in connection with this Agreement and the transactions contemplated by this Agreement, has had the opportunity to review this Agreement with its legal counsel, and has not relied on any statements made by any other Party or its legal counsel as to the meaning of any term or condition contained herein or in deciding whether to enter into this Agreement or the transactions contemplated hereby.

Section 11. Termination Events.

11.01. Consenting Lender Termination Events. This Agreement may be terminated as to all Parties by the Consenting Lender by the delivery to the Company Parties and the Consenting Parent of a written notice in accordance with Section 13.10 hereof upon the occurrence and continuation of any of the following events:

(a) the Company's failure to meet any of the Milestones (unless such Milestone has been waived or extended in a manner consistent with this Agreement); *provided* that, if the failure to achieve such Milestone is caused by, or results from, the breach by the Consenting Lender of its covenants, agreements, or other obligations under this Agreement, the Consenting Lender may not assert the right to terminate this Agreement under, this Section 11.01(a);

(b) the occurrence of the Termination Date under the DIP Facility;

(c) the occurrence of a default or an Event of Default, or any event that would allow the Consenting Lender to terminate consensual use of cash collateral, under the DIP Credit Agreement or the Interim DIP Order or the Final DIP Order, as applicable, that has not been waived or timely cured in accordance therewith;

(d) a material breach by the Company Parties of their undertakings, representations, warranties, or covenants set forth in this Agreement, which breach or failure to act remains uncured for a period of five (5) Business Days after the Consenting Lender transmits a written notice describing any such breach or failure;

(e) the entry of a judgment or order by any court of competent jurisdiction declaring this Agreement to be unenforceable;

(f) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions and (ii) remains in effect for ten (10) Business Days after the Consenting Lender transmits a written notice in accordance with Section 13.10 describing any such issuance; *provided* that if the Consenting Lender sought or requested such ruling or order in contravention of any obligation set out in this Agreement, it may not assert the right to terminate this Agreement under, this Section 11.01(f);

(g) the Bankruptcy Court enters an order denying Confirmation of the Plan and the Milestone for Confirmation of the Plan has lapsed;

(h) the entry of an order by the Bankruptcy Court, or the filing of a motion or application by any Company Party seeking an order (without the prior written consent of the Consenting Lender), (i) converting one or more of the Chapter 11 Cases of a Company Party to a case under chapter 7 of the Bankruptcy Code, (ii) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in one or more of the Chapter 11 Cases of a Company Party, or (iii) rejecting this Agreement;

(i) the making public, modification, amendment, or filing of any of the Definitive Documents by any Company Party that is not in form and substance consistent with this Agreement (including the releases set forth in the Plan Term Sheet) or contains terms or conditions that have not received the consent of the Consenting Lender as provided for in Section 3.03, or publicly announces its intention (including by filing a motion seeking authority to) to take any such action;

(j) entry of an order that grants relief terminating, annulling, or materially modifying the automatic stay (as set forth in section 362 of the Bankruptcy Code) with regard to any material asset that, to the extent such relief were granted, would have an adverse effect on the ability to consummate the Restructuring Transaction;

(k) any Company Party files a motion, application, or adversary proceeding (or any Company Party supports any such motion, application, or adversary proceeding filed or commenced by any third party) challenging the validity, enforceability, perfection, or priority of, or seeking avoidance or subordination of, any portion of the Prepetition Secured Loan Claims or asserting any other cause of action against the Consenting Lender or with respect or relating to the

Prepetition Secured Loan Claims, the Facility Agreement or any Financing Document (as such term is defined in the Facility Agreement) or the prepetition liens securing the Prepetition Secured Loan Claims;

(l) any Company Party loses the exclusive right to file a plan or plans of reorganization or to solicit acceptances thereof pursuant to section 1121 of the Bankruptcy Code;

(m) the Company Parties amend or withdraw the Plan, the Disclosure Statement, or the Definitive Documents without the consent of the Consenting Lender and in a manner that is not permitted by this Agreement, or enter into any amendments, modifications, exhibits, or supplements thereto without the consent of the Consenting Lender and in a manner that is not permitted by this Agreement;

(n) any Company Party (i) provides a Fiduciary Out Notice to the Consenting Lender or (ii) publicly announces, or executes a definitive agreement with respect to, an Alternative Restructuring;

(o) any former member of the board of the FM Wind Down Entities that was appointed by the Consenting Lender or its Affiliates (other than the FM Wind Down Entities) or any employees of the Consenting Lender or its Affiliates (other than employees who are solely employed by the FM Wind Down Entities) is subjected to a deposition by any of the Company Parties, any shareholder of the Company Parties, or any committee appointed in the Chapter 11 Cases or is subject to request for document production that is not quashed, other than any informal interviews and documents that have been reasonably requested in connection with the ongoing investigation by the Restructuring Committee of FMH's board of directors;

(p) the occurrence of any material breach by any of the FM Wind Down Entities of the Wind Down Agreement, which breach or failure to act remains uncured for a period of five (5) Business Days after the Consenting Lender transmits a written notice describing any such breach or failure;

(q) either of the Company Parties or the Restructuring Committee of FMH's board of directors determines, as a result of the ongoing investigation by the Restructuring Committee of FMH's board of directors or otherwise, to not support, not pursue, or not grant the releases set forth in the Plan Term Sheet; or

(r) the termination of the Wind Down Agreement.

11.02. Company Party Termination Events. Any Company Party may terminate this Agreement as to all Parties, in each case, upon prior written notice to all Parties in accordance with Section 13.10 upon the occurrence and continuation of any of the following events:

(a) the breach in any material respect by the Consenting Lender of any provision set forth in this Agreement (including without limitation any breach with respect to the DIP Facility or the Anglo Funding Amount) that remains uncured for a period of five (5) Business Days after the receipt by the Consenting Lender of notice of such breach;

(b) the board of directors, board of managers, or such similar governing body of any Company Party determines, after consulting with counsel, (i) that proceeding with any of the Restructuring Transactions would be inconsistent with the exercise of its fiduciary duties or applicable Law, or (ii) to pursue an Alternative Restructuring Proposal in accordance with its fiduciary duties;

(c) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions and (ii) remains in effect for ten (10) Business Days after such terminating Company Party transmits a written notice in accordance with Section 13.10 hereof detailing any such issuance; *provided* that this termination right shall not apply to or be exercised by any Company Party that sought or requested such ruling or order in contravention of any obligation or restriction set out in this Agreement; or

(d) the Consenting Lender files any motion or pleading with the Bankruptcy Court that is inconsistent in any material respect with this Agreement and such motion or pleading has not been withdrawn within five (5) Business Days of receipt by the Consenting Lender of written notice from the Company Parties that such motion or pleading is inconsistent with this Agreement.

11.03. Consenting Parent Termination Events. The Consenting Parent may terminate this Agreement as to all Parties, in each case, upon prior written notice to all Parties in accordance with Section 13.10 upon the occurrence and continuation of any of the following events:

(a) a breach by the Company Parties or by the Consenting Lender of their undertakings, representations, warranties, or any of the covenants or other obligations or agreements of the Company Parties or the Consenting Lender set forth in this Agreement in a manner that materially and adversely affects the treatment of the Consenting Parent under this Agreement or any Definitive Document, including with respect to the releases applicable to the Consenting Parent, and such breach remains uncured (if susceptible to cure) for a period of five (5) Business Days after the Consenting Parent transmits a written notice to the Company Parties and the Consenting Lender in accordance with Section 13.10 detailing any such breach or failure;

(b) the making public, modification, amendment, or filing of any of the Definitive Documents by any Company Party that is not in form and substance consistent with this Agreement (including the releases set forth in the Plan Term Sheet) or contains terms or conditions that have not received the consent of the Consenting Parent as provided for in Section 3.03 (i) in a manner that is materially adverse to the Consenting Parent and (ii) that remains uncured for three (3) Business Days after the Consenting Parent transmits a written notice describing any such event, or publicly announces its intention (including by filing a motion seeking authority to) to take any such action;

(c) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions and (ii) remains in effect for ten (10) Business Days after the Consenting Parent transmits a written notice in accordance with Section 13.10 describing any such issuance; *provided* that, if the Consenting Parent sought or

requested such ruling or order in contravention of any obligation set out in this Agreement, it may not assert the right to terminate this Agreement under this Section 11.03(b);

(d) any former member of the board of the FM Wind Down Entities that was appointed by the Consenting Parent or its Affiliates (other than the FM Wind Down Entities) or any employees of the Consenting Parent or its Affiliates (other than employees who are solely employed by the FM Wind Down Entities) is subjected to a deposition by any of the Company Parties, any shareholder of the Company Parties, or any committee appointed in the Chapter 11 Cases or is subject to request for document production that is not quashed, other than any informal interviews and documents that have been reasonably requested in connection with the ongoing investigation by the Restructuring Committee of FMH's board of directors;

(e) either of the Company Parties or the Restructuring Committee of FMH's board of directors determines, as a result of the ongoing investigation by the Restructuring Committee of FMH's board of directors or otherwise, to not support, not pursue, or not grant the releases set forth in the Plan Term Sheet; or

(f) the entry of an order by the Bankruptcy Court, or the filing of a motion or application by any Company Party seeking an order (without the prior written consent of the Consenting Parent), (i) converting one or more of the Chapter 11 Cases of a Company Party to a case under chapter 7 of the Bankruptcy Code, (ii) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in one or more of the Chapter 11 Cases of a Company Party, or (iii) rejecting this Agreement.

11.04. Mutual Termination. This Agreement, and the obligations of all Parties hereunder, may be terminated by mutual written agreement among all of the following: (a) the Consenting Lender; (b) each Company Party; and (c) the Consenting Parent.

11.05. Automatic Termination. This Agreement shall terminate as to all Parties automatically without any further required action or notice immediately after the effective date of the Plan.

11.06. Effect of Termination. Upon the occurrence of a Termination Date as to a Party, this Agreement shall be of no further force and effect as to such Party and each Party subject to such termination shall be released from its commitments, undertakings, and agreements under or related to this Agreement, except in each case as provided in Sections 11.07 and 13.17, and shall have the rights and remedies that it would have had, had it not entered into this Agreement, and shall be entitled to take all actions, whether with respect to the Restructuring Transactions or otherwise, that it would have been entitled to take had it not entered into this Agreement, including with respect to any and all claims or Causes of Action, except as set forth in Sections 11.07 hereof; *provided* that in no event will any such termination relieve a Party from liability for its breach or non-performance of its obligations hereunder before the date of such termination.

11.07. No purported termination of this Agreement shall be effective if the Party seeking to terminate this Agreement is in material breach of this Agreement. For the avoidance of doubt, the automatic stay arising pursuant to section 362 of the Bankruptcy Code shall be deemed waived or modified for purposes of providing notice or exercising rights hereunder.

Section 12. Amendments and Waivers.

(a) This Agreement may not be modified, amended, or supplemented, and no condition or requirement of this Agreement may be waived, in any manner except in accordance with this Section 12.

(b) This Agreement may be modified, amended, amended and restated, or supplemented, or a condition or requirement of this Agreement may be waived, in a writing signed by (i) each Company Party, (ii) the Consenting Lender, and (iii) the Consenting Parent.

(c) Any amendment or modification of any condition, term or provision to this Agreement must be in writing. Any amendment or modification made in compliance with this Section 12 shall be binding on all of the Parties, regardless of whether a particular Party has executed or consented to such amendment or modification. Any proposed modification, amendment, waiver, or supplement that does not comply with this Section 12 shall be ineffective and void *ab initio*.

(d) The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power, or remedy under this Agreement shall operate as a waiver of any such right, power, or remedy or any provision of this Agreement, nor shall any single or partial exercise of such right, power, or remedy by such Party preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power, or remedy. All remedies under this Agreement are cumulative and are not exclusive of any other remedies provided by Law.

Section 13. Miscellaneous.

13.01. Acknowledgement. Notwithstanding any other provision herein, this Agreement is not and shall not be deemed to be an offer with respect to any securities or solicitation of votes for the acceptance of a plan of reorganization for purposes of sections 1125 and 1126 of the Bankruptcy Code or otherwise. Any such offer or solicitation will be made only in compliance with all applicable securities Laws, provisions of the Bankruptcy Code, and/or other applicable Law.

13.02. Exhibits Incorporated by Reference; Conflicts. Each of the exhibits attached hereto is expressly incorporated herein and made a part of this Agreement, and all references to this Agreement shall include such exhibits. In the event of any inconsistency between this Agreement (without reference to the exhibits hereto) and the exhibits hereto, the exhibits shall govern.

13.03. Further Assurances. The Parties shall cooperate with each other in good faith and shall coordinate their activities (to the extent practicable) in respect of all matters concerning the implementation and Consummation of the Restructuring. Further, each of the Parties shall take such action (including executing and delivering any other agreements and making and filing any required regulatory filings) as may be reasonably necessary or as may be required by order of the Bankruptcy Court, to carry out the purposes and intent of this Agreement. Each of the Parties hereby covenants and agrees (a) to negotiate in good faith and in a timely manner (giving effect to

the Milestones) the Definitive Documents and (b) subject to the satisfaction of the terms and conditions set forth herein, to execute, as applicable, the Definitive Documents.

13.04. Complete Agreement. Except as otherwise explicitly provided herein, this Agreement, and the attached exhibits, constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, among the Parties with respect thereto, other than any confidentiality agreement.

13.05. GOVERNING LAW; SUBMISSION TO JURISDICTION; SELECTION OF FORUM. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. BY ITS EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ANY LEGAL ACTION, SUIT, OR PROCEEDING AGAINST IT WITH RESPECT TO ANY MATTER UNDER OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT RENDERED IN ANY SUCH ACTION, SUIT, OR PROCEEDING, MAY BE BROUGHT IN ANY FEDERAL OR STATE COURT IN NEW YORK, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE PARTIES HEREBY IRREVOCABLY ACCEPTS AND SUBMITS ITSELF TO THE NONEXCLUSIVE JURISDICTION OF EACH SUCH COURT, GENERALLY AND UNCONDITIONALLY, WITH RESPECT TO ANY SUCH ACTION, SUIT, OR PROCEEDING. NOTWITHSTANDING THE FOREGOING, DURING THE PENDENCY OF THE CHAPTER 11 CASES, ALL PROCEEDINGS CONTEMPLATED BY THIS SECTION 13.05 SHALL BE BROUGHT IN THE BANKRUPTCY COURT.

13.06. TRIAL BY JURY WAIVER. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

13.07. Execution of Agreement. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Each individual executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

13.08. Rules of Construction. This Agreement is the product of negotiations among the Company Parties and the Consenting Lender, and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof. The Company Parties and the Consenting Lender were each represented by counsel during the negotiations and drafting of this Agreement and continue to be represented by counsel.

13.09. Successors and Assigns; Third Parties. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors and permitted assigns, as applicable. There are no third-party beneficiaries under this Agreement, and the rights or obligations of any Party under this Agreement may not be assigned, delegated, or transferred to any other person or entity.

13.10. Notices. All notices hereunder shall be deemed given if in writing and delivered, by electronic mail, courier, or registered or certified mail (return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice):

- (a) if to a Company Party, to:

First Mode Holdings, Inc.
3417 1st Ave S
Seattle, WA, 98134
Attention: Head of Legal
E-mail address: will.smith@firstmode.com

with copies to:

Latham & Watkins LLP
330 North Wabash Avenue, Suite 2800
Chicago, IL 60611
Attention: Caroline A. Reckler
E-mail address: caroline.reckler@lw.com

- and -

Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Attention: Annemarie V. Reilly
E-mail address: annemarie.reilly@lw.com

- and -

Latham & Watkins LLP
355 South Grand Avenue, Suite 100
Los Angeles, CA 90071
Attention: Jeffrey T. Mispagel
E-mail address: jeffrey.mispagel@lw.com

- (b) if to the Consenting Lender, to:

Anglo American International Holdings Limited
17 Charterhouse Street
London, EC1N 6RA

Attention: The Company Secretary
E-mail address: cosec.admin@angloamerican.com

with copies to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
Attention: Darren S. Klein and Aryeh Ethan Falk
Email address: darren.klein@davispolk.com and
aryeh.falk@davispolk.com

(c) if to the Consenting Parent, to:

Anglo American Technical & Sustainability Limited
17 Charterhouse Street
London, EC1N 6RA
Attention: The Company Secretary
E-mail address: cosec.admin@angloamerican.com

with copies to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
Attention: Darren S. Klein and Aryeh Ethan Falk
Email address: darren.klein@davispolk.com and
aryeh.falk@davispolk.com

Any notice given by delivery, mail, or courier shall be effective when received.

13.11. Enforceability of Agreement. Each of the Parties to the extent enforceable waives any right to assert that the exercise of termination rights under this Agreement is subject to the automatic stay provisions of the Bankruptcy Code, and expressly stipulates and consents hereunder to the prospective modification of the automatic stay provisions of the Bankruptcy Code for purposes of exercising termination rights under this Agreement, to the extent the Bankruptcy Court determines that such relief is required.

13.12. Waiver. This Agreement is part of a proposed settlement of matters that could otherwise be the subject of litigation among the Parties. If the Restructuring Transactions are not consummated, or if this Agreement is terminated for any reason, the Parties fully reserve any and all of their rights. Pursuant to Federal Rule of Evidence 408 and any other applicable rules of evidence, this Agreement and all negotiations relating hereto shall not be admissible into evidence in any proceeding other than a proceeding to enforce its terms or the payment of damages to which a Party may be entitled under this Agreement.

13.13. Specific Performance. All remedies that are available at Law or in equity, including specific performance and injunctive or other equitable relief, to any Party for a breach of this Agreement by another Party shall be available to the non-breaching Party (and for the avoidance of doubt, it is agreed by the other Parties that money damages would not be a sufficient remedy for any breach of this Agreement by any Party and each non-breaching Party will be entitled to specific performance and injunctive or other equitable relief as a remedy of any such breach); *provided* that in connection with any remedy for specific performance, injunctive, or other equitable relief asserted in connection with this Agreement, each Party agrees to waive the requirement for the securing or posting of a bond in connection with any remedy and to waive the necessity of proving the inadequacy of money damages.

13.14. Several, Not Joint, Claims. Unless otherwise specified, the agreements, representations, warranties, and obligations of the Parties under this Agreement are, in all respects, several and not joint.

13.15. Severability and Construction. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect if essential terms and conditions of this Agreement for each Party remain valid, binding, and enforceable.

13.16. Remedies Cumulative. All rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at Law or in equity shall be cumulative and not alternative, and the exercise of any right, power, or remedy thereof by any Party shall not preclude the simultaneous or later exercise of any other such right, power, or remedy by such Party.

13.17. Survival. Notwithstanding the termination of this Agreement in accordance with its terms, the agreements and obligations of the Parties in Section 11.06 and this Section 13, shall survive such termination and shall continue in full force and effect for the benefit of the Parties in accordance with the terms hereof and thereof.

13.18. Email Consents. Where a written consent, acceptance, approval, or waiver is required pursuant to or contemplated by this Agreement, including a written approval by the Company Parties, the Consenting Lender, or the Consenting Parent, such written consent, acceptance, approval, or waiver shall be deemed to have occurred if, by agreement between counsel to the Parties submitting and receiving such consent, acceptance, approval, or waiver, it is conveyed in writing (including electronic mail) between each such counsel without representations or warranties of any kind on behalf of such counsel.

13.19. Reservation of Rights. Except as expressly provided in this Agreement, nothing herein is intended to, or does, in any manner waive, limit, impair, or restrict (a) the ability of any Party to protect and preserve its rights, remedies, and interests, including the Prepetition Secured Loan Claims and any other claims or interests against the Company Parties or other parties, or its full participation in the Chapter 11 Cases or any other proceeding, including the rights of a Party under any applicable bankruptcy, insolvency, foreclosure, or similar proceeding, in each case, so long as the exercise of any such right does not breach such Party's obligations hereunder; (b) subject to the terms hereof and the Plan Term Sheet, any right of any Party (i) under the Facility Agreement Documents, or (ii) under any other applicable agreement, instrument, or document that

gives rise to the Consenting Lender's and Consenting Parent's claims and interests; (c) the ability of the Consenting Lender and Consenting Parent to consult with its advisors (including counsel to the Consenting Lender and counsel to the Consenting Parent) or the Company Parties; (d) the ability of a Company Party to consult with its advisors, the Consenting Lender, or other Company Parties; (e) the ability of a Party to enforce any right, remedy, condition, consent, or approval requirement under this Agreement or any of the Definitive Documents; or (f) in each case, the Company Parties' right to contest any and all such actions or assert that such actions in fact breach this Agreement. Without limiting the foregoing sentence in any way, after the termination of this Agreement pursuant to Section 11, the Parties fully reserve any and all of their respective rights, remedies, claims, and interests, subject to Section 11, in the case of any claim for breach of this Agreement. Further, nothing in this Agreement shall be construed to prohibit any Party from appearing as a party in interest in any matter to be adjudicated in the Chapter 11 Cases, so long as such appearance and the positions advocated in connection therewith are consistent with this Agreement and the Definitive Documents.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

**Company Parties' Signature Page to
the Restructuring Support Agreement**

FIRST MODE HOLDINGS, INC.

By:  _____
Name: Julian Soles
Title: Chief Executive Officer

SYNCHRONOUS LLC

By:  _____
Name: Julian Soles
Title: Authorized Signatory

**Consenting Lender Signature Page to
the Restructuring Support Agreement**

ANGLO AMERICAN INTERNATIONAL HOLDINGS LIMITED

By: 
Name: Sarahan Zariffis
Title: Director

**Consenting Parent Signature Page to
the Restructuring Support Agreement**

ANGLO AMERICAN TECHNICAL & SUSTAINABILITY LIMITED

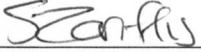
By: 
Name: Sarahan Zariffis
Title: Director

EXHIBIT A

Plan Term Sheet

FIRST MODE HOLDINGS, INC.
PLAN TERM SHEET

THIS PLAN TERM SHEET (THIS “**PLAN TERM SHEET**”) DOES NOT CONSTITUTE (NOR SHALL IT BE CONSTRUED AS) AN OFFER WITH RESPECT TO ANY SECURITIES OR A SOLICITATION OF ACCEPTANCES OR REJECTIONS AS TO ANY PLAN OF REORGANIZATION OR LIQUIDATION, IT BEING UNDERSTOOD THAT SUCH AN OFFER, IF ANY, ONLY SHALL BE MADE IN COMPLIANCE WITH APPLICABLE PROVISIONS OF SECURITIES, BANKRUPTCY, AND OTHER APPLICABLE LAWS.

THIS PLAN TERM SHEET DOES NOT PURPORT TO SUMMARIZE ALL OF THE TERMS, CONDITIONS, REPRESENTATIONS, WARRANTIES, AND OTHER PROVISIONS WITH RESPECT TO THE TRANSACTIONS DESCRIBED HEREIN, WHICH TRANSACTIONS SHALL BE SUBJECT TO THE COMPLETION OF DEFINITIVE DOCUMENTS IN ACCORDANCE WITH THE RSA AND THE TERMS SET FORTH HEREIN. THE CLOSING OF ANY TRANSACTION SHALL BE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SUCH DEFINITIVE DOCUMENTS, WHICH REMAIN SUBJECT TO NEGOTIATION.

Capitalized terms used but not defined in this Plan Term Sheet have the meanings ascribed to them in the Restructuring Support Agreement to which this Plan Term Sheet is attached as Exhibit A (the “**RSA**”).

<u>OVERVIEW</u>	
Company Entities	First Mode Holdings, Inc. (“ <u>FMH</u> ”) and Synchronous LLC (collectively, “ <u>Company Entities</u> ” or “ <u>Debtors</u> ”).
Existing Facility Agreement Indebtedness	The Company Entities’ existing funded indebtedness consists of secured obligations to Anglo American International Holdings Limited (the “ <u>Prepetition Secured Lender</u> ,” and together with its affiliates, “ <u>Anglo</u> ”) pursuant to that certain Facility Agreement, dated as of December 21, 2023 (as amended by that certain Amendment No. 1, dated March 11, 2024, that certain Amendment No. 2, dated April 12, 2024, and that certain Amendment No. 3, dated December 9, 2024, and as further amended, modified or supplemented from time to time in accordance with its terms, together with all exhibits thereto, the “ <u>Facility Agreement</u> ”), consisting of not less than US\$69,749,000 in principal amount of indebtedness, plus accrued interest, fees, expenses and other charges thereon and any other obligations owing to the Lender under the Facility Agreement (such obligations, the “ <u>Prepetition Loans</u> ”). The Company Parties have granted liens on substantially all of their assets to secure such guarantee obligations.
Implementation	The transactions contemplated by the RSA and this Plan Term Sheet (the “<u>Restructuring Transactions</u>”) shall be implemented through the commencement of voluntary chapter 11 cases of the Company Entities (the “<u>Chapter 11 Cases</u>” and the date on which the Chapter 11 Cases are commenced, the “<u>Petition Date</u>”) pursuant to chapter 11 of title 11 of the United States Code §101 et seq. (the “<u>Bankruptcy Code</u>”) in the United States Bankruptcy Court for the District of Delaware (the “<u>Bankruptcy Court</u>”). The Restructuring Transactions shall include: i. the funding of the DIP Facility on the terms set forth in the DIP Credit Agreement attached to the RSA as Exhibit B (the “<u>DIP Credit Agreement</u>”), by the Prepetition Secured Lender or a designated

	affiliate (in such capacity, the “DIP Lender”); ii. a sale of all or substantially all of the assets of the Company Entities (and certain of their non-debtor subsidiaries) pursuant to section 363 or 1123 of the Bankruptcy Code to either Cummins, Inc. (or an affiliate thereof), as stalking horse bidder, or to such other purchaser that is the successful bidder pursuant to the Bidding Procedures (the “Sale Transaction”), to be implemented through the Chapter 11 Cases, as provided in this Plan Term Sheet and the RSA; and iii. a chapter 11 plan (the “Plan”) to be confirmed by an order of the Bankruptcy Court (the “Confirmation Order”) that contemplates a contribution of the Anglo Funding Amount, in the aggregate, by the Prepetition Secured Lender to fund distributions under the Plan. The Sale Transaction will be subject to the Bidding Procedures (as defined below). The Sale Transaction and Chapter 11 Cases shall occur in accordance with the milestones set forth on <u>Exhibit 1</u> attached hereto (the “Milestones”).
Consent Rights	Notwithstanding anything else set forth herein, the form and substance of the Definitive Documents (defined below) shall be acceptable to the Company Parties and to the Prepetition Secured Lender. The Definitive Documents shall include, without limitation, all of the following: (i) the Plan (including any exhibits or supplement(s) filed with respect thereto), (ii) the Disclosure Statement (including any exhibits thereto), (iii) the RSA (including any exhibits thereto), (iv) the Confirmation Order, (v) any motion or other pleadings related to the Plan and Disclosure Statement, (vi) the order of the Bankruptcy Court approving the Disclosure Statement and solicitation materials, (vii) the DIP Credit Agreement (including any amendments, modifications, or supplements thereto) and DIP Documents, (viii) any motions (the “DIP Motion”) and related declarations filed with the Bankruptcy Court seeking approval of the DIP Credit Agreement, (ix) the interim and final DIP orders (as applicable, the “Interim DIP Order” and the “Final DIP Order”), (x) any motion seeking approval of the Bidding Procedures, (xi) the Bidding Procedures, (xii) any order approving the Bidding Procedures, (xiii) the Wind-Down Budget, (xiv) the order approving the Sale Transaction (the “Sale Order”) and any purchase agreement approved thereby, (xv) the Plan Administration Agreement, and (xvi) the Asset Purchase Agreement.
Sale Transaction	The Sale Transaction shall be consummated pursuant to sections 363 and/or 1123 of the Bankruptcy Code to one or more third party buyers.
Bidding Procedures	The assets of the Company Entities will be marketed pursuant to bidding procedures approved by the Bankruptcy Court (the “Bidding Procedures”), which shall permit bids to acquire all or substantially all of the assets of the Company Entities. In the event that more than one qualified bid is obtained, the Debtors shall conduct an auction to determine the highest or otherwise best bid for the Company Entities’ assets. The Company Entities shall file a motion in accordance with the Milestones seeking approval of the Bidding Procedures and approval of the stalking horse protections granted to Cummins, Inc. and/or its affiliate pursuant to that certain

	Asset Purchase Agreement, dated December 15, 2024, by and among Cummins Inc., the Company Parties, First Mode IPP Ltd., First Mode Pty Ltd., First Mode SA Pty, and First Mode SA Holdings (the “ <u>Asset Purchase Agreement</u> ”).
DIP Facility	The Chapter 11 Cases (and the Sale Transaction) shall be financed by a postpetition debtor-in-possession facility (the “ <u>DIP Facility</u> ”), on terms and conditions set forth in the DIP Credit Agreement.
Anglo Plan Funding, Subordination and Settlement	Subject to entry of the Confirmation Order and satisfaction or waiver of each of the conditions precedent to the occurrence of the Effective Date, Anglo shall, provide \$28,870,592 (the “<u>Anglo Funding Amount</u>”) to the Debtors to fund distributions to holders of Allowed claims under the Plan and the wind down of the Debtors (the “<u>Anglo Plan Funding</u>”); <i>provided</i> that the Anglo Funding Amount shall be reduced dollar-for-dollar by (i) payment of any prepetition claim during the Chapter 11 Cases, except to the extent such payment is paid or otherwise reimbursed (including by means of a purchase price adjustment) by the Successful Bidder, and (ii) the amount, if any, by which (x) the actual amount of Allowed Professional Fee Claims of professionals retained by any statutory committee appointed in the Chapter 11 Cases exceeds (y) the amount of such professional fees set forth in the Initial Budget (as defined in the DIP Credit Agreement) that is an Approved Budget (as defined in the DIP Credit Agreement). The Debtors shall grant the releases to Anglo provided herein. Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for, and as a requirement to receive, the distributions and other benefits provided pursuant to the Plan, including the Anglo Plan Funding, the provisions of the Plan shall constitute a good faith global and integrated compromise and settlement (the “<u>Plan Settlement</u>”) of all actual and potential disputes between and among the Company Entities and Anglo, including without limitation, any and all issues relating to (1) the incurrence of the obligations under the Facility Agreement, (2) the umbrella supply agreement between Anglo American Services (UK) Limited and FMH dated 5 January 2023 (the “<u>Umbrella Supply Agreement</u>”) and the termination thereof, (3) the HEV Purchase Order between Anglo American Services (UK) Limited and FMH dated 1 December 2023 (the “<u>HEV Purchase Order</u>”) and the termination thereof, and (4) the Relationship Agreement. The entry of the Confirmation Order shall constitute the Bankruptcy Court’s approval of the Plan Settlement as well as a finding by the Bankruptcy Court that the Plan Settlement is in the best interests of the Debtors, their estates, and holders of claims and interests and is fair, equitable, and reasonable. The Plan Settlement shall be binding upon all creditors and all other parties in interest pursuant to section 1141(a) of the Bankruptcy Code.
<u>CLAIMS AND INTERESTS</u>	
Administrative Claims	Claims incurred for a cost or expense of administration of the Chapter 11 Cases entitled to priority under sections 503(b), 507(b), or 1142(e)(2) of the Bankruptcy Code (the “ <u>Administrative Claims</u> ”), including Professional Fee Claims (as defined below).
Professional Fee	Claim for professional services, including legal, financial, advisory, accounting, and other services, rendered or costs incurred on or after the Petition Date

Claims	through the effective date of the Plan (the “ Effective Date ”) by professional persons retained by the Debtors or any statutory committee under sections 328, 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code (the “ Professional Fee Claims ”).
DIP Facility Claims	Claims arising and payable under the DIP Facility (the “ DIP Facility Claims ”).
Priority Tax Claims	Claims of governmental units entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (the “ Priority Tax Claims ”).
Other Priority Claims	Any Claim other than an Administrative Claim, DIP Facility Claim, or Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code (the “ Other Priority Claims ”).
Other Secured Claims	Secured claims, other than the Prepetition Secured Loan Claims and DIP Facility Claims (the “ Other Secured Claims ”).
Prepetition Secured Loan Claims	Claims consisting of the aggregate outstanding principal amount of and unpaid interest on the Prepetition Secured Loans, and all unpaid fees and other expenses and obligations arising and payable pursuant to the Facility Agreement (the “ Prepetition Secured Loan Claims ”).
General Unsecured Claims	Claims consisting of any prepetition claim against the Company Entities that is not an Administrative Claim, a DIP Facility Claim, a Professional Fee Claim, a Priority Tax Claim, an Other Priority Claim, an Other Secured Claim, a Prepetition Secured Loan Claim, or an Intercompany Claim (as defined below) (the “ General Unsecured Claims ”). The General Unsecured Claims shall be treated as one class of claims for all purposes of the Plan.
Intercompany Claims	Claims consisting of claims held by a Debtor or any direct or indirect subsidiary of FMH against any Debtor (the “ Intercompany Claims ”).
Intercompany Interests	All issued, unissued, authorized, or outstanding shares of common stock, preferred stock, or other instruments evidencing an ownership interest in a Debtor held by another Debtor (the “ Intercompany Interests ”).
Equity Interests	All common stock, limited liability company interests, equity securities (as defined in section 101(16) of the Bankruptcy Code), equity, ownership, profit interests, units, or shares in FMH, including all issued, unissued, authorized, or outstanding shares of capital stock of FMH and any other rights, options, warrants, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable or exchangeable securities or other agreements, arrangements, or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in FMH (the “ Equity Interests ”).
<u>TREATMENT OF CLAIMS AND INTERESTS</u>	
<i>Unclassified Claims</i>	
Administrative Claims	On the Effective Date, except to the extent that such holder agrees to a less favorable treatment, each holder of an allowed Administrative Claim shall receive, in full and final satisfaction of such claim, treatment consistent with

	section 1129(a)(9)(A) of the Bankruptcy Code.
Professional Fee Claims	The Plan Administrator shall pay Professional Fee Claims in Cash in the amount the Bankruptcy Court allows from funds held in the Professional Fee Escrow Account, ¹ as soon as reasonably practicable after such Professional Fee Claims are allowed by entry of an order of the Bankruptcy Court; <i>provided</i> that the Company Entities' and Plan Administrator's obligations to pay allowed Professional Fee Claims shall not be limited or deemed limited to funds held in the Professional Fee Escrow Account.
Priority Tax Claims	On the Effective Date, except to the extent that such holder agrees to a less favorable treatment, each holder of a Priority Tax Claim shall receive, in full and final satisfaction of such claim, treatment consistent with section 1129(a)(9)(C) of the Bankruptcy Code.
DIP Facility Claims	Unless the DIP Lender agrees to a less favorable treatment, the DIP Lender shall receive (a) on the Effective Date, all Effective Date Distributable Proceeds, ² up to the allowed amount of the DIP Facility Claims; (b) thereafter, as determined by the Plan Administrator from time to time in its reasonable discretion, all Distributable Proceeds ³ less (1) actual amounts paid to Allowed General Unsecured Claims of Participating GUC Holders pursuant to the Plan, and (2) reasonable amounts that the Plan Administrator, in good faith, believes will be sufficient to pay any remaining General Unsecured Claims of Participating GUC Holders (" Net Distributable Proceeds "). To the extent the Net Distributable Proceeds are insufficient to satisfy the DIP Facility Claims in full, the DIP Lender shall not receive any distribution on account of any resulting deficiency claims. For the avoidance of doubt, the DIP Lender shall not receive on account of its DIP Facility Claims any Net Distributable Proceeds unless all Allowed General Unsecured Claims of Participating GUC Holders are expected to be paid in full in the good faith judgment of the Plan Administrator.
<i>Classified Claims</i>	
Other Priority Claims	On the Effective Date, except to the extent such holder and the Debtor against which such allowed Other Priority Claim is asserted agree to less favorable treatment for such holder, each holder thereof shall receive payment in full in

¹ "**Professional Fee Escrow Account**" means an account funded by the Debtors with cash no later than the Effective Date in an amount equal to the Professional Fee Escrow Amount (as defined below).

² "**Effective Date Distributable Proceeds**" means all cash of the Debtors as of the Effective Date (other than the Anglo Plan Funding) less (i) an amount reasonably acceptable to Anglo for reserved for the satisfaction of all Allowed Administrative Claims (other than DIP Facility Claims) and claims for fees and charges assessed against the Estates under chapter 123 of title 28 United States Code, 28 U.S.C. §§ 1911 and 1930, and (ii) the Professional Fee Escrow Amount.

³ "**Distributable Proceeds**" means all cash (including the Anglo Plan Funding) and cash proceeds generated from the use, sale, lease, liquidation, or other disposition of any property of the Debtors after the Effective Date in excess of the sum of (i) amounts necessary to satisfy (a) all Administrative Claims (other than DIP Facility Claims), and claims for fees and charges assessed against the Estates under chapter 123 of title 28 United States Code, 28 U.S.C. §§ 1911 and 1930, (b) Professional Fee Claims, (c) Priority Tax Claims, (d) Other Priority Claims, (e) Other Secured Claims, in each case (a) through (e), to the extent Allowed against the Debtors, and (ii) reasonable wind-down costs in an amount reasonably acceptable to Anglo.

	Cash or other treatment rendering such Claim Unimpaired. <i>Unimpaired – Presumed to Accept</i>
Other Secured Claims	On the Effective Date, except to the extent that such holder agrees to less favorable treatment, each allowed Other Secured Claim, at the option of the applicable Company Entity with the consent of the Prepetition Secured Lender (not to be unreasonably withheld), shall (i) be paid in full in Cash including the payment of any interest required to be paid under section 506(b) of the Bankruptcy Code, (ii) receive the collateral securing its allowed Other Secured Claim, or (iii) receive any other treatment that would render such claim unimpaired. <i>Unimpaired – Presumed to Accept</i>
Prepetition Secured Loan Claims	Solely to the extent that the DIP Facility Claims are paid in full, and unless the Prepetition Secured Lender agrees to a less favorable treatment, the Prepetition Secured Lender shall receive on account of its Prepetition Secured Loan Claims all Net Distributable Proceeds less the amount of DIP Facility Claims. To the extent the Net Distributable Proceeds are insufficient to satisfy the Prepetition Secured Loan Claims in full, the Prepetition Secured Lender shall not receive any distribution on account of any resulting deficiency claims. For the avoidance of doubt, the Prepetition Secured Lender shall not receive on account of its Prepetition Secured Loan Claims any Net Distributable Proceeds unless all Allowed General Unsecured Claims of Participating GUC Holders are expected to be paid in full in the good faith judgment of the Plan Administrator. <i>Impaired – Entitled to Vote</i>
General Unsecured Claims	As soon as reasonably practicable after the Effective Date, except to the extent that a holder of an allowed General Unsecured Claim agrees to less favorable treatment, 1. each Participating GUC Holder⁴ shall receive the lesser of (a) payment in full in cash; and (b) its pro rata share of Distributable Proceeds. 2. each Non-Participating GUC Holder⁵ shall receive no consideration on account of its General Unsecured Claims. <i>Impaired – Entitled to Vote</i>
Intercompany Claims	On the Effective Date, each holder of an allowed Intercompany Claim shall receive no distribution under the Plan, and all Intercompany Claims shall be adjusted, reinstated, or eliminated in the applicable Debtor's discretion, unless otherwise agreed to by the Debtors and Anglo. <i>Unimpaired – Presumed to Accept or Impaired – Deemed to Reject</i>
Intercompany Interests	On the Effective Date, except to the extent that a holder of an allowed Intercompany Interest and the Debtor against which such allowed Intercompany Interest is asserted agree to less favorable treatment for such holder, each holder

⁴ “**Participating GUC Holder**” means any holder of an allowed General Unsecured Claim that does not vote to reject the Plan and, as applicable, does not “opt out” of or “opts in” to the Third-Party Release.

⁵ “**Non-Participating GUC Holder**” means any holder of a General Unsecured Claim that votes to reject the Plan or, as applicable, “opts out” of or does not “opt in” to the Third-Party Release.

	of an allowed Intercompany Interest shall receive no distribution under the Plan, and all Intercompany Interests shall be adjusted, reinstated, or eliminated in the applicable Debtor's discretion, unless otherwise agreed to, with the consent of Anglo, by the Debtors and the applicable successful bidder in connection with the Sale Transaction. <i>Unimpaired – Presumed to Accept or Impaired – Deemed to Reject</i>
Equity Interests	Holders of Equity Interests shall receive no distribution on account of their Equity Interests. On the Effective Date, all Equity Interests will be canceled and extinguished and will be of no further force or effect. <i>Impaired – Deemed to Reject</i>
<u>OTHER MATERIAL PROVISIONS</u>	
Releases and Exculpation	The Plan shall contain the release, exculpation, and injunction provisions set forth in <u>Exhibit 2</u>.
Treatment of Executory Contracts and Unexpired Leases	The Plan shall provide that any executory contracts and unexpired leases that are not assumed or assumed and assigned as of the Effective Date, either pursuant to a Sale Transaction or a separate motion, shall be deemed rejected by the applicable Company Entity.
Indemnification	Any obligations of the Debtors currently in place (whether in the bylaws, certificates of incorporation or formation, limited liability company agreements, other organizational or formation documents, board resolutions, indemnification agreements, employment contracts, applicable state law or otherwise) to indemnify, reimburse, or limit the liability of any person in respect of any claims, demands, suits, causes of action, or proceedings against such persons based upon any act or omission related to such persons' service with, for, or on behalf of the Debtors prior to the Effective Date with respect to all present and future actions, suits, and proceedings relating to the Debtors shall be assumed and shall survive confirmation and consummation of the Plan and except as set forth therein, remain unaffected thereby, and shall not be discharged, irrespective of whether such defense, indemnification, reimbursement, or limitation of liability accrued or is owed in connection with an occurrence before or after the Petition Date; provided that, notwithstanding anything herein to the contrary, the Debtors' obligation to fund such indemnification obligations after the Effective Date of the Plan shall be limited to the extent of coverage available under any insurance policy assumed by the Debtors, including any directors and officers insurance policies; provided, further, for the avoidance of doubt that all such policies shall be assumed by the Debtors on the Effective Date of the Plan. For the avoidance of doubt, neither the Debtors nor the Estates shall have any obligation to reimburse such indemnity claims or expenses.
Tax Issues	The parties shall cooperate in good faith to structure the Sale Transaction and Restructuring Transaction in a tax-efficient manner as determined by the Company Entities and with the consent of the Prepetition Secured Lender.
Conditions Precedent to the Plan Effective Date	The following shall be conditions precedent to the Effective Date, unless waived by the Company Entities and the Prepetition Secured Lender: i. the Bankruptcy Court shall have entered the Confirmation Order in form

	and substance acceptable to the Company Parties and the Prepetition Secured Lender and such order shall not have been reversed, stayed, modified, amended, or vacated; ii. the Plan, the Disclosure Statement, any Sale Transaction documentation, and the Confirmation Order, and all other Definitive Documents, including any amendments, modifications, or supplements thereto, shall be acceptable to the Debtors and the Prepetition Secured Lender; iii. the Plan Administrator⁶ acceptable to the Prepetition Secured Lender shall have been appointed and vested with the authority under the Plan; iv. the Plan Administration Agreement⁷ shall have been executed and delivered by all of the entities that are parties thereto and all conditions precedent to the effectiveness thereof shall have been waived or satisfied in accordance with the terms thereof; v. no court of competent jurisdiction or other competent governmental or regulatory authority shall have issued a final and non-appealable order making illegal or otherwise restricting, limiting, preventing, or prohibiting the consummation of any Sale Transaction or any related transactions; vi. all conditions precedent to the consummation of the Sale Transaction shall have been satisfied in accordance with the terms thereof, and the closing of the Sale Transaction shall have occurred; vii. the Professional Fee Escrow Amount⁸ shall have been transferred to the Professional Fee Escrow Account; and viii. the Wind-Down Amount⁹ shall have been funded in accordance with the Plan.
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⁶ **“Plan Administrator”** means the person or entity, or any successor thereto, who, on and after the Effective Date shall have the rights, powers, and duties set forth in the Plan. The identity and compensation of the Plan Administrator shall be agreed to by the Debtors and the Prepetition Secured Lender and shall be set forth in the Plan Supplement. For the avoidance of doubt, any successor to the Plan Administrator shall be agreed to by the Debtors and the Prepetition Secured Lender.

⁷ **“Plan Administration Agreement”** means the liquidating agreement to be entered into by and among the Debtors and the Plan Administrator regarding administration of the administration process of the Plan, which shall provide for the wind down of the Debtors and which shall be included in the Plan Supplement and shall be in form and substance acceptable to the Prepetition Secured Lender.

⁸ **“Professional Fee Escrow Amount”** means the aggregate amount of Professional Fee Claims and other unpaid fees and expenses the retained professionals have incurred or will incur in rendering services in connection with the Chapter 11 Cases prior to and as of the Effective Date, which shall be estimated pursuant to the method set forth in Article II.A.2 of the Plan.

⁹ **“Wind-Down Amount”** means cash in an amount to be determined by the Debtors, with the reasonable consent of the Prepetition Secured Lender, to be retained by the Debtors to wind-down their estates and the Chapter 11 Cases in accordance with a wind-down budget, which shall be in form and substance acceptable to the Debtors and the Prepetition Secured Lender.

EXHIBIT 1

Milestones

Set forth below are the Milestones referenced in the Plan Term Sheet to which this **Exhibit 1** is attached. Capitalized terms used but not otherwise defined below have the meanings ascribed to them in the Plan Term Sheet. All references to “days” below mean calendar days unless otherwise specified, and all Milestones set forth below shall be calculated in accordance with Bankruptcy Rule 9006.

Milestones for Chapter 11 Cases

1. No later than December 15, 2024, the Company Entities shall have commenced the Chapter 11 Cases.
2. On or before the day that is one (1) day after the Petition Date, the Debtors shall have filed a motion in form and substance acceptable to Anglo seeking to establish deadlines to file proofs of claim.
3. No later than the date that is nineteen (19) days following the Petition Date, the Debtors shall have filed each of the schedules and statements required pursuant to Rule 1007 of the Federal Rules of Bankruptcy Procedure.
4. On or before the day that is twenty (20) days after the Petition Date, the Bankruptcy Court shall have entered an order in form and substance acceptable to Anglo approving the deadlines by which proofs of claim are required to be filed.

Milestones for Marketing and Auction Process

1. The Company Entities shall have filed a motion in form and substance acceptable to Anglo to approve the Bidding Procedures and implement a Sale Transaction as contemplated therein with the Bankruptcy Court on or before the day that is one (1) day after the Petition Date.
2. The Company Entities shall have obtained the Bankruptcy Court’s approval of the Bidding Procedures on or before the day that is thirty (30) days after the Petition Date, and such order shall be in form and substance acceptable to Anglo.
3. The deadline for qualified bids submitted pursuant to the Bidding Procedures shall occur on or before the day that is thirty-six (36) days after the Petition Date (the “**Bid Deadline**”).
4. The Company Entities shall have commenced the Auction, if any, on or before the day that is seven (7) days after the Bid Deadline.
5. The Bankruptcy Court shall have entered the Sale Order in form and substance acceptable to Anglo on or before the day that is three (3) business days after the Auction concludes.
6. All conditions to closing of the Sale Transaction shall have been satisfied, and the closing of the Sale Transaction shall have occurred, on or before the day that is fifteen (15) days after entry of the Sale Order.

Milestones for Plan Confirmation

1. The Company Entities shall have filed the Plan and Disclosure Statement, each in form and substance acceptable to Anglo, with the Bankruptcy Court on or before the day that is five (5) days after the Petition.
2. The Company Entities shall have obtained the Bankruptcy Court's approval of the Disclosure Statement and the process for solicitation of votes and noticing of Plan confirmation on or before the day that is fifty-seven (57) days after the Petition Date, and such order shall be in form and substance acceptable to Anglo.
3. The Bankruptcy Court shall have entered the Confirmation Order in form and substance acceptable to Anglo on or before the day that is ninety-four (94) days after the Petition Date, or such date as soon thereafter as the Bankruptcy Court may be available.
4. The Effective Date of the Plan shall have occurred as to each of the Company Entities on or before the day that is seven (7) days after the entry of the Confirmation Order.

Milestones for DIP Financing

1. The Company Entities shall have filed the DIP Motion in form and substance acceptable to Anglo with the Bankruptcy Court on or before the day that is one (1) day after the Petition Date.
2. The Company Entities shall have obtained the Bankruptcy Court's approval of the Interim DIP Order, in form and substance acceptable to Anglo, on or before the day that is three (3) days after the Petition Date.
3. The Company Entities shall have obtained the Bankruptcy Court's approval of the Final DIP Order, in form and substance acceptable to Anglo, on or before the day that is thirty-five (35) days after the Petition Date.

EXHIBIT 2**Releases and Exculpation****A. Releases by the Debtors¹⁰**

Pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, on and after the Effective Date, each Released Party is deemed to be conclusively, absolutely, unconditionally, generally, individually, collectively, irrevocably, completely and forever released, acquitted, and discharged by the Debtors, their Estates, their assigns, and their successors in interest (including the Plan Administrator) from any and all Claims and Causes of Action, whether known or unknown, foreseen or unforeseen, asserted or unasserted, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise that the Debtors, their Estates, their assigns, and their successors in interest (including the Plan Administrator) ever had, now has, or thereafter can, shall, or may have, including any derivative claims asserted or assertable on behalf of a Debtor, its Estate, its assigns, and its successors in interest (including the Plan Administrator), that such entities would have been legally entitled to assert in their own right (whether individually or collectively) or that any Holder of any Claim or Interest could have asserted on behalf of such entities, based on or relating to, or in any manner arising from, in whole or in part, (1) the Debtors, the Debtors' capital structure, the Prepetition Secured Loans or any documents related thereto, the assertion or enforcement of rights and remedies against the Debtors, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor or Non-Debtor Subsidiary, the Umbrella Supply Agreement and the termination thereof, the HEV Purchase Order and the termination thereof, the Relationship Agreement, the marketing of the Debtors' assets, the Notice of Forbearance, the Chapter 11 Cases, (2) the formulation, preparation, dissemination, negotiation, or filing of the DIP Credit Agreement, the Wind-Down Agreement, the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Sale Transaction[s], or any contract, instrument, release, or other agreement or document created or entered into in connection with the Wind-Down Agreement, the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Chapter 11 Cases, the DIP Credit Agreement, the Prepetition Secured Loans, the Sale Transaction Documentation, the Sale Transaction[s], the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, (3) the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, (4) the business or contractual arrangements between any Debtor and any Released Party, or (5) any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date relating to any of the foregoing, to the fullest extent permissible under applicable law, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, fraud or gross negligence.

Notwithstanding anything to the contrary in the foregoing or any other provision of the Plan, the releases contained in the Plan do not (i) release any post-Effective Date obligations of any party or Entity under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, (ii) affect the rights of Holders of Allowed Claims and Interests to receive distributions under the Plan, or (iii) release any Claims or Causes of Action against any non-Released Party.

B. Third-Party Releases

As of the Effective Date, except as otherwise provided herein, each Releasing Party, their Estates, their assigns and their successors in interest, is deemed to have conclusively, absolutely, unconditionally, generally, individually, collectively, irrevocably, completely and forever released each Debtor and

¹⁰ Any and all releases by the Debtors and their Estates remain subject to the ongoing internal investigation. Nothing herein shall constitute or be deemed a waiver of any Causes of Action that the Debtors may hold against any Entity.

Released Party from any and all Claims and Causes of Action, whether known or unknown, foreseen or unforeseen, asserted or unasserted, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise that the Releasing Parties, their Estates, their assigns, and their successors in interest ever had, now has, or thereafter can, shall, or may have, including any derivative claims asserted or assertable on behalf of a Debtor, its Estate, its assigns, and its successors in interest (including the Plan Administrator), that the Releasing Parties, their Estates, their assigns, and their successors in interest would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, (1) the Debtors, the Debtors' capital structure, the Prepetition Secured Loans or any documents related thereto, the assertion or enforcement of rights and remedies against the Debtors, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor or Non-Debtor Subsidiary, the Umbrella Supply Agreement and the termination thereof, the HEV Purchase Order and the termination thereof, the Relationship Agreement, the marketing of the Debtors' assets, the Notice of Forbearance, the Chapter 11 Cases, (2) the formulation, preparation, dissemination, negotiation, or filing of the DIP Credit Agreement, the Wind-Down Agreement, the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Sale Transaction[s], or any contract, instrument, release, or other agreement or document created or entered into in connection with the Wind-Down Agreement, the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Chapter 11 Cases, the DIP Credit Agreement, the Prepetition Secured Loans, the Sale Transaction Documentation, the Sale Transaction[s], the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, (3) the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, (4) the business or contractual arrangements between any Debtor and any Released Party, or (5) any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date relating to any of the foregoing, to the fullest extent permissible under applicable law, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, fraud or gross negligence.

Notwithstanding anything to the contrary in the foregoing or any other provision of the Plan, the releases contained in the Plan do not (i) release any post-Effective Date obligations of any party or Entity under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, (ii) affect the rights of Holders of Allowed Claims and Interests to receive distributions under the Plan, (iii) release any Claims or Causes of Action against any non-Released Party, or (iv) release any claims relating to or arising under the Wind Down Agreement.

C. Exculpation

Effective as of the Effective Date, the Exculpated Parties shall neither have nor incur any liability to any Person or Entity for any claims or Causes of Action or for any act taken or omitted to be taken on or after the Petition Date and prior to or on the Effective Date in connection with, or related to, the administration of the Chapter 11 Cases, commencement of the Chapter 11 Cases, pursuit of Confirmation, negotiation, preparation, and consummation of the Plan, making Distributions, the Disclosure Statement, the Sale Process, the Sale Order, or the solicitation of votes for, or Confirmation of, the Plan; the occurrence of the Effective Date; the administration of the Plan or the property to be distributed under the Plan; the issuance of securities under or in connection with the Plan; the purchase, sale, or rescission of the purchase or sale of any asset or security of the Debtors; or the transactions or documentation in furtherance of any of the foregoing, including any postpetition, pre-Effective Date act taken or omitted to be taken in connection with or in contemplation of any restructuring of the Debtors, the approval of the Disclosure Statement or Confirmation or consummation of the Plan; *provided, however*, that the foregoing provisions of this exculpation shall not operate to waive or release: (i) any Causes of Action arising from willful misconduct, actual fraud, or gross negligence of such applicable Exculpated Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction; and/or (ii) the rights of any Person or Entity to enforce the Plan and the contracts, instruments, releases, indentures, and other agreements and documents delivered under or in connection with the Plan or

assumed pursuant to the Plan or Final Order of the Bankruptcy Court; provided, further, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning its respective duties pursuant to, or in connection with, the above referenced documents, actions or inactions. The foregoing exculpation shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person. Notwithstanding the foregoing, nothing in this section shall or shall be deemed to prohibit the Debtors from asserting and enforcing any claims, obligations, suits, judgments, demands, debts, rights, Causes of Action or liabilities they may have against any Person that is based upon an alleged breach of a confidentiality or non-compete obligation owed to the Debtors, in each case unless otherwise expressly provided for in the Plan. The Exculpation will be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Exculpated Parties from liability.

D. Injunction

Except as otherwise provided in the Plan or the Confirmation Order, all Entities who have held, hold, or may hold claims, interests, Causes of Action, or liabilities that: (a) are consensually compromised or settled under the Plan; (b) have been released pursuant to the Plan; (c) are subject to exculpation pursuant to the Plan (but only to the extent of the exculpation provided in the Plan), or (d) are otherwise satisfied, stayed or terminated pursuant to the terms of the Plan, are permanently enjoined and precluded, from and after the Effective Date, from: (i) commencing, conducting or continuing in any manner, directly or indirectly, any action or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) on account of any such claims, interests, Causes of Action, or liabilities against the Debtors or any Entity released or exculpated (or the property or estate of any such Entity); (ii) enforcing, levying, attaching (including any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order on account of any such claims, interests, Causes of Action, or liabilities against the Debtors or any Entity released or exculpated, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Entities, or any property of any such transferee or successor; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind on account of any such claims, interests, Causes of Action, or liabilities against the Debtors or any Entity released or exculpated, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Entities, or any property of any such transferee or successor; or (iv) asserting any right of setoff, subrogation, or recoupment of any kind on account of any such claims, interests, Causes of Action, or liabilities against any obligation due from such Entities or against the property of such Entities unless such Entity has filed a motion requesting the right to perform such setoff on or before the Effective Date or has filed a Proof of Claim or proof of Interest indicating that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise.

E. Key Defined Terms

“Causes of Action” means any action, claim, cross-claim, third-party claim, cause of action, controversy, dispute, demand, right, lien, indemnity, contribution, guaranty, suit, obligation, liability, loss, debt, fee or expense, damage, interest, judgment, cost, account, defense, remedy, offset, power, privilege, proceeding, license, and franchise of any kind or character whatsoever, known, unknown, foreseen or unforeseen, existing or hereafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively (including any alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law (including under any state or federal securities laws). For the avoidance of doubt, Cause of Action also includes (a) any right of setoff, counterclaim, or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity, (b) the right to object to Claims or Interests, (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code, (d) any claim or defense including fraud, mistake, duress, and usury and any other defenses set forth in section 558 of the Bankruptcy Code, and (e) any Avoidance Action or state law fraudulent transfer claim.

“Claim” means any claim, as defined in section 101(5) of the Bankruptcy Code, against any of the Debtors.

“Exculpated Party” means (a) the Debtors, (b) any Committee, and (c) solely to the extent they are estate fiduciaries, each such Entity’s current and former affiliates, subsidiaries, officers, directors (including any sub-committee of directors), managers, principals, members (including ex officio members and managing members), employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such on or after the Petition Date and prior to or on the Effective Date.

“Related Party” means, with respect to an Entity, such Entity’s current and former officers, directors, managers, principals, members, employees, agents (including any disbursing agent), advisory board members, financial advisors, partners, limited partners, general partners, attorneys, accountants, investment bankers, consultants, representatives, other professionals, shareholders, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, predecessors, participants, successors, assigns (whether by operation of law or otherwise), subsidiaries, current, former, and future associated entities, managed or advised entities, accounts or funds, management companies, fund advisors, managers, fiduciaries, trustees, other representatives, and other professionals (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an Entity), representatives, advisors, predecessors, successors, and assigns, each solely in their capacities as such, and the respective heirs, executors, estates, servants and nominees of the foregoing, each in their capacity as such

“Released Party” means, collectively, and in each case, in their respective capacities as such: (a) the Debtors; (b) the Prepetition Secured Lender; (c) the DIP Lender; (d) the Consenting Parent; (e) Anglo (including, for the avoidance of doubt, Anglo American Services (UK) Limited); (f) with respect to each Entity in clauses (a) through (e), each such Entity’s current and former Affiliates; and (g) with respect to each Entity in clause (a) through (f), each such Entity’s Related Parties; *provided*, however, that, notwithstanding the foregoing, any holder of a Claim or Interest that is not a Releasing Party shall not be a Released Party.

“Releasing Party” means, collectively, and in each case, in their respective capacities as such: (a) the Debtors;¹¹ (b) the Prepetition Secured Lender; (c) the DIP Lender; (d) the Consenting Parent; (e) Anglo (including, for the avoidance of doubt, Anglo American Services (UK) Limited); (f) all Holders of Claims and Interests who vote to accept the Plan or who are deemed to accept the Plan; (g) all Holders of Claims and Interests who (1) abstain from voting, (2) vote to reject the Plan, or (3) are deemed to reject the Plan and who, in each case (1) through (3), do not opt out of the releases set forth in the Plan; (h) with respect to each Entity in clauses (a) through (g), each such Entity’s current and former Affiliates; and (i) with respect to each Entity in clause (a) through (h), each such Entity’s Related Parties (solely to the extent such Releasing Party is legally entitled to bind such Related Party to the releases contained in the Plan under applicable non-bankruptcy law).

“Sale Process” means the sale process conducted in accordance with the Bidding Procedures.

¹¹ Any and all releases by the Debtors and their Estates remain subject to the ongoing internal investigation. Nothing herein shall constitute or be deemed a waiver of any Causes of Action that the Debtors may hold against any Entity.

EXHIBIT B

DIP Credit Agreement

**SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION FACILITY
AGREEMENT**

DATED 15 December, 2024

FOR

FIRST MODE HOLDINGS, INC.,

the Company and a Debtor-in-Possession under Chapter 11 of the Bankruptcy Code,

and

SYNCHRONOUS LLC,

as the Guarantor and a Debtor-in-Possession under Chapter 11 of the Bankruptcy Code

AND

ANGLO AMERICAN INTERNATIONAL HOLDINGS LIMITED

AS THE LENDER

FORMAL INSTRUMENT OF AGREEMENT

DATE OF AGREEMENT	15 December 2024
BETWEEN the Lender	Anglo American International Holdings Limited
Registration Number:	05501205
Address:	17 Charterhouse Street, London, EC1N 6RA United Kingdom
<i>Lender Contact Details for Notices</i>	
Attention:	Treasury Front Office
Email:	treasuryfrontoffice@angloamerican.com
FMH in its capacity as Company and Obligor	First Mode Holdings, Inc.
Registration Number:	604 502 569
Address:	300 Lenora Street PMB #1445 Seattle, WA 98121 United States
<i>FMH Contact Details for Notices</i>	
Attention:	Head of Legal
Email:	legal@firstmode.com
Synchronous in its capacity as Guarantor and Obligor	Synchronous LLC
Registration Number:	604-224-246
Address:	300 Lenora Street PMB #1445 Seattle, WA 98121 United States
<i>Synchronous Contact Details for Notices</i>	
Attention:	Head of Legal
Email:	legal@firstmode.com
BACKGROUND:	
(i) On December 15, 2024 (the “Petition Date”), the Company and the Guarantor (as defined below) (each a “Debtor” and collectively, the “Debtors”) filed voluntary petitions with the Bankruptcy Court commencing their respective cases that are pending under Chapter 11 of the Bankruptcy Code (each case of the Borrower and each other Debtor, a “Case” and collectively, the “Cases”) and have continued in the possession of their assets and management of their business pursuant to Section 1107(a) and 1108 of the Bankruptcy Code. (ii) FMH (the “Company”) wishes to borrow monies from the Lender and the Lender is willing to lend monies to the Company under the terms and subject to the conditions set out in this Agreement. (iii) In addition, the Guarantor guarantees the obligations of the Company under this Agreement. The Guarantor further confirms that the guarantee granted by it under this Agreement is for the corporate benefit of such entity, and there is no corporate power or similar limitation on the relevant entity’s ability to provide the applicable guarantee. Each Obligor further confirms that there is no corporate power or similar limitation on its ability to grant the security under a Security Agreement executed	

by it.

- (iv) The priority of the Facility with respect to the collateral granted to secure the Guaranteed Obligations (the “**Collateral**”) shall be as set forth in the Interim DIP Order and the Final DIP Order, as applicable, in each case upon entry thereof by the Bankruptcy Court.
- (v) The parties intend that the terms of this Agreement should in all material respects represent those which would be granted on an arm’s-length basis and that the terms of this Agreement shall at all times accord with the Anglo American Group’s transfer pricing policy (as may be amended and revised from time to time).

Now, it is agreed as set out in this Agreement.

THE PARTIES AGREE THAT:

- (1) The Lender must perform all obligations of the Lender in accordance with this Agreement.
- (2) Each Obligor must perform all obligations of the relevant Obligor and otherwise act in accordance with this Agreement.
- (3) This Agreement shall have effect from the Effective Date notwithstanding the actual date of signature of the Agreement.

AGREEMENT PARTICULARS

Availability Period	From the Effective Date to the first Business Day prior to the Final Maturity Date
Final Maturity Date	31 March, 2025
Currency	USD, as defined in <u>Clause 1.2(g)</u> (<i>Interpretation</i>)
Facility Amount	\$26,000,000
Facility Type	Superpriority, senior secured, priming debtor-in-possession term loan facility, consisting of new money delayed draw term loans to be made in multiple draws on Delayed Draw Borrowing Dates
Interest Reference Rate	3 Month Term SOFR (as on the Quotation Day)
Margin	6.00 per cent per annum
Credit Adjustment Spread	0.26161 per cent per annum
Upfront Premium	The Company shall pay to the Lender an upfront premium in an amount equal to 2.00% of the aggregate Facility Amount as of the Effective Date, which Upfront Premium will be fully earned and due and payable in kind (by capitalizing and adding to the principal amount of the Loans) on the first Delayed Draw Borrowing Date
Commitment Fee	At all times during the Availability Period, 35 per cent of the applicable Margin on the then unused and uncanceled Facility Amount, which Commitment Fee shall be due and payable in kind (by capitalizing and adding to the principal amount of the Loans) monthly in arrears, regardless of whether the conditions to borrowing Loans are satisfied at such time
Exit Premium	The Company shall pay an Exit Premium in accordance with the terms of Clause 5.11 (<i>Exit Premium</i>)
Standard Interest Period	3-month calendar period, commencing on each of 1 January, 1 April, 1 July and 1 October
Purpose	Solely in accordance with the DIP Orders, the Approved Budget (subject to any variances permitted by Clause 9.28(b)) and this Agreement, the proceeds of the Loans will be used (i) to pay certain costs, fees and expenses related to business operations and the Cases (including, without limitation, professional fees, costs and expenses) and (ii) to fund the Carve-Out and to make payments under the Carve-Out in accordance with the terms of the DIP Orders; provided that any success fee paid in connection with any sale transaction shall first be paid out of the proceeds of such sale transaction.
Prepayment Notice Period	3 Business Days

Drawdown Notice Period	3 Business Days
Cancellation Notice Period	5 Business Days
Lender Cancellation Option	Not applicable
Business Day	means a day (other than a Saturday, a Sunday or an official public holiday) on which banks are open for general business in New York, New York and London

EXECUTED AS AN AGREEMENT

SIGNED for and on behalf of First Mode Holdings, Inc. as Company and Obligor by a duly authorised representative

.....
Signature

.....
Name

SIGNED for and on behalf of Synchronous LLC as Obligor and Guarantor by First Mode Holdings, Inc., sole member

.....
Signature

.....
Name

SIGNED for and on behalf of Anglo American International Holdings Limited as the Lender by a duly authorised representative

.....
Signature

.....
Name

Attachment: SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION FACILITY AGREEMENT – GENERAL CONDITIONS

**SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION FACILITY AGREEMENT –
GENERAL CONDITIONS**

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless a contrary intention clearly appears from the context, terms as defined in the Agreement Particulars shall bear a corresponding meaning herein, and:

“Additional Business Day” means any day other than:

- (a) a Saturday or a Sunday; and
- (b) a day on which the Securities Industry and Financial Markets Association (or any successor organisation) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities.

“Agreement” means (i) the Formal Instrument of Agreement, (ii) the Agreement Particulars, (iii) these General Conditions and (iv) any other document stated in the Agreement to form part of the Agreement.

“Agreement Particulars” means the agreement particulars of this Agreement.

“Alternative Term SOFR” means the Term SOFR reference rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period published (before any correction, recalculation or republication by the administrator) by ICE Benchmark Administration Limited (or any other person which takes over the publication of that rate).

“Anglo American Group” means collectively, Anglo American plc, a public limited company organized under the laws of England and Wales, and its affiliates.

“Anglo Subsidiary” is a Subsidiary of Anglo American plc.

“Approved Budget” means the Initial Budget or the then most current Budget prepared by the Company and approved by the Lender pursuant to Clause 9.5(b), as applicable.

“Asset Sale” shall mean the sale, transfer or other Disposition (by way of merger, casualty, condemnation or otherwise and including by way of a sale and leaseback) by any Obligor to any person other than any Obligor of any assets of any Obligor (other than (a) the sale of equity interests and (b) other sales, transfers or other dispositions in the ordinary course of business and consistent with the Approved Budget).

“Available Facility” means with respect to the Facility, subject to the relevant conditions in Clause 4.2 (*Conditions to drawdown*) being met, the Facility Amount as defined in the Agreement Particulars minus:

- (a) the aggregate amount of all outstanding Loans (excluding for this purpose any unpaid capitalized Interest in accordance with Clause 6.3 (*Capitalization of Interest*) and/or any unpaid capitalized Commitment Fees in accordance with Clause 6.4 (*Commitment Fee*) and/or any unpaid capitalized Upfront Premium in accordance with Clause 6.5 (*Upfront Premium*)); plus
- (b) in relation to any proposed Loan, on the date of the Request for such Loan, the aggregate amount of any Loans that are due to be made on or before the proposed Utilisation Date,

provided that, on the Utilization Date for such Loan, the Available Facility shall not include, in relation to any proposed Loans, any Loans that are due to be repaid on or before the proposed Utilisation Date under the Facility and that are, in fact, not paid or repaid on or before such date.

“Avoidance Action” shall mean the Debtors’ claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code.

“Avoidance Proceeds” shall mean any proceeds or property recovered, unencumbered or otherwise in connection with successful Avoidance Actions, whether by judgment, settlement or otherwise.

“Bankruptcy Code” shall mean Title 11 of the United States Code entitled **“Bankruptcy”** as now or hereafter in effect, or any successor statute.

“Bankruptcy Court” shall mean the United States Bankruptcy Court for the District of Delaware, or any appellate court having jurisdiction over the Cases from time to time.

“Breakage Costs” means the amount (if any) by which:

- (a) the interest (less the Margin) which the Lender should have received for the period from the date of receipt of all or any part of a Loan to the last day of the current Interest Period in respect of that Loan, had the principal amount received been paid on the last day of that Interest Period;

exceeds:

- (b) the amount which the Lender would be able to obtain by placing an amount equal to the principal amount received by it on deposit with a leading bank approved by the US Federal Open Market Committee for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

“Budget” means a 13-week budget in form and substance satisfactory to the Lender delivered on or prior to the Effective Date and updated from time to time as set forth Clause 9.5(b), setting forth on a weekly basis, among other things, the Obligors’ projected operating and non-operating receipts, disbursements, professional fees, net operating cash flow and Liquidity for the period described therein, prepared by the Company’s management and in form and level of

detail substantially consistent with the Initial Budget.

“Budget Variance Test Date” means the Thursday of every week (commencing with the Thursday of the second full calendar week occurring after the Petition Date) or, to the extent such Thursday is not a Business Day, the next Business Day thereafter.

“Budget Variance Test Period” means (i) with respect to the first Budget Variance Test Date, the two-week period ending on the Thursday of the week immediately preceding such Budget Variance Test Date, (ii) with respect to the second Budget Variance Test Date, the three-week period ending on the Thursday of the week immediately preceding such Budget Variance Test Date and (iii) with respect to the third Budget Variance Test Date and each Budget Variance Test Date thereafter, the four-week period ending on the Thursday of the week immediately preceding the applicable Budget Variance Test Date.

“Budget Variance Report” means a variance report, in a form satisfactory to the Lender and certified by the chief financial officer of the Company, setting forth (a) for the applicable Budget Variance Test Period, the cumulative positive variance (as compared to the Approved Budget) of the aggregate disbursements (including, for the avoidance of doubt, professional fees) made by the Obligors (presented on a line-item basis) and (b) an explanation, in reasonable detail, of any material variance and a distinction between permanent and timing-related variances.

“Business Day” is as defined in the Agreement Particulars.

“Cash Equivalents” means:

- (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;
- (b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from a credit rating agency;
- (c) investments in certificates of deposit, banker’s acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000; and
- (d) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA and Aaa (or equivalent rating) by at least two credit rating agencies; and (iii) have portfolio assets of at least \$5,000,000,000.

“Carve-Out” shall have the meaning assigned to such term in the Interim DIP Order or the Final DIP Order, as applicable.

“Case” and **“Cases”** shall have the meaning assigned to such term specified in the Formal Instrument of Agreement.

“Cash Collateral” shall have the meaning assigned to such term in the Interim DIP Order or the Final DIP Order, as applicable.

“Central Bank Rate” means:

- (a) the short-term interest rate target set by the US Federal Open Market Committee as published by the Federal Reserve Bank of New York from time to time; or
- (b) if that target is not a single figure, the arithmetic mean of:
 - (i) the upper bound of the short-term interest rate target range set by the US Federal Open Market Committee and published by the Federal Reserve Bank of New York; and
 - (ii) the lower bound of that target range.

“Central Bank Rate Adjustment” means, in relation to the Central Bank Rate prevailing at close of business on any Additional Business Day, the 20 per cent trimmed arithmetic mean (calculated by the Lender) of the Central Bank Rate Spreads for the five most immediately preceding Additional Business Days for which Term SOFR is available.

For this purpose, **“Central Bank Rate Spread”** means, in relation to any Additional Business Day, the difference (expressed as a percentage rate per annum) calculated by the Lender between:

- (a) the Term SOFR for that Additional Business Day; and
- (b) the Central Bank Rate prevailing at close of business on that Additional Business Day.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commitment Fee” is as defined in the Agreement Particulars.

“**Credit Adjustment Spread**” is as defined in the Agreement Particulars.

“**Currency**” is as defined in the Agreement Particulars.

“**Debtor**” shall have the meaning assigned to such term specified in the Formal Instrument of Agreement.

“**Debtor Relief Laws**” shall mean the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, judicial management, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief statute, law, ordinance, rule or regulation of the United States of America, any State thereof or the District of Columbia, or other applicable jurisdictions from time to time in effect.

“**Default**” means an Event of Default or an event or circumstance which, with the expiry of a grace period, the giving of notice or the making of any determination under this Agreement or any combination of them, would be an Event of Default.

“**Default Interest**” has the meaning given to it in Clause 10.3 (*Default Interest*).

“**Default Rate**” means (a) with respect to overdue amounts for a Loan constituting principal, capitalized Interest or capitalized Commitment Fees, a rate equal to the interest rate for such Loan for the then current Interest Period (being the sum of the applicable Interest Reference Rate, the applicable Margin and the Credit Adjustment Spread) plus 2 per cent per annum; and (b) with respect to any other overdue amount (including overdue interest), a rate equal to the interest rate for Loans for the then current Interest Period (being the sum of the applicable Interest Reference Rate, the applicable Margin and the Credit Adjustment Spread) plus 2 per cent per annum, whether or not any Loans are outstanding at such time.

“**Delayed Draw Borrowing Date**” means each date on which the conditions set forth in Clause 4.2 (*Conditions to drawdown*) are satisfied and the Loans are funded.

“**DIP Commitments**” means the commitment of the Lender to make Loans to the Company in an aggregate principal amount not to exceed the Facility Amount, as such amount may be adjusted from time to time in accordance with this agreement.

“**DIP Orders**” means the Interim DIP Order and the Final DIP Order, as applicable, in each case upon entry thereof by the Bankruptcy Court.

“**Disposition**” or “**Dispose**” means the sale, transfer, license, lease or other disposition of any property by any person (including any sale and leaseback transaction and any issuance of equity interests by a Subsidiary of such person), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“**Drawdown Notice Period**” is as defined in the Agreement Particulars.

“**Effective Date**” means the date on which the conditions precedent set forth in Clause 4.1 (*Conditions to effectiveness*) have been satisfied or waived.

“Event of Default” means an event or circumstance specified as such in Clause 10.1 (*Event of Default*).

“Exit Premium” has the meaning given to it in Clause 5.11 (*Exit Premium*)

“Extraordinary Receipts” means any cash payments or proceeds (including Cash Equivalents) received (directly or indirectly) by or on behalf of any Obligor and not consisting of Net Cash Proceeds described in Clause 5.9 (*Mandatory prepayments – asset sales*) in respect of (i) insurance proceeds in connection with a casualty event, (ii) foreign, United States, state or local tax refunds, (iii) pension plan reversions, (iv) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (v) indemnity payments (other than to the extent such indemnity payments are (A) immediately payable to a person that is not an affiliate of the Company or any of its Subsidiaries or (B) received by any Obligor as reimbursement for any payment previously made to such person) and (vi) any purchase price adjustment received in connection with any purchase agreement to the extent not constituting Net Cash Proceeds.

“Facility” has the meaning given to it in Clause 2 (*The Facility*).

“Facility Amount” is as defined in the Agreement Particulars, to the extent not cancelled, or reduced under this Agreement.

“Facility Type” is as defined in the Agreement Particulars.

“FATCA Withholding” means a deduction or withholding from a payment under a Financing Document required by Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among governmental authorities and implementing such Sections of the Code.

“Final DIP Order” means an order of the Bankruptcy Court (and as to which no stay has been entered) authorizing and approving on a final basis, among other things, the Facility and the transactions contemplated by this Agreement in the form of the Interim DIP Order (with only such modifications thereto as are necessary to convert the Interim DIP Order to a final order and such other modifications as are satisfactory to the Lender in its sole discretion) (as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of the Lender in its sole discretion).

“Final Order Entry Date” shall mean the date on which the Final DIP Order is entered by the Bankruptcy Court.

“Final Maturity Date” is as defined in the Agreement Particulars.

“Financing Documents” means this Agreement and each Security Agreement.

“Formal Instrument of Agreement” means the formal instrument of agreement of this Agreement.

“GAAP” means the United States generally accepted accounting principles as in effect as of the date of determination of such principles.

“General Conditions” means the general conditions of this Agreement.

“Guaranteed Obligations” has the meaning given to it in Clause 11.1(a) (*Guaranty*).

“Guarantor” means the Initial Guarantor and any further entity which may accede as Guarantor in accordance with Clause 11.7 (*Accession of New Subsidiaries*).

“Indebtedness” means, as to any person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such person for borrowed money and all obligations of such person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) all direct or contingent obligations of such person arising under or in respect of (i) letters of credit (including standby and commercial), bankers’ acceptances, demand guarantees and similar independent undertakings and (ii) surety bonds, performance bonds and similar instruments issued or created by or for the account of such person;
- (c) net obligations of such person under any swap contract;
- (d) all obligations of such person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business);
- (e) indebtedness (excluding prepaid interest thereon) secured by a lien on property owned or being purchased by such person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such person or is limited in recourse; and
- (f) all guarantees of such person in respect of any of the foregoing.

“Initial Guarantor” means Synchronous LLC.

“Initial Budget” has the meaning set out in Clause 4.1(g) (*Conditions to effectiveness*).

“Interest” means any interest payable by the Company under Clause 6.1 (*Interest*) or any Default Interest.

“Interest Period” means, in relation to a Loan, the Standard Interest Period defined in the Agreement Particulars (or such other term as agreed in writing between the Company and the Lender), provided that if an Interest Period would otherwise extend beyond the Final Maturity Date, it will be shortened so that it ends on the Final Maturity Date.

“Interest Reference Rate” means:

- (a) the reference rate specified within the Agreement Particulars for this Agreement; or
- (b) as otherwise determined pursuant to Clause 6.2 (*Interest rate fallbacks*).

“Interim DIP Order” means an order of the Bankruptcy Court, in the form set forth in Exhibit A, authorizing on an interim basis, among other things, the Facility and the transactions contemplated by this Agreement, with only such modifications as are satisfactory to the Lender in its sole discretion.

“Interim Order Entry Date” shall mean the date on which the Interim DIP Order is entered by the Bankruptcy Court.

“Interpolated Alternative Term SOFR” means, in relation to any Loan, the rate (rounded to the same number of decimal places as Alternative Term SOFR) which results from interpolating on a linear basis between:

- (a) either:
 - (i) Alternative Term SOFR (as on the Quotation Day) for the longest period (for which Alternative Term SOFR is available) which is less than the Interest Period of that Loan; or
 - (ii) if no such Alternative Term SOFR is available for a period which is less than the Interest Period of that Loan, Overnight SOFR for the Overnight Reference Day; and
- (b) the applicable Alternative Term SOFR (as on the Quotation Day) for the shortest period (for which Alternative Term SOFR is available) which exceeds the Interest Period of that Loan.

“Interpolated Term SOFR” means, in relation to a Loan, the rate (rounded to the same number of decimal places as Term SOFR) which results from interpolating on a linear basis between:

- (a) either:
 - (i) Term SOFR (as on the Quotation Day) for the longest period (for which Term SOFR is available) which is less than the Interest Period of that Loan; or
 - (ii) if no such Term SOFR is available for a period which is less than the Interest Period of that Loan, Overnight SOFR for the Overnight Reference Day; and
- (b) Term SOFR (as on the Quotation Day) for the shortest period (for which Term SOFR is available) which exceeds the Interest Period of that Loan.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of capital stock or other securities of another Person, (b) a loan, advance or capital contribution to, guarantee or

assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor guarantees Indebtedness of such other Person, or (c) an acquisition. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“Lender” means Anglo American International Holdings Limited.

“Liquidity” means, as of any date, an amount equal to the aggregate unrestricted cash and Cash Equivalents of the Obligors calculated in a manner consistent with determining the Obligor’s “Unrestricted Cash” as set forth in the Initial Budget as of such date.

“Liquidity Certificate” means a certificate substantially in the form of Exhibit B.

“Loan” means each borrowing made under this Agreement or the principal amount outstanding of that borrowing together with all capitalized Interest and capitalized Commitment Fees.

“Margin” means the percentage per annum specified in the Agreement Particulars.

“Material Adverse Effect” means, with respect to any Obligor, an effect which is materially adverse to:

- (a) the ability of such Obligor to perform its payment or other material obligations under any Financing Document; or
- (b) the validity or enforceability of any Financing Document; or
- (c) any material right or remedy of the Lender in respect of any Financing Document;

provided that “Material Adverse Effect” shall expressly exclude (i) any matters disclosed in any “first day” pleadings or declarations and (ii) the effect of filing the Cases, the events and conditions related to, resulting from and/or leading up thereto and the effects thereon and any action required to be taken under the Financing Documents or the DIP Orders.

“Net Cash Proceeds” shall mean (a) with respect to any Asset Sale, the cash proceeds received by any Obligor (including cash proceeds subsequently received (as and when received) in respect of non-cash consideration initially received and including all insurance settlements and condemnation awards), net of (i) transaction expenses (including reasonable broker’s fees or commissions, legal fees, accounting fees, investment banking fees and other professional fees, transfer and similar taxes and the Company’s good faith estimate of income taxes paid or payable in connection with the receipt of such cash proceeds), (ii) amounts provided as a reserve, in accordance with GAAP, including pursuant to any escrow arrangement, against any liabilities under any indemnification obligations or purchase price adjustment associated with such Asset Sale (*provided that*, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds), (iii) in the case of insurance settlements and condemnation awards, amounts previously paid by the Obligors consistent with the Approved Budget to replace or restore the affected property, and (iv) the principal amount,

premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money which is secured by the asset sold in such Asset Sale and is required to be repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such asset), (b) with respect to any issuance or incurrence of Indebtedness or issuance of any equity interest, the cash proceeds thereof, net of all taxes and customary fees, commissions, costs and other expenses (including reasonable broker's fees or commissions, legal fees, accounting fees, investment banking fees and other professional fees, and underwriter's discounts and commissions) incurred in connection therewith and (c) with respect to any Extraordinary Receipts, 100% of such cash or proceeds received by any Obligor.

"New Lender" has the meaning set out in Clause 12.1 (*Assignments by the Lender*).

"Notice of Forbearance" shall mean the Notice of Forbearance delivered to FMH and Synchronous on August 20, 2024 in connection with the Pre-Petition Facility, as modified and extended through the following notices: Notice of Extension of Forbearance to the Companies dated October 4, 2024; Notice of Second Extension of Forbearance dated October 8, 2024; Notice of Third Extension of Forbearance dated October 25, 2024; Notice of Fourth Extension of Forbearance dated October 31, 2024; Notice of Fifth Extension of Forbearance dated November 7, 2024; Notice of Sixth Extension of Forbearance dated November 11, 2024; Notice of Seventh Extension of Forbearance dated November 18, 2024; Notice of Eighth Extension of Forbearance dated November 25, 2024; the Notice of Ninth Extension of the Notice of Forbearance dated December 2, 2024; Notice of Tenth Extension of the Notice of Forbearance dated December 9, 2024 (and as amended, restated, amended and restated, supplemented, extended or otherwise modified from time to time).

"Obligors" shall mean FMH and Synchronous.

"Overnight SOFR" means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published (before any correction, recalculation or republication by the administrator) by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate).

"Overnight Reference Day" means the day which is two Additional Business Days before the Quotation Day.

"Petition Date" shall have the meaning assigned to such term specified in the Formal Instrument of Agreement.

"Post-Petition" means the time period commencing immediately upon the filing of the Cases.

"Pre-Petition Facility" shall mean that certain Facility Agreement, dated as of 21 December, 2023, among, *inter alios*, the Company, the other borrowers and obligors named therein and the Lender, as amended, supplemented or otherwise modified prior to the Petition Date.

"Pre-Petition Financing Documents" shall mean the "Financing Documents" as defined in the Pre-Petition Facility.

“Prepayment Notice Period” is as defined in the Agreement Particulars.

“Purpose” is as defined in the Agreement Particulars.

“Quotation Day” means two Additional Business Days before the first day of the relevant Interest Period.

“Relevant Nominating Body” means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

“Request” means a request for a Loan, substantially in the form of Schedule 1, or such other form as may be agreed between the Company and the Lender.

“Restricted Debt Payment” shall mean any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in substance or legal defeasance), sinking fund or similar payment with respect to any Subordinated Debt or any unsecured Indebtedness for borrowed money of the Obligors.

“Restricted Junior Payment” shall mean collectively Restricted Debt Payments and Restricted Payments.

“Restricted Payment” shall mean (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock of the Company, except a dividend payable solely in shares of that class of stock to the holders of that class, (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of capital stock of the Company and (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of capital stock of the Company.

“Second Currency” has the meaning given to it in Clause 7.4(a) (*Currency Indemnity*).

“Security” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“Security Agreement” means, collectively, (a) the security agreement governed under the law of New York entered into by FMH, Synchronous and the Lender, (b) [reserved], (c) any security agreement entered into pursuant to Clause 9.16 (*Additional Security*), and (d) each additional agreement entered into in respect of collateral granted by a New Subsidiary under Clause 11.7 (*Accession of New Subsidiaries*).

“SOFR” means a rate equal to the secured overnight financing rate as administered by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“Stalking Horse Purchaser” means Cummins, Inc.

“Stalking Horse Purchase Agreement” has the meaning given to it in Clause 4.1(f)

(*Conditions to effectiveness*).

“**Standard Interest Period**” is as defined in the Agreement Particulars.

“**Subordinated Debt**” shall mean Indebtedness of any Obligor that is subordinated in right of payment to the Guaranteed Obligations or secured on a junior basis to the Obligations.

“**Subsidiary**” of a person, means a corporation, partnership, limited liability company, association or joint venture or other business entity of which a majority of the equity interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time owned or the management of which is controlled, directly, or indirectly through one or more intermediaries of such person, or such person otherwise controls the management and policies of such other entity. Unless otherwise specified, “Subsidiary” shall mean any Subsidiary of the Company.

“**Sum**” has the meaning given to it in Clause 7.4(a) (*Currency Indemnity*).

“**Superpriority Claim**” shall mean any administrative expense claim in the case of any Obligor having priority over any and all administrative expenses, diminution claims and all other priority claims against the Debtors, subject only to the Carve-Out, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c) (subject only to and effective upon entry of the Final Order), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code.

“**Term SOFR**” means the term SOFR reference rate administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period published by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate).

“**Termination Date**” shall mean the earliest of (a) the Final Maturity Date, (b) the effective date of any plan for the reorganization or liquidation of the Company or any other Debtor under chapter 11 of the Bankruptcy Code, (c) the entry of an order for the conversion of the Cases to case under Chapter 7 of the Bankruptcy Code, (d) the entry of an order for the dismissal of the Cases and (e) the date of acceleration of the Loans and the termination of unused DIP Commitments with respect to the Facility in accordance with the terms of this Agreement upon and during the continuance of an Event of Default.

“**Transfer Date**” means, in relation to an assignment, the later of:

- (a) the proposed Transfer Date specified in the relevant assignment agreement; and
- (b) the date on which the New Lender and the Existing Lender have executed the relevant assignment agreement.

“**Utilisation Date**” means, with respect to any Loan, the date on which such Loan is made.

1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) any reference in this Agreement to:
 - (i) any agreement or instrument is a reference to that agreement or instrument as amended and/or restated and/or novated;
 - (ii) a provision of law is a reference to that provision as amended or re-enacted;
 - (iii) a time of day is a reference to the time in New York, New York;
 - (iv) the singular includes the plural and *vice versa* and any gender includes the other genders; and
 - (v) a “**person**” shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;
- (b) section, clause and schedule headings are for ease of reference only.
- (c) where any date for payment under this Agreement is not a Business Day, payment shall be effected on the immediately preceding Business Day;
- (d) any notice delivered after 1:00 p.m., New York City time, on any Business Day shall be deemed delivered on the next succeeding Business Day;
- (e) a certificate signed by an authorised signatory of the Lender as to the amount payable under this Agreement and any calculation of interest or costs shall, in the absence of manifest error, be conclusive for the purposes of this Agreement;
- (f) a reference to the “**Central Bank Rate**” shall include any successor rate to, or replacement for, that rate; and
- (g) the following currency terms or symbols shall bear the following meanings:

“**U.S. Dollar**”, “**Dollar**”, “**U.S.\$**”, “**\$**” and “**USD**” each means the lawful currency of the United States of America.

1.3 Third party rights

This Agreement shall be binding upon and inure solely to the benefit of the parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever.

1.4 Joint and Several Liability

The liability of the Companies shall be joint and several between the Companies, and the liability of the Guarantors shall be joint and several between the Guarantors.

2 THE FACILITY

Subject to the terms and conditions of this Agreement and the DIP Orders, the Lender will make available to the Company, unless previously cancelled in accordance with this Agreement, the Facility Amount as a committed delayed draw term loan cash advance facility (the “**Facility**”) in the Currency. Once funded, each Loan shall be a “Loan” and a “New Money Loan” for all purposes under this Agreement and the other Financing Documents.

3 PURPOSE

3.1 Permitted use

The Facility shall be used by the Company solely for the Purpose.

3.2 No obligation to monitor

The Lender shall not be required to monitor or verify how any amount advanced under this Agreement is used by the Company.

4 DRAWDOWN

4.1 Conditions to effectiveness

The effectiveness of this Agreement and the obligation of the Lender to make Loans hereunder on the Effective Date are subject to the satisfaction of the following conditions:

- (a) the Lender (or its counsel) shall have received from each party hereto a counterpart of this Agreement signed on behalf of such party;
- (b) [reserved];
- (c) [reserved];
- (d) [reserved];
- (e) the Petition Date shall have occurred, and each of the Company and the Guarantor shall be a debtor and a debtor-in-possession in the Cases;
- (f) the Obligors and certain of their affiliates shall have entered into an asset purchase agreement (the “**Stalking Horse Purchase Agreement**”) acceptable to the Lender pursuant to which the Stalking Horse Purchaser has agreed to acquire substantially all the assets and the assumption of specified liabilities of the Obligors and such affiliates;
- (g) the Lender shall have received a copy of the Budget in form and substance satisfactory to the Lender (the “**Initial Budget**”);

- (h) the Lender shall have received an operating budget of the Company covering the period commencing on the Petition Date and ending on the Final Maturity Date and setting forth, on a weekly basis, projected operating and non-operating receipts, disbursements, net operating cash flow and Liquidity prepared by the Company's management and in form and substance acceptable to the Lender;
- (i) the Lender shall have received a wind-down budget for the non-Debtor Subsidiaries of the Company;
- (j) the Cases of any of the Debtors shall not have been dismissed or converted into cases under Chapter 7 of the Bankruptcy Code;
- (k) a motion, in form and substance satisfactory to the Lender seeking approval of the Facility shall have been filed in each of the Cases within one (1) day of the Petition Date;
- (l) all "first day" orders and all related pleadings intended to be entered on or prior to the Interim Order Entry Date shall have been entered by the Bankruptcy Court and shall be in form and substance acceptable to the Lender, it being understood that drafts approved by counsel to the Lender prior to the Petition Date are acceptable;
- (m) the Company shall not have made any payments after the Petition Date on account of any Indebtedness arising prior to the Petition Date unless such payment is expressly authorized by the "first day" orders or the DIP Orders and is made with the consent of the Lender (1) "consistent with the Approved Budget" or (2) as required by the Stalking Horse Purchase Agreement;
- (n) no trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or examiner with expanded powers shall have been appointed in any of the Cases;
- (o) the Interim Order Entry Date shall have occurred not later than three calendar days following the Petition Date, and the Interim DIP Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the prior written consent of the Lender, and the Lender shall have received a certified copy of the Interim DIP Order entered by the Bankruptcy Court;
- (p) except for the Cases, there shall exist no unstayed action, suit, investigation, litigation or proceeding pending or (to the knowledge of the Obligors) threatened in any court or before any arbitrator or governmental instrumentality (other than the Bankruptcy Court) that would reasonably be expected to have a Material Adverse Effect.

4.2 Conditions to drawdown

Subject to the terms of this Agreement, the Lender will only be obliged to make a Loan if on both the date of the Request and the proposed Utilisation Date of the Loan:

- (a) the Effective Date shall have occurred;

- (b) [reserved];
- (c) Interim DIP Order (with respect to the period on and after entry of the Interim DIP Order and prior to entry of the Final DIP Order) or the Final DIP Order (with respect to the period on and after entry of the Final DIP Order) shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the prior written consent of the Lender in its sole discretion;
- (d) the Lender shall have received a duly completed Request;
- (e) the representations and warranties set out in Clause 8 (*Representations*) and in each other Financing Document shall be true correct in all material respects (or, in the case of any representations and warranties qualified by materiality, Material Adverse Effect or words of similar import, in all respects) on and as of the Delayed Draw Borrowing Date with the same effect as though made on and as of such date (other than any such representations and warranties that are made as of a specific date, which shall be true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality, Material Adverse Effect or words of similar import, in all respects) as of such earlier date);
- (f) at the time of and immediately after giving effect to the making of the Loans, no Default or Event of Default shall have occurred and be continuing or would result therefrom;
- (g) the Lender shall have received (i) an updated Budget in accordance with Clause 9.5(b) for the 13-week period commencing on or about the Delayed Draw Borrowing Date and (ii) all Budget Variance Reports then required have been delivered;
- (h) the requested principal amount of Loan to be made on the Delayed Draw Borrowing Date does not exceed an amount equal to the aggregate of (x) the forecasted disbursements in the four weeks following such Delayed Draw Borrowing Date as set forth in the then-extant Approved Budget, minus (y) the amount of cash on balance sheet of the Debtors in excess of \$1,000,000 on such Delayed Draw Borrowing Date;
- (i) the Chapter 11 Cases shall not have been dismissed or converted under Chapter 7 of the Bankruptcy Code;
- (j) no trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code shall have been appointed in the Chapter 11 Cases;
- (k) All Milestones required to be satisfied pursuant to Clause 9.29 (*Milestones*) shall have been satisfied (unless waived or extended by the Lender); and
- (l) The proceeds of the Loans made on the Delayed Draw Borrowing Date shall be disbursed in accordance with the Approved Budget;
- (m) no action has been taken under Clause 10.2 (*Acceleration*);

- (n) with respect to the first request for a Loan, the Lender has received copies of board and shareholder/member resolutions of the Company approving incurrence of the Loans and each Obligor's obligations under this Agreement;
- (o) each requested Loan has been approved by a majority of the independent directors of FM (which such approval may be evidenced by emails from the majority of such independent directors); and
- (p) the Available Facility shall not be exceeded.

By delivering a Request required pursuant to Clause 4.2(d), on the Delayed Draw Borrowing Date, the Company shall be deemed to have represented and warranted that the conditions specified in clauses (e) and (f) above have been satisfied.

4.3 Drawdowns

Subject to the terms and conditions of this Agreement, in order to request a Borrowing of Loans during the Availability Period, the Company may from time to time, in accordance with the Drawdown Notice Period described in the Agreement Particulars (or such other period as may be agreed), request a Loan under the Facility by delivery to the Lender of a duly completed Request which shall:

- (a) specify the proposed Utilisation Date for the Loan, which must be a Business Day during the Availability Period; and
- (b) specify the requested amount of the Loan.

Unless otherwise agreed by the Lender, only two Requests in total may be delivered by the Company in each month during the Availability Period.

5 REPAYMENT, PREPAYMENT AND CANCELLATION

5.1 Repayment

On the Termination Date, the Company shall repay to the Lender all outstanding Loans, including all principal plus capitalized Interest plus all capitalized Commitment Fees plus all capitalized Upfront Premium, and all accrued and unpaid Interest, Commitment Fees and Upfront Premium and the Exit Premium. Any amounts borrowed (or deemed borrowed) and repaid or prepaid may not be reborrowed.

5.2 Voluntary prepayment

The Company may, provided that it has given not less than the specified Prepayment Notice Period (or such shorter notice period as may be agreed) prior notice to the Lender, prepay a Loan at any time in whole or in part without premium or penalty (other than customary Breakage Costs and subject to Clause 5.11 (Exit Premium)). Any amount prepaid shall be applied to any principal amount outstanding of the specified Loans and to any accrued but unpaid Interest on such prepaid Loans and any unpaid Commitment Fees and Upfront Premium with respect to the prepaid Loans, unless otherwise agreed.

5.3 Cancellation by the Company

- (a) The Company may, by giving to the Lender not less than the specified Cancellation Notice Period (or such shorter notice period as may be agreed) prior notice specifying the amount to be cancelled, cancel without penalty all or any part of the Facility Amount (as the Company shall specify in such notice) provided such amount shall be no less than US\$1,000,000 (one million US Dollars). In the event of such cancellation, any sums then outstanding in respect of the Facility in excess of the Facility Amount following such cancellation (plus accrued Interest on such excess amount) will be repaid to the Lender by the Company. Any such notice of cancellation shall be irrevocable.
- (b) Any Facility Amount which at that time is unutilised shall be cancelled at the end of the Availability Period.

5.4 Mandatory prepayment – illegality

- (a) If it becomes unlawful for the Lender to perform any of its obligations under this Agreement, to maintain the Facility Amount committed or to fund or maintain its participation in any Loan:
 - (i) the Lender must notify the Company promptly upon becoming aware of that illegality;
 - (ii) the Lender shall not be obliged to fund any further Loans, to the extent affected by that illegality; and
 - (iii) the Lender shall have the right, in its sole discretion, at any time following such event, to: (A) require the Company to repay or prepay the Lender an amount of outstanding Loans equal to the Facility Amount affected by the relevant illegality, together with all applicable accrued Interest, Commitment Fees and Upfront Premium, and all other amounts accrued or outstanding under this Agreement following which all such Loans, accrued Interest, Commitment Fees and other amounts shall become immediately due and payable; and/or (B) cancel the Facility Amount affected by the relevant illegality, whereupon such Facility Amount will be immediately cancelled and shall immediately cease to be available for further utilisation, **provided that** the relevant prepayment or cancellation date under paragraphs (A) and (B) above shall be not be earlier than the last day of any applicable grace period permitted by law.
- (b) The Lender shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to this Clause 5.4 (*Mandatory prepayment – illegality*).

5.5 [Reserved]

5.6 Mandatory prepayment – Extraordinary Receipts

Not later than the second Business Day following the receipt of Net Cash Proceeds by any Obligor in respect of Extraordinary Receipts in excess of \$100,000 in the aggregate for all such Extraordinary Receipts during the term of this Agreement, the Company shall cause to be prepaid an aggregate principal amount of Loans in an amount equal to 100% of all such excess Net Cash Proceeds received therefrom.

5.7 [Reserved]

5.8 [Reserved]

5.9 Mandatory prepayments – Asset Sales

Not later than the second Business Day following the receipt of Net Cash Proceeds by any Obligor in respect of any Asset Sale (or series of related Asset Sales) in excess of \$100,000 in any single transaction or series of related transactions, the Company shall apply 100% of the Net Cash Proceeds received in excess of such threshold to prepay outstanding Loans.

5.10 Mandatory prepayments – debt incurrence or equity issuance

Not later than the second Business Day following the receipt of Net Cash Proceeds by any Obligor in respect of any issuance or incurrence of Indebtedness or issuance of any equity interest, in each case other than as permitted by this Agreement, the Company shall cause to be prepaid an aggregate principal amount of Loans in an amount equal to 100% of all such Net Cash Proceeds received therefrom.

The Company shall deliver to the Lender, at the time of each prepayment required under Clauses 5.6, 5.9 and 5.10, to the extent practicable, at least three Business Day's prior written notice of such prepayment. Each notice of prepayment shall specify the prepayment date and the principal amount of each Loan (or portion thereof) to be prepaid. All prepayments of Loans under this Clause 5 shall be accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment and the Exit Premium. Notwithstanding anything to the contrary herein, the Lender may in its sole discretion elect not to accept all or any part of any mandatory prepayment of Loans required to be made pursuant to Clauses 5.6 and 5.9 above by providing written notice to the Company no later than 5:00 p.m. on the Business Day the Lender receives notice from the Company regarding such prepayment. Any such declined amount shall be applied to prepay other Indebtedness to the extent required by the terms thereof and, after giving effect thereto, any remaining amounts may be retained by the Company.

5.11 Exit Premium

With respect to each repayment or prepayment of Loans under Clause 5 (other than a prepayment or repayment made pursuant to Clauses 5.4, 5.6 or 5.9), any other repayment or prepayment of Loans upon maturity (scheduled or otherwise) and/or any acceleration of the Loans and/or the other Guaranteed Obligations with respect thereto (regardless of whether before or after the occurrence of an Event of Default or the commencement of any bankruptcy or insolvency proceeding or any other proceeding under any Debtor Relief Law (including any deemed repayment or satisfaction in connection therewith)), in each case whether in full or in part, the Company shall be required to pay an amount equal to 2.00% of the amount of the

Loans (including any unpaid capitalized Interest in accordance with Clause 6.3 (*Capitalization of Interest*) and/or any unpaid capitalized Commitment Fees in accordance with Clause 6.4 (*Commitment Fee*) and/or any unpaid capitalized Upfront Premium in accordance with Clause 6.5 (*Upfront Premium*)) repaid, prepaid or accelerated (the “**Exit Premium**”), in each case, concurrently with such repayment, prepayment or acceleration. For the avoidance of doubt, it is understood and agreed that, if the Loans are accelerated or otherwise become due prior to the Final Maturity Date, in each case whether in full or in part (regardless of whether before or after the occurrence of an Event of Default or the commencement of any bankruptcy or insolvency proceeding or any other proceeding under any Debtor Relief Law), the Exit Premium will also automatically be due and payable as though the Loans were being repaid or prepaid and shall constitute part of the Guaranteed Obligations with respect to the Loans. For the avoidance of doubt, the Exit Premium shall also be due and payable (i) in the event the Loans (or any notes representing the Loans) are satisfied or released by foreclosure (whether by power of judicial proceeding or otherwise), deed in lieu of foreclosure or by another means and/or (ii) upon the satisfaction, release, payment, restructuring, reorganization, replacement, reinstatement, defeasance or compromise of any Guaranteed Obligations (and/or this Agreement or the notes evidencing any Guaranteed Obligations) in any insolvency proceeding or other proceeding pursuant to any Debtor Relief Laws, foreclosure (whether by power of judicial proceeding or otherwise), deed in lieu of foreclosure or by other means or the making of a distribution of any kind in any insolvency proceeding or under any Debtor Relief Law to the Lender, in full or partial satisfaction of the Guaranteed Obligations.

5.12 Interest

Any prepayment under this Agreement shall be made together with unpaid accrued Interest on the amount prepaid, and without premium or penalty (other than customary Breakage Costs and subject to Clause 5.11 (*Exit Premium*)).

6 INTEREST AND FEES

6.1 Interest

(a) Interest shall accrue on all outstanding Loans in respect of each Interest Period at a rate equal to the sum of:

- (A) the Interest Reference Rate for that Interest Period;
- (B) the Margin for such Interest Period; and
- (C) the Credit Adjustment Spread,

provided that, in relation to any Interest Period of the Loans, if the aggregate of the Interest Reference Rate and the Credit Adjustment Spread is less than zero, then the aggregate of the applicable Interest Reference Rate and the Credit Adjustment Spread shall be deemed to be zero.

(b) Interest on each Loan will be paid in arrears on the first Business Day following the end of an Interest Period and shall, pursuant to Clause 6.3 (*Capitalization of Interest*),

be added to and be deemed a Loan and bear Interest accordingly.

6.2 Interest rate fallbacks

- (a) *Interpolated Term SOFR*: If Term SOFR is not available for any Interest Period of a Loan, the applicable Interest Reference Rate shall be the Interpolated Term SOFR for a period equal in length to the Interest Period of that Loan.
- (b) *Alternative Term SOFR*: If paragraph (a) above applies to a Loan for an Interest Period but it is not possible to calculate the Interpolated Term SOFR, the applicable Interest Reference Rate shall be the Alternative Term SOFR as on the Quotation Day for a period equal in length to the Interest Period of that Loan.
- (c) *Interpolated Alternative Term SOFR*: If paragraph (b) above applies to a Loan for an Interest Period but no Alternative Term SOFR is available for the Interest Period of that Loan, the applicable Interest Reference Rate shall be the Interpolated Alternative Term SOFR for a period equal in length to the Interest Period of that Loan.
- (d) *Term Fallback Option*: If paragraph (c) above applies to a Loan for an Interest Period but it is not possible to calculate the Interpolated Alternative Term SOFR, the applicable Interest Reference Rate shall be:
 - (A) the percentage rate per annum which is the aggregate of:
 - (1) the Central Bank Rate for the Quotation Day; and
 - (2) any applicable Central Bank Rate Adjustment; or
 - (B) if the Central Bank Rate for the Quotation Day is not available, the percentage rate per annum which is the aggregate of:
 - (1) the most recent Central Bank Rate for a day which is no more than five Additional Business Days before the Quotation Day; and
 - (2) any applicable Central Bank Rate Adjustment.
- (e) *Parties Agreement Fallback Option*: If it is not possible to calculate the applicable Interest Reference Rate under paragraphs (a) to (d) above, the applicable Interest Reference Rate shall be such alternative benchmark rate as may be agreed between the Lender and the Company each acting in a commercially reasonable manner, in line with any rate (i) recommended as a replacement to Term SOFR by the administrator of Term SOFR or any Relevant Nominating Body or (ii) otherwise generally accepted in the relevant loan market.

6.3 Capitalization of Interest

- (a) Unless otherwise agreed in writing, the Company all Interest on the outstanding Loans under the Facility will be capitalized and added to and deemed a Loan on the first Business Day following the end of an Interest Period ending on or prior to the Final

Maturity Date and will bear Interest accordingly. Any Interest capitalized in accordance with this Clause 6.3 (*Capitalization of Interest*) shall be disregarded for the purposes of calculating the Available Facility.

- (b) Interest in respect of an Interest Period which ends on the Final Maturity Date or during the continuance of an Event of Default may not be capitalized.

6.4 Commitment Fee

- (a) The Company agrees to pay to the Lender a commitment fee calculated based on the average daily undrawn, uncanceled amount of the Facility, computed at a rate per annum equal to the Commitment Fee. Such Commitment Fee shall be payable (i) monthly in arrears which shall be due and payable on the last day of each calendar month during the Availability Period, and (ii) on the last day of the Availability Period, provided that if there is a cancellation in full or in part, such fee shall be due and payable on the cancelled amount of the Facility at the time the relevant cancellation becomes effective.
- (b) Other than the payment date occurring on the last day of the Availability Period, the Commitment Fee will be payable in kind, and such Commitment Fee shall be added to or be deemed a Loan under the Facility (although any such capitalized Commitment Fees shall be disregarded for the purposes of calculating the Available Facility).
- (c) Commitment Fee amounts due and payable on the last day of the Availability Period may not be capitalized.

6.5 Upfront Premium

- (a) The Company agrees to pay to the Lender an upfront premium equal to 2.00% of the aggregate amount of the DIP Commitments as of the Effective Date (the “**Upfront Premium**”).
- (b) The Upfront Premium will be fully earned and due and payable in kind, and such Upfront Premium be added to or be deemed a Loan under the Facility (although any such capitalized Upfront Premium shall be disregarded for the purposes of calculating the Available Facility) on the first Delayed Draw Borrowing Date hereunder.

6.6 Notification

The Lender shall promptly notify the Company of each new rate of Interest determined by it under this Clause 6 (*Interest and Fees*).

7 COSTS AND INDEMNITIES

7.1 Recovery of external costs

The Company shall promptly on demand reimburse the Lender the amount of all external costs and expenses (together with any applicable value added tax on them) that the Lender actually incurs in connection with the enforcement of any Loan and this Agreement.

7.2 Stamp duties and other documentary taxes

The Obligors shall pay any stamp, documentary, intangible, recording, filing and other similar duties and taxes to which the Financing Documents may be subject or give rise (including any such taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Financing Documents) and shall indemnify the Lender against any losses or liabilities which it may incur as a result of any delay or omission by the Obligors in paying any such duties or taxes.

7.3 General indemnity

The Obligors will, on demand, indemnify the Lender against any costs, loss, expense or liabilities reasonably sustained or incurred by it directly as a result of any failure by an Obligor to comply with any of its obligations under this Agreement.

7.4 Currency Indemnity

(a) If any sum due from an Obligor under this Agreement (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from USD (the “**First Currency**”) into another currency (the “**Second Currency**”) for the purpose of:

- (i) making or filing a claim or proof against an Obligor;
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings;

the relevant Obligor shall, as an independent obligation (joint and several between the Obligors), within three (3) Business Days of demand, indemnify the Lender to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

(b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under this Agreement in a currency or currency unit other than that in which it is expressed to be payable.

8 REPRESENTATIONS

8.1 Representations

Each Obligor makes the representations and warranties set out in this Clause 8.1 (Representations) to the Lender. The Lender enters into this Agreement on the strength of and relying on the representations and warranties set out in this Clause 8 (Representations), each of which is a separate representation and warranty, given without prejudice to any other representation or warranty and is deemed to be a material representation or warranty (as applicable) inducing the Lender to enter into this Agreement.

(a) Status

- (i) It is a duly organized and validly existing and in good standing (to the extent such concept exists in the relevant jurisdiction) under the laws of its jurisdiction of organization.
- (ii) It has the power to own its assets and carry on its business as it is being conducted.

(b) Capacity, power and authority

Subject to the entry of the DIP Orders and the terms thereof, it has the legal capacity, authority and power to enter into and perform, and subject to the entry of the DIP Orders and the terms thereof, it has taken all necessary action to authorise the entry into and performance of the Financing Documents to which it is a party and the transactions contemplated by such Financing Documents.

(c) Legal validity

- (i) Subject to the entry of the DIP Orders and the terms thereof, the Financing Documents constitute legally binding, valid and enforceable obligations, in the proper form for its enforcement, and other than violations arising as a result of the commencement of the Cases and except as otherwise excused by the Bankruptcy Code, the entry into the Financing Documents, their performance, and the transactions contemplated by them, do not conflict with any law or regulation applicable to the relevant Obligor party to such Financing Documents (other than to extent that any such conflict is an immaterial breach of such law or regulation).
- (ii) Subject to the DIP Orders and the terms thereof, to ensure the legality, validity, enforceability or admissibility into evidence of the Financing Documents, it is not necessary that the Financing Documents or any other document be filed or recorded with any governmental authority (other than the entry of the DIP Orders) in these jurisdictions, other than, as of the date of this Agreement, (i) filings of financing statements under the Uniform Commercial Code (UCC) in the Office of the Secretary of State of the State of Delaware and the Secretary of State of the State of Washington by each Obligor party to the Security Agreement governed under the law of New York, and (ii) filings with the United States Patent and Trademark Office and the United States Copyright Office with respect to intellectual property rights under the Security Agreement governed under the law of New York entered into by each of the Obligors and the Lender entered into by, among others, FMH and the Lender (in the case of each of (i) and (ii), as required to create first ranking security over all assets which are subject to security under the relevant Security Agreement).

(d) Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Financing Documents to which it is a party, and the granting of any Security under the Security Agreements to which it is a party, do not conflict with:

- (i) the constitutional documents of any Obligor; or
- (ii) other than violations arising as a result of the commencement of the Cases and except as otherwise excused by the Bankruptcy Code, any document which is binding upon it or any of its assets or constitute a default or termination event (however described) under any such document,

in each case, to an extent or in a manner which has a Material Adverse Effect or could result in any liability on the part of the Lender to any third party.

(e) Authorisations

Subject to the DIP Orders and the terms thereof, all authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, the Financing Documents to which it is a party have been obtained or effected (as appropriate) and are in full force and effect.

(f) Pari passu ranking

Its payment obligations under this Agreement rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

(g) Encumbrances over assets

(i) It has no encumbrances on the whole or any part of its present or future assets save as arising by operation of law, as permitted by this Agreement or pursuant to any Security Agreement, or during the ordinary course of its business, or disclosed in writing to the Lender on or before the execution hereof.

(ii) Subject to the DIP Orders and the terms thereof, each Security Agreement (if any then exists):

(A) creates or, upon execution (and, where applicable, following registration and/or satisfaction of any other requirement for the perfection of the relevant security interest) will create, those security interests that it purports to create which security interests are (or will be, as applicable) perfected, first priority security interests in favor of the Lender; and

(B) is legal, valid and binding under its governing law.

(h) No default; no Material Adverse Effect

- (i) No Event of Default is continuing or will result from the entry into, or the performance of any transaction contemplated by, the Financing Documents.
 - (ii) Other than violations arising as a (i) result of the commencement of the Cases and except as otherwise excused by the Bankruptcy Code and (ii) alleged Defaults specifically identified by the Lender in the Notice of Forbearance, no other event or circumstance is continuing which constitutes a default under any other agreement, instrument or document which is binding on it or any of its assets to an extent or in a manner which has or is reasonably likely to have a Material Adverse Effect.
 - (iii) Since the Petition Date, no event, change, circumstance or condition has occurred that, individually or in the aggregate, has had, or could reasonably be expected to have, a Material Adverse Effect.
- (i) Financial Statements.
 - (i) The consolidated financial statements of the Obligors were prepared in accordance with GAAP, and give a true and fair view of the financial condition of the Persons covered thereby as at the date such financial statements were prepared, subject only to any qualifications expressly set out in such financial statements. No Obligor has liabilities, obligations or commitments of a type required to be reflected in a financial statement in accordance with GAAP, except: (i) those which are adequately reflected or reserved against in the provided financial statements; and (ii) those which have been incurred in the ordinary course of business and which are not material in amount.
 - (ii) The Initial Budget, which was delivered to the Lender on or prior to the Effective Date, and each subsequent Budget was prepared in good faith based upon assumptions the Company believed to be reasonable assumptions on the date of delivery of such Budget. To the knowledge of the Company, no facts exist that (individually or in the aggregate) would result in any material change in the then-applicable Approved Budget. The Company shall deliver to the Lender updates to the Budget in accordance with Clause 9.5(b).
- (j) Taxes
 - (i) Each Obligor has filed all income and other material federal, state and local or non-U.S. tax returns, as the case may be, which are required to be filed by it and has paid all income and other material taxes due pursuant to such returns or pursuant to any assessment received by an Obligor, except (i) to the extent that any such assessment is being contested in good faith by appropriate proceedings and (ii) taxes that need not be paid pursuant to an order of the Bankruptcy Court or pursuant to the Bankruptcy Code. The charges, accruals and reserves on the books of Obligors in respect of taxes or other governmental charges are adequate in accordance with GAAP.

(k) Governing Law

The submission to jurisdiction, consents and waivers by the Obligors in the relevant Financing Documents are valid and irrevocable.

(l) Validity and admissibility in evidence

It is not necessary in order for the Lender to enforce any rights or remedies under the Financing Documents against any Obligor or solely by reason of the execution, delivery and performance by Obligors of the Financing Documents that the Lender be licensed or qualified with any governmental authority in the United States.

(m) No Misleading Information

All information heretofore furnished by or on behalf of the Obligors and their Subsidiaries to the Lender for purposes of or in connection with the Financing Documents or any transaction contemplated under the Financing Documents (including any Budget) is, and all such information hereafter furnished by or on behalf of the Obligors and their Subsidiaries to the Lender will be, true and accurate in all material respects on the date as of which such information is stated or certified and does not contain any untrue statement of a material fact or omit any material fact necessary to make the statement made not misleading.

(n) No Litigation; Compliance with Laws

(i) Except for the Cases, there is no action, suit, proceeding or investigation pending against, or to the Obligors' knowledge threatened against or affecting, the Obligors before any court or arbitrator or any governmental body, agency or official in which there is a reasonable possibility of an adverse decision which could have a Material Adverse Effect, except those disclosed to the Lender as of the Effective Date, or which in any manner draws into question the validity or enforceability of the Financing Documents.

(ii) Except as excused by the Bankruptcy Code, none of the Obligors nor any of their respective material properties or assets is in violation of, nor will the continued operation of their material properties and assets as currently conducted violate, any law, rule or regulation, or is in default with respect to any judgment, writ, injunction, decree or order of any governmental authority, where such violation or default could reasonably be expected to result in a Material Adverse Effect.

(o) No Immunity

None of the Obligors nor any of their respective property has any immunity from the jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) under applicable law in respect of their obligations under the Financing Documents.

(p) Properties; Intellectual Property; Collateral

- (i) Subject to the terms of the applicable DIP Orders, each Obligor has good title to, or valid leasehold interests in, all real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes or to the extent that any such failures would not in the aggregate reasonably be expected to have a Material Adverse Effect. No Obligor owns any fee owned real property.
- (ii) The properties of the Obligors are insured with financially sound and reputable insurance companies that are not affiliates of the Company, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Obligor operates.
- (iii) Each of the Obligors owns, licenses or possesses the right to use all of the trademarks, tradenames, service marks, copyrights, patents, franchises, licenses and other intellectual property rights that are necessary for the operation of their respective businesses, as currently conducted, and the use thereof by any Obligor does not conflict with the rights of any other Person, except to the extent that such failure to own, license or possess or such conflicts, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the foregoing is pending or, to the knowledge of such Obligor, threatened that would reasonably be expected to be adversely determined, and, if so determined, would reasonably be expected to have a Material Adverse Effect.
- (iv) Upon the entry of the Interim DIP Order (and, if entered, the Final DIP Order), the liens granted thereunder by the Debtors to the Lender on any Collateral shall be valid and automatically perfected with the priority set forth herein and in the DIP Orders, and no filing or other action will be necessary to perfect or protect such liens and security interests with respect to any Debtor's Guaranteed Obligations under the Financing Documents and such DIP Order.

(q) Cases; Orders

- (i) The Cases were commenced on the Petition Date in accordance with applicable laws and proper notice thereof was given for (i) the motion seeking approval of the Financing Documents and the Interim DIP Order and, when applicable, Final DIP Order, (ii) the hearing for the entry of the Interim DIP Order, and (iii) the hearing for the entry of the Final DIP Order (*provided* that notice of the final hearing will be given as soon as reasonably practicable after such hearing has been scheduled).
- (ii) After the entry of the Interim DIP Order, and pursuant to and to the extent

permitted in the Interim DIP Order and the Final DIP Order, the Guaranteed Obligations will constitute allowed administrative expense claims in the Cases having priority over all administrative expense claims and unsecured claims against the Debtors now existing or hereafter arising, of any kind whatsoever, including all administrative expense claims of the kind specified in sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under section 364(c)(1) of the Bankruptcy Code, subject to (i) the Carve-Out and (ii) the priorities set forth in the Interim DIP Order or Final DIP Order, as applicable.

- (iii) After the entry of the Interim DIP Order and pursuant to and to the extent provided in the Interim DIP Order and the Final DIP Order, the Guaranteed Obligations will be secured by a valid and perfected Lien on all of the Collateral and with the priority set forth in the Interim DIP Order or the Final DIP Order.
- (iv) The Interim DIP Order (with respect to the period on and after entry of the Interim DIP Order and prior to entry of the Final DIP Order) or the Final DIP Order (with respect to the period on and after entry of the Final DIP Order), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), vacated, or, without the Lender's consent, modified or amended. The Obligors are in compliance in all material respects with the Interim DIP Order (with respect to the period on and after entry of the Interim DIP Order and prior to entry of the Final DIP Order) or the Final DIP Order (with respect to the period on and after entry of the Final DIP Order).
- (v) Notwithstanding the provisions of section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim DIP Order or the Final DIP Order, as the case may be, upon the Termination Date (whether by acceleration or otherwise) of any of the Guaranteed Obligations, the Lender shall be entitled to immediate payment of such Guaranteed Obligations and, subject to Clause 10.1 (Event of Default), to enforce the remedies provided for hereunder or under applicable laws, without further notice, motion or application to, hearing before, or order from, the Bankruptcy Court.

8.2 Repetition

- (a) The representations and warranties set out in Clause 8.1 (Representations) are made by the Obligors on the date of this Agreement. The representations and warranties set out in Clause 8.1 (Representations) are further made on the date of any Security Agreement entered into pursuant to Clause 9.16 (Additional Security) by the Obligor executing such Security Agreement with respect to the relevant Security Agreement.
- (b) Each representation and warranty set out in Clause 8.1 (Representations) is deemed to be repeated by the Obligors on the date of each Request and on the first day of each Interest Period.

- (c) The representations and warranties set out in Clause 8.1 (*Representations*) are made by each New Subsidiary at the time it accedes hereto in accordance with Clause 11.7 (*Accession of New Subsidiaries*) and on the on the date of each Request thereafter.
- (d) When a representation and warranty is repeated, it is made with reference to the circumstances existing at the time of repetition.

9 COVENANTS

9.1 Authorisations

Each Obligor must promptly:

- (a) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence; and
- (b) if so requested by the Lender, supply certified copies to the Lender of any authorisation required under any law or regulation to enable it to perform its respective obligations under the Financing Documents and to ensure the legality, validity, enforceability or admissibility in evidence of the Financing Documents.

9.2 Insurance

To the extent consistent with the Approved Budget, each Obligor must:

- (a) Keep its insurable properties adequately insured at all times by financially sound and reputable insurers; maintain such other insurance (including self-insurance), to such extent and against such risks, including fire and other risks insured against by extended coverage, as is customary with companies in the same or similar businesses operating in the same or similar locations and of same or similar size; and maintain such other insurance as may be required by law;
- (b) Notify the Lender promptly whenever any separate insurance is taken out by any Obligor concurrent in form or contributing in the event of loss with that required to be maintained under this Clause 9.2; and promptly deliver to the Lender a duplicate original copy of such policy or policies (including, for the avoidance of doubt, any flood or earthquake policy or policies);
- (c) In connection with the covenants set forth in this Clause 9.2, it is understood and agreed that:
 - (i) none of the Lender or its agents or employees shall be liable for any loss or damage insured by the insurance policies to be maintained under this Clause 9.2, it being understood that (A) the Obligors shall look solely to their insurance companies or any other parties other than the aforesaid parties for the recovery of such loss or damage and (B) such insurance companies shall have no rights of subrogation against the Lender or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights

against such parties, as required above, then the Company and Guarantor each hereby agrees, to the extent permitted by law, to waive its right of recovery, if any, against the Lender and its agents and employees; and

- (ii) the designation of any form, type or amount of insurance coverage by the Lender under this Clause 9.2 shall in no event be deemed a representation, warranty or advice by the Lender that such insurance is adequate for the purposes of the Company and Synchronous LLC or the protection of their properties and the Lender shall have the right from time to time to require the Company and the Obligors to keep other insurance in such form and amount as the Lender may reasonably request; provided that such insurance shall be obtainable on commercially reasonable terms and consistent with the Approved Budget.

9.3 Pari passu ranking

Each Obligor must ensure that its payment obligations under the Financing Documents to which it is a party at all times rank at least *pari passu* with all its other present and future unsecured and unsubordinated payment obligations, except for obligations mandatorily preferred by law applying to companies generally.

9.4 Encumbrances over assets

Each Obligor shall not create or permit to subsist any encumbrance on the whole or any part of its present or future assets, except (i) subject to the DIP Orders and the terms thereof, liens, pledges or deposits under worker's compensation, unemployment insurance or other social security legislation; (ii) mandatory liens (not securing Indebtedness) arising solely by operation of law in the ordinary course of the relevant Obligor's business, (iii) entered into with the prior consent in writing of the Lender, (iv) encumbrances securing the obligations under the Pre-Petition Facility and encumbrances already existing as at the Effective Date and disclosed to the Lender in writing prior to the Effective Date, or (v) liens created under the Financing Documents or the DIP Orders.

9.5 Financial Statements, Reports, etc.

The Company shall furnish to the Lender:

- (a) not later than 1:00 p.m. (New York City time) on the Thursday of each week (or if such day is not a Business Day, the immediately succeeding Business Day), a duly completed Liquidity Certificate;
- (b) on or prior to the Effective Date, the Initial Budget. The Company shall update the Initial Budget (or the then-effective Approved Budget, as applicable) by no later than 1:00 p.m. (New York City time) on the Thursday of each week (or if such day is not a Business Day, the immediately succeeding Business Day), commencing with the Thursday of the first full calendar week after the Petition Date by delivering via email a Budget for the rolling 13-week period (or the period through the Final Maturity Date, if shorter) commencing on the Saturday of the prior week; *provided* that (i) any such

updated Budget must be approved by the Lender in its sole discretion; *provided* that the Lender shall be deemed to have approved any such updated Budget if it has not object to such updated Budget within three Business Days of receipt thereof and (ii) to the extent any such updated Budget is approved by the Lender, the line item amounts set forth therein shall only be used to calculate the projected line items commencing with the week in which such updated Budget is so approved and for subsequent weeks set forth therein, and any prior weeks tested as part of any then applicable Budget Variance Test Period or other test or period shall be calculated using the projected line items set forth in the applicable previously Approved Budget. Upon delivery on or about the Effective Date, in the case of the Initial Budget, and upon such approval by the Lender pursuant to this Clause 9.5(b) with respect to a Budget required to be approved pursuant to this Clause 9.5(b), such Budget shall constitute, together with the Initial Budget, the “**Approved Budget**”;

- (c) not later than 1:00 p.m. (New York City time) on each Budget Variance Test Date, a Budget Variance Report;
- (d) (x) in a manner (including with respect to timing of delivery) consistent with past practice of the Obligors and their Subsidiaries, all management reporting materials for each Obligor and its Subsidiaries, including operational cash flow forecasts for operating entities, in each case, in substantially the same form as prepared and disclosed to the Lender prior to the Effective Date and (subject to reasonable adjustment to account for intervening transactions) (y) and such other financial information with respect to the Obligors and their Subsidiaries as the Lender may reasonably request; and
- (e) not later than 1:00 p.m. (New York City time) on each Thursday occurring after the Petition Date, commencing with the Thursday of the first full calendar week occurring after the Petition Date (or to the extent such Thursday is not a Business Day, the next Business Day thereafter), (i) a cash flow forecast for the most recently ended Budget Variance Test Period for the subsequent calendar week in form and substance reasonably satisfactory to the Lender and (ii) a matrix/schedule (“**Weekly Payment Matrix**”) of the aggregate amount of payments made during the immediately preceding calendar week with respect to any (x) critical vendors, (y) foreign vendors and (z) administrative expenses under section 503(b)(9) of the Bankruptcy Code, including the following information: (1) the category or type of payment identified in the foregoing clauses (x), (y) and (z), (2) the date and aggregate amount of each payment and (iii) the Debtors that made the payment; *provided* that each such Weekly Payment Matrix shall be in form and substance reasonably acceptable to the Lender.

9.6 Lender Conference Calls

The Company shall host a conference call with representatives of the Lender (including advisors) at least twice each week upon reasonable prior notice to be held at such time as reasonably designated by Company (in consultation with the Lender) (but, in any event, within three Business Days of each delivery of the management reports and financials delivered pursuant to Clause 9.5(d)), at which conference call the Company shall make available the

executive management team and their advisors and there shall be discussed the Budget and the Budget Variance Reports, the Obligors' financial condition, business operations, liquidity, business plan, forecasts and projections and other materials provided pursuant to Clause 9.5.

9.7 Information

- (a) Each Obligor shall supply to the Lender, promptly on request, such documentation or information regarding its financial condition, business and operations, or other information as the Lender may reasonably request, including any such information that is required to enable the Lender, in its sole discretion, to comply with any legal or regulatory requirements, including tax, "know your customer" and anti-money laundering rules and regulations applicable to the Lender (including to make any filings or respond to any information requests).
- (b) Any Obligor must notify the Lender of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- (c) Any Obligor must notify the Lender in writing, promptly after obtaining knowledge thereof, of (i) the filing or commencement of, or any threat or notice of intention of any person to file or comment, any action, suit or proceeding, whether at law or in equity or by or before any governmental authority, against the Company or any affiliate thereof that could reasonably be expected to result in a Material Adverse Effect and (ii) any development with respect to any Obligor that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect.

9.8 Compliance with laws and regulations

Except as otherwise excused by the Bankruptcy Code, each Obligor will comply with the requirements of all laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

9.9 Preservation of corporate existence

Each Obligor will (a) preserve, renew and maintain in full force and effect its legal existence and good standing under the laws of the jurisdiction of its organization except in a transaction permitted under this Agreement; (b) take all reasonable action to maintain all rights, licenses, permits, privileges and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its patents, trademarks, trade names and service marks.

9.10 Keeping of books and records

Each Obligor will maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Obligors.

9.11 Maintenance of Properties

Each Obligor will (a) maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in good working order and condition (ordinary wear and tear excepted) and (b) make all necessary repairs and renewals and replacements, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

9.12 Mergers, spin-off, liquidations, dissolution and joint venture

Unless otherwise agreed in writing by the Lender, no Obligor shall (i) consolidate with, merge or amalgamate with or into, or demerge from any other person or undergo any other financial reconstruction or liquidation or dissolution, (ii) transfer to any person all or substantially all of its assets in one or more related transactions, or (iii) enter into any partnership or joint venture.

9.13 Changes in nature of business

No Obligor shall engage to any material extent in any business other than those businesses conducted by the Obligors on the date hereof or any business reasonably related or incidental thereto or representing a reasonable expansion thereof.

9.14 Asset Dispositions

- (a) No Obligor shall Dispose of any of its assets, except to the extent such Disposition is: (i) in relation to obsolete or worn out property, whether now owned or acquired; (ii) in relation to sales of goods and services (other than sale of patents, trademarks, trade names and service marks) to third parties, conducted on arm's length basis and in the ordinary course of business; or (iii) otherwise permitted under the Financing Documents.
- (b) Unless otherwise contemplated under a Financing Document, each Obligor undertakes that it shall not Dispose of any assets which have been acquired using proceeds of the loans.

9.15 Further Assurances.

The Obligors shall: (a) correct any material defect or error that may be discovered in any Financing Document or in the execution, acknowledgment, filing or recordation thereof; and (b) execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, conveyances, pledge agreements, assignments, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments as the Lender may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Financing Documents, (ii) to the fullest extent permitted by applicable laws, subject any properties, assets, rights or interests to the liens now or intended to be covered by any of the Security Agreements, (iii) perfect and maintain the validity, effectiveness and priority of any of the Security Agreements and any of the liens intended to be created under the Financing Agreements and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Lender

the rights granted or now or intended to be granted to the Lender under any Financing Document or under any other instrument executed in connection with any Financing Document to which an Obligor is or is to be a party.

9.16 Additional Security

Each Obligor shall, if so requested by the Lender with at least ten (10) Business Days prior notice, enter into a Security Agreement and take all such other actions on such terms as are necessary to create first ranking security in favor of the Lender over its assets.

9.17 Indebtedness

No Obligor shall create, incur, assume or suffer to exist any Indebtedness, except Indebtedness which is:

- (a) (w) owing between the Obligors, (x) created under the Financing Documents, (y) outstanding on the Effective Date under the Pre-Petition Facility and the other Pre-Petition Financing Documents as in effect on the Effective Date *plus* accrued and unpaid interest thereunder or (z) outstanding on the date hereof and disclosed to the Lender in writing prior to the Effective Date.

9.18 Investments

No Obligor shall make any Investment or enter into any agreement to make any Investment, except:

- (a) Investments held by an Obligor in the form of cash and cash equivalents; and
- (b) Investments by any Obligor in any other Obligor

9.19 Burdensome Agreements

No Obligor shall enter into any contractual obligation that limits the ability of any of the Obligors to pay, directly or indirectly, dividends or make any other distributions in respect of its equity interests to the Company or to otherwise transfer property to the Company.

9.20 Additional Subsidiaries

The Obligors shall not create or acquire any Subsidiary except with the prior written consent of the Lender (which may be provided via email to the Borrower).

9.21 Limitations on Upstreaming

Notwithstanding anything herein to the contrary, no Obligor shall permit any of its Subsidiaries that are not Obligors to contribute or transfer (including by way of any Restricted Payments, Investments or Dispositions) any assets or other property, including cash and cash equivalents, to any direct or indirect parent company of the Company.

9.22 Restricted Junior Payments

No Obligor shall directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Junior Payment except that any Subsidiary may declare and pay dividends or make other distributions ratably to its equity holders.

9.23 Certain Amendments

The Obligors will not, without the consent of the Lender (such consent not to be unreasonably withheld or delayed), (a) amend, modify or change any provision of their respective organizational documents in a manner that is materially adverse to the Lender or (b) amend, modify or change, or permit the amendment, modification or changing of any documents in respect of the Pre-Petition Facility.

9.24 Transactions with Affiliates

No Obligor shall sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transactions with, any of its affiliates other than (a) transactions on terms and conditions (taken as a whole) not materially less favorable to such Obligor than could be obtained on an arm's-length basis from unrelated third parties; provided that such restriction shall not apply to any transaction between or among Obligors, and (b) to the extent constituting transactions with affiliates that would otherwise be prohibited under this Clause 9.24: (i) [reserved], (ii) the payment of reasonable fees to directors of the Company or any Subsidiary who are not employees of the Company or any Subsidiary, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of the Company or the Subsidiaries in the ordinary course of business and consistent with the Approved Budget, (iii) transactions permitted under Clauses 9.17 and 9.18 and (iv) the Company and the Subsidiaries may perform their respective obligations under the arrangements outstanding on the date hereof and disclosed to the Lender in writing prior to the Effective Date.

9.25 Material Contracts

- (a) Save for any Financing Document, no Obligor shall enter into any material agreement, contract or commitment or incur any additional obligation other than in the ordinary course of business.
- (b) Each Obligor shall not permit any waiver, supplement modification, amendment, termination or release of any agreement with any material vendor.
- (c) Unless otherwise agreed by the Lender in its sole discretion, each Obligor shall not make payments or enter into any payment plans and/or settlements with respect to amounts owing (x) to any critical vendors, (y) to any foreign vendors and (z) in respect of administrative expenses under section 503(b)(9) of the Bankruptcy Code.

9.26 Obligations and Taxes

Each Obligor shall, in accordance with the Bankruptcy Code and subject to any required approval by the Bankruptcy Court in the case of the Debtors (it being understood that no Debtor

shall be obligated to make any payments hereunder that may, in its reasonable judgment, result in a violation of any applicable law, including the Bankruptcy Code, without an order of the Bankruptcy Court authorizing such payments) and any prohibitions set forth in this Agreement, pay its Indebtedness and other obligations promptly and in accordance with their terms and pay and discharge promptly when due all material taxes (in the case of any Debtor, solely to the extent arising after the Petition Date) imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful claims for labor, materials and supplies or otherwise that, if unpaid, could reasonably be expected to give rise to a lien upon such properties or any part thereof; *provided* that such payment and discharge shall not be required with respect to any such obligation or taxes so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings diligently conducted and the Company or such Obligor shall have set aside on its books adequate reserves with respect thereto in accordance with GAAP and such contest operates to suspend collection of the contested obligation or taxes and enforcement of a lien.

9.27 Use of Proceeds

The Obligors shall use the proceeds of the Loans only for the purposes described in Clause 3.1.

9.28 Financial Covenants

- (a) Commencing with the Thursday of the first full week after the Petition Date and tested on each Thursday thereafter, the Company shall not permit Liquidity to be less than \$1,000,000 as of such testing date.
- (b) On each Budget Variance Test Date, the Company shall not permit actual total disbursements (including professional fees) and actual capital expenditures for such Budget Variance Test Period to be greater than 115% of the forecasted total disbursements (including professional fees) and forecasted total capital expenditures for such Budget Variance Test Period in the applicable Approved Budget; provided that, to the extent any disbursement or capital expenditure was scheduled to be made in any applicable period pursuant to the then applicable Approved Budget and was not made or expended during such period, the amount of such disbursement or capital expenditure may be made in a future period without constituting an “actual” disbursement or capital expenditure for purposes of the budget variance covenant set forth in this Section 9.28(b) in such future period.

9.29 Milestones

The Obligors shall ensure the satisfaction of the following milestones (collectively, the “**Milestones**” and each, a “**Milestone**”), unless waived or extended with the consent of the Lender in its sole discretion (which may be by email):

- (a) no later than one calendar day after the Petition Date, the Obligors shall have filed:
 - (i) a motion, in form and substance acceptable to the Lender, seeking approval of bid procedures in respect of a sale of the Debtors’ assets and approval of the bid protections in the Stalking Horse Purchase Agreement (the “**Bidding**”

Procedures Motion”);

- (ii) a motion in form and substance acceptable to the Lender seeking to establish deadlines to file proofs of claim;
- (iii) a motion, in form and substance acceptable to Anglo, seeking approval of the Facility; and
- (b) no later than the date that is three calendar days after the Petition Date, the Bankruptcy Court shall have entered the Interim DIP Order approving the Facility;
- (c) no later than the date that is five days after the Petition Date, the Obligors shall have filed a plan of reorganization and disclosure statement, each in form and substance acceptable to Anglo, with the Bankruptcy Court;
- (d) no later than the date that is 19 calendar days following the Petition Date the Obligors shall have filed each of the schedules and statements required pursuant to Rule 1007 of the Federal Rules of Bankruptcy Procedure;
- (e) no later than 20 days following the Petition Date, the Bankruptcy Court shall have entered an order in form and substance acceptable to Anglo approving the deadlines by which proofs of claim are required to be filed;
- (f) no later than the date that is 30 calendar days after the Petition Date, the Bankruptcy Court shall have entered an order approving the Bidding Procedures Motion;
- (g) no later than the date that is 35 days after the Petition Date, the Bankruptcy Court shall have approved the Final DIP Order;
- (h) no later than the date that is 36 days after the Petition Date, the deadline for qualified bids submitted pursuant to the Bidding Procedures (the “**Bid Deadline**”) shall occur;
- (i) no later than the date that is 7 days after the Bid Deadline, the Company Entities shall have commenced the Auction;
- (j) no later than the date that is 3 business days after the Auction concludes, the Bankruptcy Court shall have entered the Sale Order in form and substance acceptable to the Lender;
- (k) no later than the date that is 15 days after entry of the Sale Order, all conditions to closing of the Sale Transaction shall have been satisfied and the Sale Transaction shall be consummated;
- (l) no later than the date that is 57 calendar days after the Petition Date, the Bankruptcy Court shall have entered an order approving the disclosure statement for a chapter 11 liquidating plan, each in form and substance acceptable to the Lender;
- (m) no later than 94 days after the Petition Date, or as soon thereafter as the Bankruptcy Court may be available, the Bankruptcy Court shall have entered an order confirming

the Plan (the “**Confirmation Order**”) in form and substance acceptable to the Lender; and

- (n) no later than the seven calendar days after entry of the Confirmation Order, the Plan shall have become effective in accordance with its terms.

9.30 Priority of Liens

Subject to the DIP Orders, each Obligor hereby covenants, represents and warrants that, upon entry of the Interim DIP Order (and when applicable, the Final DIP Order), its Guaranteed Obligations hereunder and under the other Financing Documents:

- (a) pursuant to section 364(c)(1) of the Bankruptcy Code, shall at all times constitute an allowed Superpriority Claim against each of the Obligors on a joint and several basis, which will be payable from and have recourse to all pre- and post-petition property of the Obligors and all proceeds thereof (excluding Avoidance Actions but including, subject to entry of a Final DIP Order, Avoidance Proceeds), subject only to the Carve-Out to the extent provided in the Interim DIP Order or the Final DIP Order, as applicable and any payments or proceeds on account of such Superpriority Claim shall be distributed in accordance herewith;
- (b) pursuant to section 364(c)(2) of the Bankruptcy Code and subject to the Carve-Out to the extent provided in the Interim DIP Order or Final DIP Order, as applicable, shall be secured by a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest and lien on all of the assets of the Obligors, whether currently existing or thereafter acquired, of the same nature, scope and type as the Collateral that are not subject to (x) valid, perfected and non-avoidable liens as of the Petition Date or (y) valid liens in existence as of the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, excluding Avoidance Actions but including, subject to entry of the Final DIP Order, Avoidance Proceeds;
- (c) pursuant to section 364(d)(1) of the Bankruptcy Code and subject only to the Carve-Out to the extent provided in the applicable DIP Order, shall at all times be secured by (i) a valid, binding, continuing, enforceable, fully-perfected first priority priming security interest in and lien upon the property of the Obligors of the same nature, scope and type as the Collateral to the extent that such Collateral is subject to existing liens that secure the obligations under the Pre-Petition Facility and (ii) such priming liens shall be senior in all respects to any Adequate Protection Liens (as defined in the Orders);
- (d) pursuant to section 364(c)(3) of the Bankruptcy Code, subject only to the Carve-Out to the extent provided in the applicable DIP Order and except as provided in clause (c) above, shall be secured by a valid, binding, continuing, enforceable, fully-perfected junior security interest in and lien on the Collateral, which is subject to (A) valid, perfected and non-avoidable senior liens in existence at the time of the commencement of the Cases (other than liens securing the obligations under the Pre-Petition Facility)

and (B) valid senior liens (other than liens securing the obligations under the Pre-Petition Facility) in existence at the time of such commencement that are perfected subsequent to such commencement as permitted by section 546(b) of the Bankruptcy Code, with the priority of the liens in respect of the Facility as set forth in the DIP Orders;

- (e) shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Obligors and their estates under section 551 of the Bankruptcy Code or (ii) unless otherwise provided for in the Financing Documents, any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Obligors;
- (f) each Obligor hereby confirms and acknowledges that, pursuant to the Interim DIP Order (and, when entered, the Final DIP Order), the liens in favor of the Lender in all of the assets of the Obligors shall be created and (to the extent the Interim DIP Order (and, when entered, the Final DIP Order) is effective to create and perfect under local law) perfected without the recordation or filing in any land records or filing offices of any mortgage, assignment or similar instrument;
- (g) each Obligor further agrees that, upon the request of the Lender in its reasonable business judgment, such Obligor shall execute and deliver to the Lender, as soon as reasonably practicable following such request but in any event within thirty days following such request, mortgages in recordable form with respect to any material real property and identified by the Lender on terms reasonably satisfactory to the Lenders;
- (h) for the avoidance of doubt, the Collateral shall exclude Avoidance Actions, but shall, subject to entry of the Final DIP Order, include Avoidance Proceeds;
- (i) Subject to and effective only upon entry of the Final DIP Order, except to the extent of the Carve-Out, no costs or expenses of administration of the Cases or any future proceeding that may result therefrom, including a case under chapter 7 of the Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of section 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of Law, without the prior written consent of Lender, and no consent shall be implied from any action, inaction or acquiescence by the Lender. In no event shall the Lender be subject to (i) the “equities of the case” exception contained in section 552(b) of the Bankruptcy Code (subject only to and effective upon entry of the Final DIP Order), or (ii) the equitable doctrine of “marshaling” or any other similar doctrine with respect to the Collateral; and
- (j) Except for the Carve-Out, the Superpriority Claims shall at all times be senior to the rights of any Obligor, any chapter 11 trustee and, subject to section 726 of the Bankruptcy Code, any chapter 7 trustee, or any other creditor (including, without

limitation, Post-Petition counterparties and other Post-Petition creditors) in the Cases or any subsequent proceedings under the Bankruptcy Code, including, without limitation, any chapter 7 cases (if any of the Cases are converted to cases under chapter 7 of the Bankruptcy Code).

9.31 Bankruptcy-Related Matters

The Obligors shall:

- (a) cause all proposed (i) “first day” orders, (ii) “second day” orders, (iii) orders related to or affecting the Loans, the Financing Documents and the Pre-Petition Financing Documents, any other financing or use of Cash Collateral, any sale or other disposition of Collateral outside the ordinary course, cash management, adequate protection, any plan of reorganization and/or any disclosure statement related thereto, (iv) orders concerning the financial condition of the Company or any of its Subsidiaries or other Indebtedness of the Obligors or seeking relief under section 363, 365, 1113 or 1114 of the Bankruptcy Code or section 9019 of the Federal Rules of Bankruptcy Procedure, (v) orders authorizing additional payments to critical vendors and (vi) orders establishing procedures for administration of the Cases or approving significant transactions submitted to the Bankruptcy Court, in each case, proposed by the Debtors to be in accordance with and permitted by the terms of this Agreement and acceptable to the Lender in its sole discretion in all respects, it being understood and agreed that the forms of orders approved by the Lender prior to the Petition Date are in accordance with and permitted by the terms of this Agreement and acceptable to the Lender in its sole discretion in all material respects;
- (b) comply in all material respects with each order entered by the Bankruptcy Court in connection with the Cases;
- (c) comply in a timely manner with their obligations and responsibilities as debtors-in-possession under the Bankruptcy Code, the Bankruptcy Rules, the Interim DIP Order and the Final DIP Order, as applicable, and any other order of the Bankruptcy Court;
- (d) promptly upon the Lender’s written request, each Obligor shall provide the Lender with copies of any informational packages provided to potential bidders, draft agency agreements, purchase agreements, status reports, and updated information related to the sale or any other transaction and copies of any such bids and any updates, modifications or supplements to such information and materials except as may otherwise be required by the bidding procedures approved by the Bankruptcy Court;
- (e) provide the Lender with reasonable access to non-privileged information (including historical information) and relevant personnel regarding strategic planning, cash and liquidity management, operational and restructuring activities, in each case subject to customary confidentiality restrictions;
- (f) deliver to counsel to the Lender (to the extent practicable) promptly as soon as available but no later than two Business Days prior to filing, copies of all proposed non-

ministerial or administrative pleadings, motions, applications, orders, financial information and other documents to be filed by or on behalf of the Obligors with the Bankruptcy Court in the Cases, or distributed by or on behalf of the Obligors to any official or unofficial committee appointed or appearing in the Cases or any other party in interest, and all press releases or other public announcements to be issued, and shall consult in good faith with the Lender's advisors regarding the form and substance of any such document;

- (g) if not otherwise filed on the Bankruptcy Court's electronic docketing system, as soon as reasonably possible, deliver to the Lender and to counsel to the Lender copies of all final pleadings, motions, applications, orders, financial information and other documents filed by or on behalf of the Obligors with the Bankruptcy Court in the Cases, or distributed by or on behalf of the Obligors to any official or unofficial committee appointed or appearing in the Cases, in each case subject to any confidentiality provisions; and
- (h) the Company shall provide at least two Business Days' (or such shorter notice acceptable to the Lender in their its discretion) prior written notice of any assumption or rejection of any Obligor's or any other Subsidiary's material contracts or material non-residential real property leases pursuant to section 365 of the Bankruptcy Code, and no such contract or lease shall be assumed or rejected if the Lender informs the Company that it objects to such assumption or rejection, as applicable.

9.32 Additional Bankruptcy Matters

The Company shall not, and will not permit any of its Subsidiaries to:

- (a) assert or prosecute any claim or cause of action against the Lender (in its capacity as such), unless such claim or cause of action is in connection with the enforcement of the Financing Documents against the Lender;
- (b) subject to the terms of the Interim DIP Order or the Final DIP Order, as applicable, object to, contest, delay, prevent or interfere with in any material manner the exercise of rights and remedies by the Lender with respect to the Collateral following the occurrence of an Event of Default (provided that any Obligor may contest or dispute whether an Event of Default has occurred); or
- (c) make any payment or distribution on account of any obligations under any Indebtedness or obligation arising prior to the Petition Date except as (i) expressly provided or permitted hereunder (including to the extent pursuant to any "first day" or "second day" orders complying with the terms of this Agreement) or (ii) provided pursuant to any other order of the Bankruptcy Court acceptable to the Lender (1) "consistent with the Approved Budget" or (2) as required by the Stalking Horse Purchase Agreement.

9.33 Wind-Down Support Agreement

The Company shall cause its Subsidiaries (other than Synchronous LLC) to wind-down

their respective businesses pursuant to and in compliance in all material respects with that certain Wind-Down Support Agreement, made and entered into as of December 9, 2024, by and among the Lender, the Obligors and the Subsidiaries.

9.34 Security Agreement and IP Security Agreements

No later than 5 Business Days from the Effective Date, the Lender (or its counsel) shall receive a counterpart of the Security Agreement referred to in clause (a) of the definition of "Security Agreement" and intellectual property security agreements in a form and substance reasonably satisfactory to the Lender.

9.35 U.S. Tax Treatment

Each party hereto hereby acknowledges and agrees to treat any Loan under this Agreement as an equity interest in the Company for U.S. federal and applicable state and local income tax purposes and which does not constitute "preferred stock" within the meaning of section 305 of the Code. The parties hereto agree not to file any tax return, report or declaration or to take any position or action inconsistent with the foregoing except to the extent required pursuant to a change in law after the date hereof or a "determination" (as defined in section 1313 of the Code).

10 DEFAULT

10.1 Event of Default

Each of the events or circumstances set out in this Clause 10.1 (*Event of Default*) is an Event of Default.

(a) Non-payment

An Obligor does not pay on the due date any amount payable by it under any Financing Documents in the manner required under the Financing Documents, provided that, for the avoidance of doubt, any due and unpaid Interest capitalized in accordance with Clause 6.3 (*Capitalization of Interest*) or due and unpaid Commitment Fees capitalized in accordance with Clause 6.4(b) (*Commitment Fee*) or due and unpaid Upfront Premium capitalized in accordance with Clause 6.5(b) (*Upfront Premium*) shall not constitute a non-payment default.

(b) Breach of other obligations

(i) An Obligor does not comply with any covenant or agreement contained in Clauses 9.4, 9.5, 9.7(b), 9.9, 9.12, 9.13, 9.14, 9.17, 9.18, 9.19, 9.20, 9.21, 9.22, 9.23, 9.24, 9.25, 9.27, 9.28, 9.29, 9.31 or 9.32.

(ii) An Obligor does not comply with any other term of a Financing Document, other than any term referred to in Clause 10.1(b)(i) (*Breach of other obligations*) or Clause 10.1(a) (*Non-payment*), unless that non-compliance: (A) is capable of remedy; and (B) is remedied within 15 days of the earlier of (x) the Lender giving notice of the breach to the Company and (y) any Obligor

becoming aware of the non-compliance.

(c) Cross Default

An Obligor fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness (other than Indebtedness under the Financing Documents) in excess of US\$100,000 (one hundred thousand US Dollars) (other than the Guaranteed Obligations and any Indebtedness of any Debtor that was incurred prior to the Petition Date that is subject to the automatic stay applicable under section 362 of the Bankruptcy Code), or an Obligor fails to observe or perform any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on their behalf) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity.

(d) Misrepresentation

A representation or warranty made or repeated by an Obligor in a Financing Document or in any document delivered by or on behalf of an Obligor under a Financing Document is incorrect or misleading in any material respect when made or deemed to be repeated.

(e) [Reserved]

(f) Insolvency proceedings

(i) The commencement of any Insolvency Proceedings by any Non-US First Mode Parties prior to the consummation of a sale of all or substantially all of the assets of the applicable Non-US First Mode Parties without prior written consent of the Lender.

(A) “Insolvency Proceeding” includes (i) in respect of Australian law, any external administration as defined in section 5-15 of Schedule 2 of the Corporations Act 2001 (Cth), other than the appointment of a liquidator in a members’ voluntary winding up under Division 2 of Part 5.5 of the Corporations Act and (ii) in respect of English law, administration or insolvent liquidation under the Insolvency Act 1986 but shall exclude a members’ voluntary liquidation in accordance with sections 84 – 96 of the Insolvency Act and Part 5 of the Insolvency (England and Wales) Rules 2016.

(g) Material adverse change

Any event or series of events (whether related or not) occurs after the Petition Date

which has or is reasonably likely to have a Material Adverse Effect on an Obligor.

(h) Expropriation

Any seizure, expropriation or nationalisation by or on behalf of any governmental, regulatory or other authority of the whole or the greater part of the assets of an Obligor which has or would be reasonably likely to have a Material Adverse Effect.

(i) Unlawfulness

It is or becomes unlawful for any Obligor to perform or comply with any or all of the obligations expressed to be assumed by it in any Financing Document or all or any of the obligations expressed to be assumed by any Obligor under any Financing Document is not or ceases to be legal, valid, binding and enforceable.

(j) Repudiation

Any Financing Document is repudiated, suspended, cancelled, revoked, forfeited, surrendered or terminated (whether in whole or a part) or has its validity or enforceability (or that of any of its provisions) challenged otherwise than by the Lender or otherwise is not, or ceases to be, of full force or effect (save in accordance with its terms).

(k) Cessation of Security

Any security interest created under any Security Agreement ceases to constitute legal, valid and fully perfected first ranking security interest in favor of the Lender.

(l) Judgments

One or more judgments arising after the Petition Date for the payment of money the aggregate amount is in excess of the US\$100,000 (one hundred thousand US Dollars) (to the extent not covered by insurance provided by an insurer that is not an affiliate of the Company, with respect to which coverage has been acknowledged by such insurer) shall be rendered against any Obligor or any combination thereof and the same shall remain undischarged for a period of forty-five consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of any Obligor to enforce any such judgment.

(m) Change of Control

Any Obligor ceases to be a direct or indirect Anglo Subsidiary.

(n) Bankruptcy

(i) Any of the following shall occur:

(A) any of the Cases of the Obligors shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code;

- (B) (A) a trustee, responsible officer or an examiner having expanded powers (beyond those set forth under sections 1106(a)(3) and (4) of the Bankruptcy Code) (other than a fee examiner) is appointed or elected in the any of the Cases, (B) any Obligor applies for, consents to, supports, acquiesces in or fails to promptly oppose, any such appointment or (C) the Bankruptcy Court shall have entered an order providing for such appointment;
 - (C) an order of the Bankruptcy Court shall be entered denying or terminating use of Cash Collateral by the Obligors and the Obligors shall have not obtained use of Cash Collateral pursuant to an order consented to by, and in form and substance acceptable to, the Lender;
 - (D) any Obligor, or any person on behalf of any Obligor, shall file a motion or other pleading seeking, or otherwise consenting to, any of the matters set forth in clauses (A) through (C) above or the granting of any other relief that if granted would give rise to an Event of Default;
 - (E) any Obligor or any of its Subsidiaries, or any person claiming by or through any Obligor or any of its Subsidiaries shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding against (A) the Lender relating to the Facility, or (B) the Lender in its capacity as a lender under the Pre-Petition Facility, in each case other than, with respect to an Obligor, in the case of a Person that has obtained an order from the Bankruptcy Court, over the objection of the Obligors, granting such Person derivative standing to commence, join in, assist or otherwise participate as an adverse party;
- (ii) The existence of any claims or charges, or the entry of any order of the Bankruptcy Court authorizing (i) any claims or charges, other than in respect of the Facility and the Carve-Out or as otherwise permitted under the applicable Financing Documents or the DIP Orders, entitled to superpriority administrative expense claim status in any chapter 11 case pursuant to section 364(c)(1) of the Bankruptcy Code that are pari passu with or senior to the claims of the Lender under the Facility, or there shall arise or be granted by the Bankruptcy Court any claim having priority over any or all administrative expenses of the kind specified in clause (b) of section 503 or clause (b) of section 507 of the Bankruptcy Code (other than the Carve-Out), or (ii) any lien on the Collateral having a priority senior to or pari passu with the liens and security interests granted herein, except, in each case, as expressly provided in the Financing Documents or in the DIP Order then in effect (but only in the event specifically consented to by the Lender);
- (iii) The Bankruptcy Court shall enter an order or orders granting relief from any stay of proceeding (including, the automatic stay applicable under section 362

of the Bankruptcy Code to the holder or holders of any security interest) to (x) permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any material assets of any of the Obligor or (y) permit other actions that would have a Material Adverse Effect on the Obligor or their estates (taken as a whole);

- (iv) A final order of the Bankruptcy Court shall be entered reversing, amending, supplementing, staying, vacating or otherwise amending, supplementing or modifying the Interim DIP Order or the Final DIP Order, or an Obligor files an application, motion or other pleading seeking such entry of such an order or supports or fails to promptly oppose such an order, in each case without the prior written consent of the Lender;
- (v) The Interim DIP Order (prior to the Final Order Entry Date) or the Final DIP Order (on and after the Final Order Entry Date) shall cease to create a valid and perfected lien on the Collateral or to be in full force and effect, shall have been reversed, modified, amended, stayed, vacated, or subject to stay pending appeal, in the case of modification or amendment, without prior written consent of the Lender;
- (vi) An order shall have been entered by the Bankruptcy Court avoiding or requiring disgorgement by the Lender of any amounts received in respect of the Guaranteed Obligations;
- (vii) An order shall have been entered by the Bankruptcy Court terminating or modifying the exclusive right of any Obligor to file a chapter 11 plan pursuant to section 1121 of the Bankruptcy Code, without the prior written consent of the Required Lender;
- (viii) Any of the Obligor shall fail to comply with a material provision of the Interim DIP Order (prior to the Final Order Entry Date) or the Final DIP Order (on and after the Final Order Entry Date);
- (ix) An order in the Cases shall be entered charging any of the Collateral (as defined herein) or the collateral security the Pre-Petition Facility under section 506(c) of the Bankruptcy Code against the Lender or the Lender in its capacity as the lender under the Pre-Petition Facility, or the commencement of other actions in any of the Cases that are (x) materially adverse to the Lender or inconsistent with any of the Financing Documents or (y) materially adverse to the Lender in its capacity as the lender under the Pre-Petition Facility or inconsistent with any of the Pre-Petition Financing Documents;
- (x) Any order shall be entered which dismisses any of the Cases of the Obligor and which order does not provide for payment in full in cash of the Guaranteed Obligations under the Financing Documents (other than contingent indemnification obligations not yet due and payable), or any of the Obligor and their Subsidiaries shall seek, support or fail to contest in good faith the

entry of any such order;

- (xi) Failure to satisfy any of the Milestones in accordance with the terms relating to such Milestone (unless waived or extended with the consent of the Lender);
- (xii) Any Obligor or any Subsidiary thereof shall take any action in support of any matter set forth in this Clause 10.1 (*Event of Default*) or any other Person shall do so and such action is not contested in good faith by the Obligors and the relief requested is granted in an order that is not stayed pending appeal;
- (xiii) Any Obligor or any Subsidiary thereof shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding seeking, or otherwise consenting to (i) the invalidation, subordination or other challenging of the Superpriority Claims and liens granted to secure the Guaranteed Obligations or any other rights granted to the Lender in the DIP Orders or this Agreement or (ii) any relief under section 506(c) of the Bankruptcy Code with respect to any Collateral;
- (xiv) Any Obligor shall challenge, support or encourage a challenge of any payments made to the Lender with respect to the Guaranteed Obligations or the Lender in its capacity as the lender under the Pre-Petition Facility with respect to the Pre-Petition Facility, other than to challenge the occurrence of a Default or Event of Default;
- (xv) Other than the Bidding Procedures Motion, without the consent of the Lender, the filing of any motion by the Obligors seeking approval of (or the entry of an order by the Bankruptcy Court approving) adequate protection to any pre-petition agent, trustee or lender that is inconsistent with the Interim DIP Order (prior to the Final Order Entry Date) or the Final DIP Order (on and after the Final Order Entry Date);
- (xvi) Without the Lender's consent, the entry of any order by the Bankruptcy Court granting, or the filing by any Obligor or any of its Subsidiaries of any motion or other request with the Bankruptcy Court (in each case, other than the DIP Orders and motions seeking entry thereof or permitted amendments or modifications thereto) seeking, authority to use any cash proceeds of any of the Collateral without the Lender's consent or to obtain any financing under section 364 of the Bankruptcy Code other than the facility hereunder unless such motion or order contemplates payment in full in cash of the Guaranteed Obligations immediately upon consummation of the transactions contemplated thereby;
- (xvii) Without the consent of the Lender, the filing of any motion by the Obligors or any person on behalf of any Obligor seeking authority to consummate a sale of assets of the Obligors or the Collateral outside the ordinary course of business and not otherwise permitted hereunder;

- (xviii) If any Obligor or any of its Subsidiaries is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any part of the business affairs of the Obligors and their Subsidiaries, taken as a whole, which could reasonably be expected to have a Material Adverse Effect; *provided that* the Obligors shall have two Business Days after the entry of such an order to obtain a court order vacating, staying or otherwise obtaining relief from the Bankruptcy Court or another court to address any such court order;
- (xix) Without the consent of the Lender, the making by any Obligor of any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-petition Indebtedness or payables other than payments permitted under this Agreement to the extent authorized by one or more “first day” orders, the Interim DIP Order or the Final DIP Order, consistent with the Approved Budget;
- (xx) If, unless otherwise approved by the Lender, an order of the Bankruptcy Court shall be entered providing for a change in venue with respect to the Cases and such order shall not be reversed or vacated within ten days;
- (xxi) Without the Lender’s consent, any Obligor or any Subsidiary thereof shall file any motion or other request with the Bankruptcy Court seeking (i) to grant or impose, under section 364 of the Bankruptcy Code or otherwise, liens or security interests in any Collateral, whether senior, equal or subordinate to the Lender’s liens and security interests; (ii) to use, or seek to use, Cash Collateral; or (iii) to modify or affect any of the rights of the Lender under the DIP Orders or the Financing Documents, by any order entered in the Cases;
- (xxii) Other than the Bidding Procedures Motion, without the Lender’s consent, any Obligor shall file a motion seeking or take any action supporting a motion seeking, or the Bankruptcy Court shall enter an order in any of the Cases authorizing the sale of all or substantially all of the Obligors’ assets (unless such order contemplates payment in full in cash of the Guaranteed Obligations upon the closing of such financing or consummation of such sale, whether pursuant to a plan of reorganization or otherwise); or
- (xxiii) Any termination of the Stalking Horse Purchaser Agreement, other than a termination following the Stalking Horse Purchase not having been selected as the successful bidder or back-up bidder pursuant to the Bidding Procedures.

10.2 Acceleration

Subject to the DIP Orders, an Event of Default has occurred and is continuing, the Lender may, by notice to the Company and without prejudice to any other rights or remedies which the Lender may have under a Financing Document or at law:

- (a) cancel all or any part of the Facility Amount; and/or

- (b) declare that all or part of any amounts outstanding under this Agreement are immediately due and payable; and/or
- (c) declare that all or part of any amounts outstanding under this Agreement are payable on demand by the Lender; and/or
- (d) claim immediate payment of all or part of any amounts outstanding under this Agreement; and/or
- (e) exercise all rights and remedies available to it under the Security Agreements (if any then exist) and applicable law.

Any notice given under this Clause 10.2 (*Acceleration*) will take effect in accordance with its terms.

10.3 Default Interest

If a Default occurs with respect to the payment of any sum due to the Lender under any Financing Document (after the expiration of any applicable grace period), Interest shall accrue on that sum from the date of default until payment (both before and after judgment) at the rate per annum equal to the Default Rate (“**Default Interest**”). Such Interest will be payable on demand.

11 GUARANTY

11.1 Guaranty

- (a) Each Guarantor irrevocably, unconditionally and jointly and severally with the other Guarantors guarantees to the Lender, the due and punctual payment in full in cash of (i) any payments owed by the Company under this Agreement, including principal, capitalized Interest and capitalized Commitment Fees (including, without limitation, Interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), and any other amounts due under, the Facility when and as the same shall become due and payable (whether at stated maturity or required by optional or mandatory prepayment or by acceleration or otherwise) and (ii) any other sums which may become due under the terms and provisions of the Financing Documents (all such obligations described in clauses (i) and (ii) above are herein called the “**Guaranteed Obligations**”). The guaranty in the preceding sentence is an absolute, present and continuing guaranty of payment and not of collectability and is in no way conditional or contingent upon any attempt to collect from the Company or any other guarantor of the Guaranteed Obligations (including, without limitation, any other Guarantor) or upon any other action, occurrence or circumstance whatsoever. In the event that the Company shall fail so to pay any of such Guaranteed Obligations, each Guarantor agrees to pay the same when due to the Lender, without demand, presentment, protest or notice of any kind, in lawful money of the United States of America, pursuant to the requirements for payment specified in this Agreement. Each default in payment of any of the Guaranteed Obligations shall

give rise to a separate cause of action and separate suits may be brought under this Agreement as each cause of action arises.

- (b) Each Guarantor agrees to pay and to indemnify and save the Lender harmless from and against any damage, loss, cost or expense (including attorneys' fees) which the Lender may incur or be subject to as a consequence, direct or indirect, of (i) any breach by such Guarantor, by any other Guarantor or by the Company of any warranty, covenant, term or condition in, or the occurrence of any default under, this Agreement or any other agreement referred to therein, together with all expenses resulting from the compromise or defense of any claims or liabilities arising as a result of any such breach or default, (ii) any legal action commenced to challenge the validity or enforceability of this Agreement or any other agreement referred to therein and (iii) enforcing or defending (or determining whether or how to enforce or defend) the provisions of this Agreement.
- (c) Each Guarantor acknowledges and agrees that such Guarantor's liability is joint and several with the other Guarantors and any other person(s) who may guarantee the obligations and Indebtedness under and in respect of the Facility and this Agreement.
- (d) The obligations of each Guarantor shall be primary, absolute, irrevocable and unconditional, irrespective of the validity or enforceability of the Financing Documents or any other document referred to therein, shall not be subject to any counterclaim, setoff, deduction or defense based upon any claim such Guarantor may have against the Company or the Lender or otherwise, and shall remain in full force and effect without regard to, and shall not be released, discharged or in any way affected by, any circumstance or condition whatsoever (whether or not such Guarantor shall have any knowledge or notice), including, without limitation: (i) any amendment to, modification of, supplement to or restatement of the Financing Documents or any other document referred to therein (it being agreed that the obligations of each Guarantor shall apply to the Financing Documents or any other document as so amended, modified, supplemented or restated) or any assignment or transfer of any interest, or any furnishing, acceptance or release of any security for the Facility or the addition, substitution or release of any other Guarantor or any other entity or other person primarily or secondarily liable in respect of the Guaranteed Obligations; (ii) any waiver, consent, extension, indulgence or other action or inaction under or in respect of the Financing Documents or any other document referred to therein; (iii) any bankruptcy, insolvency, arrangement, reorganization, readjustment, composition, liquidation or similar proceeding with respect to the Company or its property; (iv) any merger, amalgamation or consolidation of any Guarantor or of the Company into or with any other person or any sale, lease or transfer of any or all of the assets of any Guarantor or of the Company to any person; (v) any failure on the part of the Company for any reason to comply with or perform any of the terms of any other agreement with any Guarantor; (vi) any failure on the part of the Lender to obtain, maintain, register or otherwise perfect any security; or (vii) any other event or circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor (whether or not similar to the foregoing), and in any event however material or prejudicial it may be to any Guarantor or to any subrogation, contribution or reimbursement rights any

Guarantor may otherwise have. Each Guarantor covenants that its obligations under this Agreement will not be discharged except by payment in full in cash of all of the Guaranteed Obligations and all other obligations.

11.2 Waiver of defenses

Each Guarantor unconditionally waives to the fullest extent permitted by law, (a) notice of acceptance hereof, of any action taken or omitted in reliance hereon and of any default by the Company in the payment of any amounts due under the Financing Documents or any other document referred to therein, and of any of the matters referred to in this Clause 11 (*Guaranty*), (b) all notices which may be required by statute, rule of law or otherwise to preserve any of the rights of the Lender against such Guarantor, including, without limitation, presentment to or demand for payment from the Company or any Guarantor with respect to any Loan, notice to the Company or to any Guarantor of default or protest for nonpayment or dishonor and the filing of claims with a court in the event of the bankruptcy of the Company, (c) any right to require the Lender to enforce, assert or exercise any right, power or remedy including, without limitation, any right, power or remedy conferred in the this Agreement or other Financing Document, (d) any requirement for diligence on the part of the Lender and (e) any other act or omission or thing or delay in doing any other act or thing which might in any manner or to any extent vary the risk of such Guarantor or otherwise operate as a discharge of such Guarantor or in any manner lessen the obligations of such Guarantor.

11.3 Obligations unimpaired

Each Guarantor authorizes the Lender, without notice or demand to such Guarantor or any other Guarantor and without affecting its obligations, from time to time: (a) to renew, compromise, extend, accelerate or otherwise change the time for payment of, all or any part of Financing Documents or any other agreement referred to therein; (b) to change any of the representations, covenants, events of default or any other terms or conditions of or pertaining to the Financing Documents or any other agreement referred to therein, including, without limitation, decreases or increases in amounts of principal, rates of interest, or any other obligation; (c) to take and hold security for the payment of the Financing Documents or any other agreement referred to therein, for the performance of this guaranty or otherwise for the Indebtedness guaranteed under this Agreement and to exchange, enforce, waive, subordinate and release any such security; (d) to apply any such security and to direct the order or manner of sale as the Lender in its sole discretion may determine; (e) to obtain additional or substitute endorsers or guarantors or release any other Guarantor or any other person or entity primarily or secondarily liable in respect of the Guaranteed Obligations; (f) to exercise or refrain from exercising any rights against the Company, any Guarantor or any other person; and (g) to apply any sums, by whomsoever paid or however realized, to the payment of the Guaranteed Obligations and all other obligations owed under this Agreement. The Lender shall have no obligation to proceed against any additional or substitute endorsers or guarantors or to pursue or exhaust any security provided by the Company, such Guarantor or any other Guarantor or any other person or to pursue any other remedy available to the Lender.

If an event permitting the acceleration of the maturity of the principal amount of any Loan shall exist and such acceleration shall at such time be prevented or the right of the Lender to receive

any payment on account of the Guaranteed Obligations shall at such time be delayed or otherwise affected by reason of the pendency against the Company, any Guarantor or any other guarantors of a case or proceeding under a bankruptcy or insolvency law, such Guarantor agrees that, for purposes of this guaranty and its obligations, the maturity of such principal amount shall be deemed to have been accelerated with the same effect as if the Lender had accelerated the same in accordance with the terms of this Agreement, and such Guarantor shall forthwith pay such accelerated Guaranteed Obligations.

11.4 Subrogation and Subordination

- (a) Each Guarantor will not exercise any rights which it may have acquired by way of subrogation under this Clause 11 (*Guaranty*), by any payment made or otherwise, or accept any payment on account of such subrogation rights, or any rights of reimbursement, contribution or indemnity or any rights or recourse to any security for the Loans or this guaranty unless and until all of the Guaranteed Obligations shall have been indefeasibly paid in full in cash.
- (b) Each Guarantor subordinates the payment of all Indebtedness and other obligations of the Company or any other guarantor of the Guaranteed Obligations owing to such Guarantor, whether now existing or hereafter arising, including, without limitation, all rights and claims described in paragraph (a) of this Clause 11.4 (*Subrogation and Subordination*), to the indefeasible payment in full in cash of all of the Guaranteed Obligations. If the Lender so requests, any such Indebtedness or other obligations shall be enforced and performance received by such Guarantor as trustee for the Lender and the proceeds shall be paid over to the Lender promptly, in the form received (together with any necessary endorsements) to be applied to the Guaranteed Obligations, whether matured or unmatured, as may be directed by the Lender, but without reducing or affecting in any manner the liability of any Guarantor under this guaranty.
- (c) If any amount or other payment is made to or accepted by any Guarantor in violation of any of the preceding paragraphs (a) and (b) of this Clause 11.4 (*Subrogation and Subordination*), such amount shall be deemed to have been paid to such Guarantor for the benefit of, and held in trust for the benefit of, the Lender and shall be paid over to the Lender promptly, in the form received (together with any necessary endorsements) to be applied to the Guaranteed Obligations, whether matured or unmatured, as may be directed by the Lender, but without reducing or affecting in any manner the liability of such Guarantor under this Agreement.
- (d) Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by the Financing Documents and that its agreements set forth herein are knowingly made in contemplation of such benefits.

11.5 Reinstatement of Guaranty

This guaranty shall continue to be effective, or be reinstated, as the case may be, if and to the extent at any time payment, in whole or in part, of any of the sums due to the Lender on account of the Guaranteed Obligations is rescinded or must otherwise be restored or returned by the

Lender upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Company or any other guarantors, or upon or as a result of the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to the Company or any other guarantors or any part of its or their property, or otherwise, all as though such payments had not been made.

11.6 Rank of Guaranty

Each Guarantor will ensure that its payment obligations under this Clause 11 will at all times rank at least *pari passu*, without preference or priority, with all other unsecured and unsubordinated Indebtedness of such Guarantor now or hereafter existing.

11.7 Accession of New Subsidiaries

The parties hereto acknowledge that to the extent that any Obligor acquires or creates any new Subsidiary (the “**New Subsidiary**”) that (a) it shall be a condition to the acquisition, or incorporation of such New Subsidiary, that the relevant New Subsidiary accedes to this Agreement in capacity as Guarantor by execution of a deed of accession substantially in the form set out as Schedule 3 (*Deed of Accession*) hereto and, of so requested by the Lender, provides a copy of board and/or shareholder resolutions approving the grant of the relevant guarantee as being for the corporate benefit of the New Subsidiary, (b) if so requested by the Lender, all assets owned by the New Subsidiary and the shares of the New Subsidiary shall be charged by way of a first ranking, legal, valid and binding security in favor of the Lender, and (c) if so requested by the Lender, the Obligors shall procure delivery to the Lender of a capacity legal opinion (in form and substance and from a counsel satisfactory to the Lender) in respect of the laws of the jurisdiction of domicile of the New Subsidiary regarding its entry into the documents described in (a) and (b), and (d) an enforceability opinion from relevant counsel in respect of the documents described in (a) and (b).

12 CHANGES TO THE PARTIES

12.1 Assignments by the Lender

Subject to this Clause 12 (*Changes to the Parties*), the Lender (the “**Existing Lender**”) may assign to one or more assignees all or a portion of its rights and obligations under this Agreement to any person, including Anglo American plc or any of its Anglo Subsidiaries or any of its affiliates (the “**New Lender**”).

12.2 Conditions of assignment

- (a) The consent of the Company is only required for an assignment which:
 - (i) is to a New Lender other than Anglo American plc or any of its Anglo Subsidiaries or any of its affiliates; or
 - (ii) is determined by the Existing Lender in its reasonable discretion to result in adverse cost consequences for the Company as a result of the identity or circumstances of the New Lender.

- (b) Where required, the consent of the Company to an assignment must not be unreasonably withheld or delayed. The Company will be deemed to have given its consent five Business Days after the Existing Lender has requested it, unless consent is expressly refused by the Company within that time.

12.3 Procedure for assignment

- (a) An assignment may be effected in accordance with paragraph (b) below when the New Lender and the Existing Lender execute a duly completed assignment agreement, in a form proposed by the Existing Lender, acting reasonably.
- (b) On the Transfer Date:
 - a. the Existing Lender will assign absolutely to the New Lender the rights under this Agreement expressed to be the subject of the assignment in the assignment agreement;
 - b. the Existing Lender will be released by each Obligor from the obligations owed by it (the “**Relevant Obligations**”) and expressed to be the subject of the release in the assignment agreement; and
 - c. the New Lender shall become a party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.

12.4 Assignments by the Obligors

An Obligor may not assign any of its rights or obligations under this Agreement.

13 PAYMENTS

13.1 No set-off

All payments to be made by an Obligor under this Agreement shall be made in full, without any set-off or counterclaim whatsoever and free and clear of any deductions or withholdings, except deductions or withholdings an Obligor is required by law to make from any amounts due under this Agreement for or on account of any tax, duty, levy or charge (a “**Deduction**”).

13.2 Deductions

Each Obligor shall:

- (a) promptly when due pay to the appropriate taxing authority the amount of any Deduction on behalf of the Lender; and
- (b) provide the Lender with copies of all certificates, receipts and other documents in its possession or control relating to the Deduction.

13.3 Gross-up

If an Obligor is required to make a Deduction from a payment to the Lender in accordance with

Clause 13.1 (*No set-off*) then such payment shall be increased to the extent necessary to ensure that, after the making of such Deduction, the Lender receives and retains (free from any liability in respect of any such Deduction) a net sum equal to the sum which it would have received and so retained had no such Deduction been made or required to be made.

13.4 U.S. Withholding Form

The Lender (a) shall provide to the Company a properly completed and duly executed Internal Revenue Service Form W-8BEN-E (“**U.S. Withholding Form**”) reflecting its exemption from (i) U.S. federal withholding tax under the “dividends” article of the income tax treaty applicable between the United Kingdom and the United States and under the “interest” article of such treaty and (ii) FATCA Withholding; and (b) agrees to update as soon as reasonably practicable such U.S. Withholding Form for any change in circumstances that the Lender determines causes such U.S. Withholding Form to be invalid, incorrect or obsolete.

13.5 Immediately available funds

Payment shall be made in immediately available, freely transferable, cleared funds on the due date to such account of the Lender as it may from time to time notify to the Obligors.

14 NOTICES

14.1 Notices in writing

Every notice or other communication under this Agreement (including requests for any consent of Lender required under this Agreement) shall be in writing and may be delivered personally or by letter or email despatched as follows:

- (a) in the case of the Lender, the Lender contact details for notices, as specified in the Formal Instrument of Agreement;
- (b) in the case of the Company, such Company contact details for notices, as specified in the Formal Instrument of Agreement;
- (c) in the case of an Obligor, such Obligor contact details for notices, as specified in the Formal Instrument of Agreement; or
- (d) (in any case) to such other address or email as may be notified in accordance with this Clause 14 (*Notices*) by the relevant party to the other party for such purpose.

14.2 Receipt of notices

Every notice or other communication shall, except as otherwise provided in this Agreement, be deemed to have been received as follows:

- (a) if sent by recorded priority delivery post, 72 hours after despatch;
- (b) if delivered personally, at the time of delivery if during normal business hours in the place of intended receipt on a Business Day in that place and otherwise at the opening

of business in that place on the next succeeding Business Day; and

- (c) if delivered by email, at the time of dispatch if during normal business hours in the place of intended receipt on a Business Day in that place and otherwise at the opening of business in that place on the next succeeding Business Day.

15 AMENDMENTS

Any provision of this Agreement may be amended or supplemented only if each of the Obligors and the Lender consent in writing, provided that any consent by the Lender must be in writing, may be given subject to any conditions which the Lender shall think fit and shall be effective only in the instance and for the purpose for which it is given.

16 LAW AND JURISDICTION

16.1 GOVERNING LAW

THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER FINANCING DOCUMENTS) SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

16.2 Jurisdiction

Each Obligor irrevocably and unconditionally submits, for itself and its respective property, to the exclusive jurisdiction of the Bankruptcy Court and, if the Bankruptcy Court does not have, or abstains from jurisdiction, of any New York state or federal court located in the Borough of Manhattan in New York City or in any state or federal appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Financing Document or for recognition or enforcement of any judgment. Each Obligor irrevocably and unconditionally agrees, to the fullest extent permitted by applicable law, that all claims in respect of any such action or proceeding may be heard and determined in such New York state court or in such federal court, and it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Lender relating to this Agreement or any other Financing Document or the related transactions, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Financing Document shall affect any right that the Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Financing Document against the Obligors or the Obligors' respective properties in the courts of any jurisdiction.

16.3 Waiver of Venue

Each Obligor irrevocably and unconditionally waives, to the fullest extent permitted by

applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Financing Document in any court referred to in this Clause 16 (Law and Jurisdiction). Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

16.4 Service of Process

Each party hereto irrevocably consents to service of process in the manner provided for notices in this Agreement. Each Obligor (other than FMH and Synchronous) irrevocably and unconditionally (i) agrees that service of all writs, process and summonses in any such suit, action or proceeding brought in the State of New York may be made upon FMH, presently located at 542 1st Avenue South, Suite 300, Seattle WA 98104, United States (the “**Process Agent**”) and each Obligor confirms and agrees that the process agent has been duly and irrevocably appointed as its respective agent to accept such service for the duration of this Agreement of any and all such writs, processes and summonses, and agrees that the failure of the process agent to give any notice of any such service of process to an Obligor shall not impair or affect the validity of such service or of any judgment based thereon. If the Process Agent shall cease to serve as agent for an Obligor to receive service of process, such Obligor shall promptly appoint a successor agent satisfactory to the Lender. The Obligors further consent to the service of process in any suit, action or proceeding by mailing the same by the Lender by registered or certified mail, postage prepaid, at its notice address set forth in this agreement, and (ii) agree that nothing herein shall affect the right to effect service of process in any other manner permitted by law, or shall limit the right to sue in any other jurisdiction.

16.5 WAIVER OF JURY TRIAL

EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR THE CONTEMPLATED TRANSACTIONS (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS CLAUSE 16.5 (WAIVER OF JURY TRIAL).

16.6 Exit Premium

Each party to this Agreement hereby expressly acknowledges and agrees, to the fullest extent it may lawfully do so, that (i) if the payment of the Loans is accelerated or the Loans otherwise become due and payable, in each case, including as a result of any Termination Date (including, but not limited to, upon the occurrence of a bankruptcy or insolvency event (including the

acceleration of claims by operation of law)), the Exit Premium with respect to the Loans will also be due and payable as though the Loans were otherwise redeemed or repaid or prepaid, and in all cases the Exit Premium shall constitute part of the Guarantee Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of the Lender's lost profits as a result thereof, (ii) such Exit Premium (x) shall be presumed to be the liquidated damages sustained by the Lender as the result any redemption (including prior to the Final Maturity Date) and (y) is reasonable under the circumstances currently existing, (iii) such Exit Premium shall also be payable in the event that the Loans are satisfied or released by foreclosure (whether by power of judicial proceeding or otherwise), deed in lieu of foreclosure or by any other means, (iv) THE COMPANY EXPRESSLY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE EXIT PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION INCLUDING WITH ANY VOLUNTARY OR INVOLUNTARY ACCELERATION PURSUANT TO ANY INSOLVENCY PROCEEDING PURSUANT TO ANY DEBTOR RELIEF LAW, (v) such Exit Premium is reasonable and is the product of an arm's-length transaction between sophisticated business people, ably represented by counsel, (vi) such Exit Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made, (vii) there has been a course of conduct between the Lender and the Company giving specific consideration in this transaction for such agreement to pay such Exit Premium, (viii) the Company shall be estopped hereafter from claiming differently than as agreed to in this Clause 16.6 and otherwise in this Agreement and (ix) the Company's agreement to pay the Exit Premium to Lender as herein described is a material inducement to the Lender to make the Loans.

17 NO WAIVER

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under this Agreement shall operate as a waiver of such right or remedy, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise of such right or remedy, or the exercise of any other right or remedy. The rights and remedies provided in the Agreement are cumulative and not exclusive of any rights or remedies provided by law.

18 PARTIAL INVALIDITY

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.

19 COUNTERPARTS. ELECTRONIC EXECUTION

19.1 Counterparts.

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Financing Document constitute

the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (e.g., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Agreement.

19.2 Electronic Execution.

The words “execution,” “signed,” “signature,” and words of like import in this Agreement and the other Financing Document shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Schedule 1

Form of Request

To: Anglo American International Holdings Limited

From: First Mode Holdings, Inc.

Date: [_____]

Senior Secured Superpriority Debtor-in-Possession Facility Agreement dated [_____] (as amended from time to time, the “Agreement”)

1 We refer to the Agreement. This is a Request under the Agreement.

2 We wish to borrow a Loan on the following terms:

Amount: []

Utilisation Date: []

Our payment instructions are: []

3 We confirm that:

3.1 each condition to utilisation under the Agreement which must be satisfied on the date of this Request is so satisfied;

3.2 the representations and warranties set out in Clause 8 (*Representations*) of the Agreement are correct in all material respects;

3.3 no Default is continuing or would result from the proposed Loan; and

3.4 the proposed Loan (together with all other Loans) does not exceed the Facility Amount.

This Request is irrevocable.

FIRST MODE HOLDINGS, INC.

By:

#99513594v24
#99513594v24
#99513594v24
#99513594v24
#99513594v24

Schedule 2

[Reserved]

Schedule 3

Deed of Accession

To: [*The Lender*]

From: [*New Subsidiary*]

Date: [_,____]

Accession Agreement

We refer to the Facility Agreement dated [_____,] between, among others, Anglo American International Holdings Limited as the Lender, First Mode Holdings, Inc. as the Company and Synchronous LLC as the Guarantor (the “**Facility Agreement**”). Terms defined in the Facility Agreement shall have the same meanings in this Accession Agreement as appropriate.

1. This Accession Agreement is delivered pursuant to Clause 11.7 (*Accession of New Subsidiaries*) of the Facility Agreement and we confirm that we are a New Subsidiary for the purposes of such clause.
2. We acknowledge and agree that upon and by reason of our delivering this Accession Agreement to the Lender we will become a Guarantor under the Facility Agreement and accordingly shall have liabilities and obligations identical to those expressed to be assumed by a Guarantor under the Facility Agreement and shall be entitled to the rights and benefits of a Guarantor under the Facility Agreement.
3. We make each of the representations and warranties set out in Clause 8.1 (*Representations*) of the Facility Agreement on the date of this Accession Agreement.
4. [If so requested by the Lender, we undertake that on the date of this Accession Agreement we shall enter into one or more Security Agreements as necessary so that all assets owned by us and all of our shares are charged by way of a first ranking, legal, valid and binding security in favour of the Lender.] [If so requested by the Lender, promptly after the date of this Accession Agreement, we shall deliver to the Lender the legal opinions mentioned in Clause 11.7 (*Accession of New Subsidiaries*) of the Facility Agreement.]
5. Our address for delivery of notices and communications pursuant to Clause 14.1(c) (*Notices in writing*) of the Facility Agreement is as follows:

[NEW SUBSIDIARY]

Address:

Email: _____

Attention: _____ Facsimile: _____

6. Clauses 16 (*Law and Jurisdiction*), 17 (*No Waiver*), 18 (*Partial Invalidity*) and 19 (*Counterparts. Electronic Execution*) of the Facility Agreement are incorporated by reference in this Accession Agreement as if fully set forth in this Accession Agreement, with each reference to “this Agreement” being deemed to be a reference to this Accession Agreement.

Yours truly,

[NEW SUBSIDIARY]

By: _____

Name: _____

Title: _____

Acknowledged:

[THE LENDER]

Exhibit C

Evidentiary Support for First Day Motions

Motion for Joint Administration of the Chapter 11 Cases.

1. By this motion, the Debtors seek authorization directing procedural consolidation and joint administration of the Debtors' chapter 11 cases. I understand that the Debtors are "affiliates" as such term is defined in section 101(2) of the Bankruptcy Code and as used in Bankruptcy Rule 1015(b). I believe that joint administration of the Chapter 11 Cases will provide significant administrative convenience without harming the substantive rights of any party in interest. Many of the motions, hearings, and orders in the Chapter 11 Cases will affect both Debtor entities. The entry of an order directing joint administration of the Chapter 11 Cases will reduce fees and costs by avoiding duplicative filings and objections. In my opinion, joint administration also will allow the United States Trustee and all parties in interest to monitor the Chapter 11 Cases with greater ease and efficiency.

2. Moreover, the rights of the respective creditors of each of the Debtors will not be adversely affected by joint administration of these cases inasmuch as the relief sought is purely procedural and is in no way intended to affect substantive rights. Each creditor and party in interest will maintain whatever rights it has against the particular estate in which it allegedly has a claim or right. In addition, all creditors will benefit from the reduction in costs that will result from joint administration. The use of the simplified caption proposed in the motion, without reference to their respective tax identification numbers and other detail specified by section 342(c) of the Bankruptcy Code and Bankruptcy Rule 1015, will eliminate cumbersome and confusing procedures and ensure uniformity of pleading.

A. Motion to Approve Continued Use of Cash Management System.

3. By this motion, the Debtors seek entry of interim and final orders, (i) authorizing, but not directing, the Debtors to (a) continue to operate their existing Cash Management System (as defined below), (b) honor certain prepetition obligations related thereto, (c) maintain their

existing accounts and Business Forms (as defined below), and (d) continue to perform Intercompany Transactions (as defined below) in the ordinary course of business; (ii) waiving certain requirements under section 345 of the Bankruptcy Code and the U.S. Trustee Guidelines (each as defined below); (iii) authorizing, but not directing, the Debtors to continue to maintain and use their existing deposit practices; and (iv) granting related relief.

i. The Cash Management System

4. The Debtors maintain an integrated, centralized cash management system (the “**Cash Management System**”) that is similar to those commonly employed by businesses comparable in size and scale to the Debtors to manage the cash flow of operating units in a cost-effective, efficient manner. The Debtors use the Cash Management System in the ordinary course of business to collect, transfer, and distribute funds, and to facilitate cash monitoring, forecasting, and reporting.

5. The Debtors’ accounting and finance departments maintain oversight over the Cash Management System and undertake entity-level forecasting to ensure that there is sufficient liquidity across the corporate structure to meet all short-term obligations. These departments conduct entity-level cash forecasts by managing recurring payments, planning for purchase orders and contracts under negotiation by entity, and considering applicable liquidity restrictions. Entity-level forecasting is run on a monthly-basis; however, these projections are updated based on weekly group-level forecasting to account for any material updates.

6. I believe that requiring the Debtors to adopt a new cash management system during the Chapter 11 Cases would be expensive, burdensome, and unnecessarily disruptive to the Debtors’ operations. The Cash Management System is tailored specifically to meet the Debtors’

(and the Company's³¹) operating needs—enabling the Debtors to control and monitor corporate funds, ensure cash availability and liquidity, reduce administrative expenses by facilitating the movement of funds, and enhance the development of accurate account balances. Any disruption of the Cash Management System could have a negative effect on the Debtors' restructuring efforts. By contrast, I believe that maintaining the current Cash Management System will facilitate the Debtors' transition into chapter 11 by, among other things, minimizing delays in paying postpetition debts and eliminating administrative inefficiencies.

ii. Debtor Accounts and Flow of Funds

7. As of the Petition Date, the Cash Management System includes six (6) bank accounts held by the Debtors (together with any other bank accounts the Debtors may open in the ordinary course of business following the Petition Date, the "**Debtor Accounts**"). The Debtor Accounts are maintained with Wells Fargo Bank N.A. ("**Wells Fargo**" and together with any other financial institution at which the Debtors may open Debtor Accounts, the "**Debtor Bank**"). None of the Debtor Accounts is subject to a deposit account control agreement, though one of the Debtor Accounts—the Restricted Deposit Account (as defined below)—is subject to certain restrictions for purposes of collateralizing the corporate credit card issued to the Debtors by Wells Fargo (the "**Credit Card Program**"), as described further below.³² As of December 14, 2024, the Debtor Accounts held approximately \$1.6 million in the aggregate.

³¹ Certain of the Debtors' non-Debtor affiliates (the "**Non-Debtor Affiliates**" and, together with the Debtors, the "**Company**") maintain certain bank accounts that historically have received funding on a periodic basis from the Debtor Accounts (as defined below). As set forth in more detail below, the Debtors do not intend to continue such transfers during the course of the Chapter 11 Cases and will not do so absent further Court order.

³² The Debtors also held employee credit cards as part of the Credit Card Program; however, these credit cards were closed before the Petition Date. I understand that the Debtors reserve the right to re-open such accounts or any other account, in accordance with terms of the Credit Card Program.

8. I understand that Wells Fargo has executed a uniform depository agreement (“**Uniform Depository Agreement**”) with, and is designated as an authorized depository (“**Authorized Depository**”) by, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) pursuant to the Operating Guidelines and Reporting Requirements for Debtors in Possession and Trustees (the “**U.S. Trustee Guidelines**”). Additionally, the Debtor Bank is insured by the Federal Deposit Insurance Corporation (the “FDIC”).

9. A description of the flow of funds through the Debtor Accounts is provided below.³³

Debtor Account	Debtor Account Description
<u>FMH Operating Account</u> Wells Fargo (5084)	Debtor First Mode Holdings, Inc. (“<u>FMH</u>”) maintains an operating account with Wells Fargo (the “<u>FMH Operating Account</u>”). The FMH Operating Account receives funds from the Anglo American Capital Deposit Account (the “<u>AA Capital Deposit Account</u>”) and draws under the Facility Agreement.³⁴ The FMH Operating Account acts as a centralized depository for the Debtors, and the funds flow through the corporate structure begins here. The FMH Operating Account, directly or indirectly, funds the other Debtor Accounts, including the Synchronous Operating Account and the Restricted Deposit Account (each as defined below) to pay third parties on account of accounts payable, to fund the Debtors’ employee payroll in the United States, and to facilitate the operations of the Debtors and Non-Debtor Affiliates. The FMH Operating Account is further utilized to process payments to non-bankruptcy professional service providers. Notably, the FMH Operating Account has an accompanying interest bearing sweep account (the “<u>FMH Sweep Account</u>”), which has an identical account

³³ Prior to the Petition Date, the Debtors have been in communication with Wells Fargo to open the Bid Account (Other Bid Deposits); Segregated DIP Facility Carve Out /Professional Fee Account; and the Utilities Adequate Assurance Account. The status of these accounts may still be pending as of the Petition Date.

³⁴ Anglo American Capital plc, as borrower (the “**Borrower**”), and FMH, as depositor (the “**Depositor**”), are party to that certain deposit agreement dated June 20, 2023 (the “**Deposit Agreement**”). The Deposit Agreement states that its purpose is “to enable the Depositor to deposit its surplus cash with the Borrower and for the Borrower to benefit from the cash surplus of the Depositor by way of temporary advances.” The AA Capital Deposit Account is a restricted cash account that represents Debtors’ cash held by Anglo American Capital plc.

Debtor Account	Debtor Account Description
	number. The entire checking balance on the FMH Operating Account is swept into the FMH Sweep Account on a nightly basis. As of December 14, 2024, the FMH Operating Account maintains a cash balance of approximately \$1,572,000.
<u>Synchronous Operating Account</u> Wells Fargo (5596)	Debtor Synchronous, LLC (“<u>Synchronous</u>”) maintains an operating account with Wells Fargo (the “<u>Synchronous Operating Account</u>,” and together with the FMH Operating Account, the “<u>Operating Accounts</u>”). The Synchronous Operating Account receives funds from the FMH Operating Account, and uses the funds for operations such as, but not limited to, making payments to vendors and other third parties and processing employee payroll payments for the Debtors’ United States workforce. The Synchronous Operating Account has an accompanying interest bearing sweep account (the “<u>Synchronous Sweep Account</u>,” and together with the FMH Sweep Account, the “<u>Sweep Accounts</u>”), which has an identical account number. The entire checking balance on the Synchronous Operating Account is swept into the Synchronous Sweep Account on a nightly basis. As of December 14, 2024, the Synchronous Operating Account maintains a cash balance of approximately \$72,800.
<u>Restricted Deposit Account</u> Wells Fargo (5480)	Debtor Synchronous holds a restricted cash account with Wells Fargo to maintain a corporate credit card (the “<u>Restricted Deposit Account</u>”). The corporate credit card has a limit of \$100,000.00, and Wells Fargo required Synchronous to post a \$100,000.00 security deposit to act as a backstop. Synchronous allows the Debtors’ employees to use the corporate credit card to pay for eligible business-related expenses incurred on behalf of the Debtors, including travel expenses. Notably, the Restricted Deposit Account is an interest bearing commercial money market account. The accrued interest from this account was previously deposited into the FMH Operating Account; however, the Debtors have requested such interest to be deposited into the Synchronous Operating Account going forward. The current interest rate is 1.69500%, which is posted at the end of each month.
<u>Utilities Adequate</u>	Debtor Synchronous maintains an account at Wells Fargo (the “<u>Adequate Assurance Account</u>”), which the Debtors propose, via the Utilities Motion³⁵, to be used to hold funds as adequate assurance for utility providers

³⁵ Contemporaneously with the filing of this Motion, the Debtors filed the *Motion of Debtors for Entry of Interim and Final Orders (I) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit As Adequate Assurance Of Payment, (III) Establishing Procedures*

Debtor Account	Debtor Account Description
<u>Assurance Account</u> <u>Wells Fargo</u> (6648)	as further described in the Utilities Motion. The Adequate Assurance Account will be funded in accordance with the procedures set forth in the Utilities Motion, pending approval by the Court.
<u>Segregated DIP Facility Carve Out/Professional Fee Account</u> <u>Wells Fargo</u> (6655)	Debtor Synchronous maintains an account at Wells Fargo (the “ <u>Segregated DIP Facility Carve Out/Professional Fee Account</u> ”) that will hold funds in trust to provide for the payment of Allowed Professional Fees and certain other amounts (as described in the DIP Motion) ³⁶ subject to the Carve-Out (as defined in the DIP Motion).
<u>Bid Account (Other Bid Deposits)</u> <u>Wells Fargo</u> (5409)	Debtor Synchronous maintains an account at Wells Fargo (the “ <u>Bid Account (Other Bid Deposits)</u> ”), which will hold bid deposits received by the Debtors during the sale process (other than the deposit from the Cummins Inc. (the “ <u>Stalking Horse Bidder</u> ”)) ³⁷ pursuant to the Bid Procedures Motion. ³⁸

10. The Cash Management System generally facilitates three principal cash management functions: (i) cash concentration; (ii) internal transfers and disbursements to fund the Company’s operations; and (iii) securing collateral obligations under the Credit Card Program.

for Resolving Requests by Utility Companies for Additional Assurance of Payment, and (IV) Granting Related Relief (the “**Utilities Motion**”).

³⁶ Contemporaneously with the filing of this Motion, the Debtors filed the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims With Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Facility Lender, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing and (VI) Granting Related Relief* (the “**DIP Motion**”).

³⁷ The Stalking Horse Bidder has or will soon deposit certain funds in an escrow account held at JP Morgan Chase as required under the Stalking Horse APA (as defined in the Bid Procedures Motion).

³⁸ Contemporaneously with the filing of this Motion, the Debtors filed the *Motion of Debtors for Entry of (I) an Order (A) Approving Bid Procedures in Connection with the Sale of Substantially All of the Debtors’ Assets, (B) Scheduling an Auction and a Sale Hearing, (C) Approving the Form and Manner of Notice Thereof, (D) Authorizing the Debtors to Enter into the Stalking Horse Agreement and Related Bid Protections, (E) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (F) Granting Related Relief; and (II) an Order (A) Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (B) Authorizing the Assumption and Assignment of Contracts and Leases, and (C) Granting Related Relief* (the “**Bid Procedures Motion**”).

A. Cash Concentration

11. Funds in each of the various accounts are concentrated in the FMH Operating Account, which includes the associated FMH Sweep Account. From that account, the Debtors (i) use funds to make cash disbursements necessary to run their business, including payments to third parties via the Synchronous Operating Account, which includes the associated Synchronous Sweep Account, and (ii) use funds to conduct Intercompany Transactions (defined below).

B. Internal Transfers and Cash Disbursements

12. Funds in the FMH Operating Account are used by the Debtors to directly or indirectly satisfy various financial obligations arising in the ordinary course of business largely via transfers to the Synchronous Operating Account and the Restricted Deposit Account. In particular, funds in the FMH Operating Account are disbursed via internal transfer to the Synchronous Operating Account, which then disburses funds via wire transfer, check, direct debit, or ACH, as applicable, to satisfy the Debtors' vendor, employee or third-party obligations. The Synchronous Operating Account also uses funds received from the FMH Operating Account to maintain the security deposit for the Restricted Deposit Account.

13. Additionally, the Synchronous Operating Account transfers funds received from the FMH Operating Account to Non-Debtor Affiliates as needed to ensure each entity has sufficient cash for operational needs. I understand that the Debtors are not seeking approval to continue transferring funds to accounts held by Non-Debtor Affiliates.

C. Collateral Obligations of the Credit Card Program

14. The Debtors have posted cash collateral in favor of and as required by Wells Fargo (the "Collateral Obligation") pursuant to the Credit Card Program. As of the Petition Date, the Debtors have posted approximately \$100,000.00 in the aggregate to secure the Collateral

Obligation of the Credit Card Program. The Collateral Obligation equals the credit limit under the Credit Card Program for the account.

15. The Credit Card Program is primarily utilized by the Debtors' employees to pay for eligible business-related expenses incurred on behalf of the Debtor, including travel expenses. The Debtors pay all costs incurred through the Credit Card Program directly to Wells Fargo from the Synchronous Operating Account on a monthly basis. I believe that the Credit Card Program is instrumental to ensuring that the Debtors' day-to-day operations continue with minimal disruption in the ordinary course of business. The Debtors estimate that there is an outstanding balance of approximately \$2,500 under the Credit Card Program as of the Petition Date, and there is no risk of overextension, as the credit limit under the Credit Card Program is equivalent to the amount posted to secure the Collateral Obligations. I believe that the use of the Credit Card Program is an integral part of the Debtors' cash management and accounting functions, and continuation of the Credit Card Program for procurement is essential to the continued operation of the Debtors' business. Accordingly, the Debtors request authority, but not direction, to (i) continue the Credit Card Program and to pay all obligations incurred under the Credit Card Program, and (ii) comply with the Collateral Obligation posted prepetition and renew, replace, modify, extend, or add to the posted collateral as needed postpetition in the ordinary course of business during the administration of the Chapter 11 Cases.

iii. DIP Facility

16. Contemporaneously with the filing of the Cash Management Motion, the Debtors have also filed the DIP Motion. As described in greater detail in the DIP Motion, I understand that the Debtors are seeking approval of a superpriority, senior secured, priming debtor-in-possession term loan facility in the aggregate principal amount of up to \$26,000,000 (the "**DIP Facility**"),

consisting of a new money delayed draw term loan to be made in multiple draws on the Delayed Draw Borrowing Dates. The DIP Facility will be provided to the Debtors by the DIP Lender under the terms of the DIP Credit Agreement. The Debtors will use the proceeds of the DIP Facility to, among other things, pay fees and expenses related to the Chapter 11 Cases and fund ordinary course operating expenses of the Debtors, in accordance with the terms of the Approved Budget. As set forth above, I understand that Allowed Professional Fees and other amounts subject to the Carve-Out will be held in the Segregated DIP Facility Carve Out/Professional Fee Account.

iv. Intercompany Transactions

17. The Debtors comprise two affiliated entities, and the Debtors' day-to-day operations and financial transactions are conducted by Debtor FMH. In the ordinary course of business, Debtor FMH periodically makes payments on behalf of Debtor Synchronous (the "**Intercompany Transactions**") in order to satisfy the minimal obligations of Synchronous. Accordingly, I understand that the Debtors request authority to continue the Intercompany Transactions in the ordinary course consistent with past practice.³⁹ The Debtors record all payments, including Intercompany Transactions, in their accounting system.

v. Debtors' Existing Business Forms

18. The Debtors may use a variety of preprinted business forms, including checks, letterhead, correspondence forms, invoices, purchase orders, and other business forms in the ordinary course of business (collectively, the "**Business Forms**"). The Debtors also maintain books and records to document their financial results and a wide array of necessary operating information, including their profits and expenses. To avoid distraction and unnecessary expense

³⁹ It is my understanding that the Debtors do not seek authority to transfer funds to, or make payments on behalf of, the Non-Debtor Affiliates during the pendency of these Chapter 11 Cases, but the Debtors reserve the right to seek such relief by separate motion.

to their estates, the Debtors request authorization to continue using all of the Business Forms and the books and records in use immediately before the Petition Date (and as may be amended or modified in the ordinary course from time to time), including with respect to the Debtors' ability to update authorized signatories and services, as needed—without reference to the Debtors' status as chapter 11 debtors in possession—rather than requiring the Debtors to incur the expense and delay of ordering new Business Forms and creating new books and records.

19. The Debtors submit that, when the Debtors generate new checks during the pendency of the Chapter 11 Cases, such checks will include a legend referring to the Debtors as “Debtor in Possession” and the case number for the Debtors' lead chapter 11 case.

vi. Cash Management Fees

20. The Debtors incur periodic service charges and other fees in connection with the maintenance of the Cash Management System (the “**Cash Management Fees**”), which average approximately \$3,000 per month and are payable in arrears and drawn automatically from the Debtor Accounts by the Debtor Bank. The Debtors estimate that they owe Cash Management Fees totaling approximately \$1,000 as of the Petition Date, the entirety of which will become due and payable within the first 30 days following the Petition Date. To minimize disruption to the Cash Management System, the Debtors seek authority to pay the Cash Management Fees, including prepetition Cash Management Fees, in the ordinary course on a postpetition basis, consistent with past practices.

B. Motion for Authority to Pay Prepetition Wages and Continue Benefits.

21. By this motion, the Debtors seek entry of interim and final orders (i) authorizing (a) payment of certain prepetition workforce obligations, (b) continuance of workforce programs, (c) payment of withholding and payroll-related taxes, (d) payment of prepetition claims owing to

administrators, and (ii) granting related relief. I believe that payment of the following prepetition amounts is necessary for the reasons described herein and in the motion:

Payment	Approximate Outstanding Prepetition Amount	Approximate Amount Due Within Interim Period
Workforce Obligations	\$172,000	\$172,000
i. Wage Obligations	\$0	\$0
ii. Director Compensation Obligations	\$0	\$0
iii. Deductions	\$130,000	\$130,000
iv. Employee Incentive Programs Obligations	\$0	\$0
v. Employee Benefits Obligations	\$17,000	\$17,000
vi. Workers Compensation Obligations	\$0	\$0
vii. Reimbursable Expense Obligations	\$25,000	\$25,000
viii. Miscellaneous Benefits Obligations	\$0	\$0
Administrator Fees and Expenses	\$0	\$0
TOTAL	\$172,000	\$172,000

i. **The Workforce**

22. As of the Petition Date, the Debtors employ sixty-six (66) employees (the “**Employees**”), all of which are full-time Employees. Employees are either salaried (“**Exempt**”) or paid hourly (“**Non-Exempt**”). In addition, as of the Petition Date, the Debtors employ one (1) temporary employee (the “**Temporary Employees**” and, together with the Employees, the “**Workforce**”). The Debtors have historically sourced the Temporary Employees through several agencies (collectively, the “**Staffing Agencies**”), though no longer do so. The Workforce is not subject to a collective bargaining agreement or similar labor agreement and contains no union members.

23. On January 16, 2024, the Debtors implemented a reduction in force (the “**January RIF**”) impacting forty-two (42) Employees, or approximately 20% of their Workforce. Prior to the January RIF, the Debtors employed approximately two-hundred twenty-eight (228) Employees and twenty-three (23) Temporary Employees (including independent contractors). On August 5, 2024, the Debtors implemented a further reduction in force (the “**August RIF**”) impacting sixty-five (65) Employees, or approximately 40% of their Workforce. Following the August RIF, the Debtors significantly limited their operations, and retained a core group of Employees to maintain the essential knowledge to allow business operations to restart in accordance with the preferences of the Debtors’ ultimate buyer once a sale is consummated or as otherwise may be contemplated. On December 4, 2024, the Debtors conducted a further reduction in force (the “**December RIF**” and together with the January RIF and August RIF, the “**RIFs**”) impacting 14 (fourteen) additional Employees.⁴⁰ In the week following the December RIF, two (2) Employees voluntarily resigned and agreed to be terminated (the “**Resignations**”). In connection with the RIFs and the Resignations, the Debtors paid all accrued wages and cash severance amounts due under their severance policy to the Employees subject to the RIFs and prefunded all COBRA and outplacement benefits with the associated Administrators (as defined below) using amounts funded by Anglo American International Holdings Limited.

24. The Workforce provides a variety of critical functions relating to management and day-to-day operations of the Debtors’ business, including general administrative functions, engineering, research & development, manufacturing, software engineering, sales, communications, supply chain, technical operations, and general corporate.

ii. The Workforce Obligations

⁴⁰ In addition, certain of the Debtors’ non-Debtor affiliates conducted reductions in force during a similar time period.

25. In the ordinary course of business, the Debtors incur various labor-related obligations (collectively, the “**Workforce Obligations**”) under plans, programs, policies, and agreements maintained by or for the benefit of, or contributed to or entered into by, the Debtors before the Petition Date (collectively, the “**Workforce Programs**”). The Workforce Obligations are comprised of: (i) wages, salaries, and related compensation (the “**Wage Obligations**”); (ii) director fees and related compensation (the “**Director Compensation Obligations**”); (iii) deductions associated with the Wage Obligations (the “**Deductions**”); (iv) obligations stemming from the Debtors’ incentive programs (the “**Employee Incentive Programs Obligations**”); (v) various health, financial, and welfare benefits (the “**Employee Benefits Obligations**”); (vi) obligations relating to workers compensation (the “**Workers Compensation Obligations**”); (vii) reimbursable expenses and related obligations (the “**Reimbursable Expense Obligations**”); and (viii) certain miscellaneous Employee benefits payments related to transportation benefits, corporate discounts, and learning and development programs (the “**Miscellaneous Benefits Obligations**”).

26. I believe honoring the foregoing Workforce Obligations and Workforce Programs is essential to avoid immediate and irreparable harm to the Debtors’ estates and in the best interests of the Debtors, their estates, and their economic stakeholders. I believe that without this relief, the Employees may seek alternative opportunities, perhaps with the Debtors’ competitors. The loss of valuable Employees, who are critical to the Debtors’ operations, would deplete the Debtors’ Workforce and thereby hinder the Debtors’ ability to maximize the value of the Company and pursue a sale process. I believe such an outcome would interfere with the Debtors’ continued operations and ability to pursue their goals in the Chapter 11 Cases. Moreover, failure to satisfy

prepetition obligations arising in connection with the Workforce Programs would have a significant and adverse impact on Employee morale at a critical time in the Chapter 11 Cases.

27. I believe the Debtors' ability to carry out their chapter 11 objectives and maximize the value of their estates will depend, in large part, on the continued employment, active participation, and dedication of the remaining Workforce. Accordingly, I believe that the relief requested in the Employee Wages and Benefits Motion is in the best interests of the Debtors, their estates, and all parties in interest and should be granted.

C. Creditor Matrix Motion.

28. By this motion, the Debtors seek entry of an order (i) authorizing the Debtors to (a) file a consolidated list of creditors in lieu of submitting a separate mailing matrix for each Debtor, (b) file a consolidated list of the Debtors' thirty (30) largest unsecured creditors in lieu of filing lists for each Debtor, and (c) redact certain personal identification information, and (ii) granting related relief, including scheduling a final hearing to consider approval of the motion on a final basis.

29. I believe that the preparation of separate lists of creditors for each Debtor would be expensive, time consuming, administratively burdensome, and of little incremental benefit. I believe that permitting the Debtors to maintain a single consolidated list of creditors (the "**Creditor Matrix**"), in lieu of maintaining a separate creditor matrix for each Debtor, is warranted. Requiring the Debtors to segregate and convert their computerized records to a Debtor-specific creditor matrix format would be unnecessarily burdensome and result in duplicative mailings.

30. Further, I believe the Debtors should be allowed to file a single list of their thirty (30) largest general unsecured, non-insider creditors on a consolidated basis (the "**Top 30 List**"). Because the Top 20 Lists (as defined in the Creditor Matrix Motion) of the Debtors could overlap

and certain Debtors may have fewer than twenty (20) significant unsecured creditors, the Debtors submit that filing separate Top 20 Lists for each Debtor would be of limited utility. In addition, I believe that the exercise of compiling separate Top 20 Lists for each individual Debtor could consume an excessive amount of the Debtors' and their advisors' limited time and resources. I believe that the Top 30 List will aid the U.S. Trustee in any efforts to communicate with these creditors.

31. Privacy and data protection regulations have been enacted in key jurisdictions in which the Debtors and their non-Debtor affiliates do business. For example, I understand that the United Kingdom General Data Protection Regulation (the "**UK GDPR**"), the European General Data Protection Regulation (the "**EU GDPR**"), and similar laws in other countries impose significant constraints on the processing of personal data (which includes names and home address of individuals) ("**Personal Data**"). The UK GDPR and EU GDPR apply to all organizations processing Personal Data in the context of an establishment in the United Kingdom or a European Economic Area member state (and, in some circumstances, organizations established in other countries when processing Personal Data to individuals located in the United Kingdom or European Economic Area, respectively). In addition, to the extent a United Kingdom organization processed personal data of individuals located outside the United Kingdom during the post-Brexit transition period, the EU GDPR continues to apply to the processing of that Personal Data for the time being.

32. 19. The UK GDPR and EU GDPR require a legal basis for any processing (including disclosure) of Personal Data. In addition, processing (including disclosure) under the UK GDPR and EU GDPR must comply with the principle of data minimization, which also requires that any processing must be necessary in relation to its purpose. I believe that disclosure

of the unredacted names and home addresses of individual creditors is not necessary for the purpose of the relevant parties reviewing the amounts owed to those individuals as part of the chapter 11 process, and redaction would be a less intrusive way of achieving this purpose.

33. The rights of individual creditors not to have their unredacted names and home and email addresses disclosed on the public docket would likely override the legitimate interest of disclosing such information to facilitate the Chapter 11 Cases. Disclosure in an unredacted form therefore risks breaching the UK GDPR and EU GDPR on account of (a) having no legal basis and (b) breaching the minimization principle.

34. Further, I understand that violators of the UK GDPR and EU GDPR risk severe penalties. If an organization is found to have processed information in breach of the UK GDPR, the organization may be fined up to the higher of £17,500,000 or 4% of worldwide annual turnover—*i.e.*, total annual revenues—of the preceding financial year.

35. In my opinion, it is appropriate to authorize the Debtors to redact from any paper filed or to be filed with the Court in the Chapter 11 Cases, including the Creditor Matrix, the following personally identifiable information of the Debtors' current and former employees, independent contractors, customers, creditors, equity security holders (solely to the extent they are natural persons), and any other natural persons: (i) the home addresses of individual creditors—including the Debtors' employees and independent contractors—who are citizens of the United States located in the United States, and (ii) the names, home and email addresses, and other Personal Data of any natural person, including the Debtors' employees, to the extent they are processed subject to the UK GDPR or EU GDPR. Such redaction is warranted not only because the publication of such information may violate United States privacy laws, the UK GDPR, the EU GDPR, the CCPA, and other similar laws, but also because it could be used to perpetrate

identify theft or phishing scams or to harass or stalk such individuals, exposing the Debtors to potential civil liability and significant financial penalties. Absent the relief requested in the motion, I believe the Debtors could jeopardize the privacy and safety of individual parties in interest in the Chapter 11 Cases by publishing their names and home addresses without any advance notice or opportunity to opt out or take protective measures.

36. Finally, to the extent that parties in interest require access to this information, I understand that the Debtors propose to provide an unredacted version of the Creditor Matrix and any other filings redacted pursuant to the proposed interim order and final order to (i) the Court, the U.S. Trustee, counsel to any official committee appointed in these Chapter 11 Cases, and (ii) any party in interest upon a request to the Debtors (email is sufficient) or to the Court that is reasonably related to the Chapter 11 Cases.

D. Application to Appoint Omni Agent Solutions, Inc. as Claims, Noticing, and Solicitation Agent.

37. By this application, the Debtors seek entry of an order authorizing the Debtors to employ Omni Agent Solutions, Inc. (the “Claims Agent”) as claims, noticing, and solicitation agent in these chapter 11 cases for purposes of 28 U.S.C. § 156(c). I understand, upon information and the Debtors’ receipt of three proposals considered for the position, that the Claims Agent’s rates are competitive and reasonable, and the Claims Agent has the expertise required in a complex chapter 11 case.

E. Insurance Motion.

38. By this motion, the Debtors seek entry of interim and final orders (i) authorizing, but not directing, the Debtors to, in their sole discretion, (a) continue to administer insurance coverage currently in effect, as set forth below, and pay all amounts on account of prepetition premiums, taxes, charges, fees, and other obligations owed under or with respect thereto

(collectively, the “**Prepetition Insurance Obligations**”), including any fees (such fees, the “**Broker’s Fees**”) due to the Debtors’ insurance broker, Sequoia Benefits & Insurance Services, LLC (the “**Broker**”) to the extent the Debtors determine in their discretion that such payments are necessary or appropriate, (b) in the ordinary course of business, pay all postpetition premiums, taxes, charges, fees, and other obligations (including the Broker’s Fees) relating to the insurance coverage and related programs, and any other additional, revised, or supplemental insurance policies or programs obtained by the Debtors (the “**Postpetition Insurance Obligations**” and, together with the Prepetition Insurance Obligations, the “**Insurance Obligations**”) as such payments become due, and (c) revise, extend, supplement, change, terminate and/or replace the Debtors’ insurance coverage as needed in the ordinary course of business, (ii) authorizing and directing all banks to receive, process, honor, and pay all of the Debtors’ prepetition checks and fund transfers on account of any obligations authorized to be paid pursuant the Orders, and (iii) granting related relief.

39. It is my understanding that Debtors do not believe that there are any accrued and unpaid amounts owing on account of Prepetition Insurance Obligations. Nevertheless, out of an abundance of caution, I understand that the Debtors seek authority by the motion to honor any Prepetition Insurance Obligations in the ordinary course of business.

40. The Debtors additionally request that the Debtors’ banks and financial institutions be authorized and directed, when requested by the Debtors in their sole discretion, to process, honor, and pay any and all checks or electronic fund transfers that are drawn on the Debtors’ bank accounts for the payment of all prepetition obligations requested pursuant to the motion and consistent with the interim order and final order, as applicable, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the

applicable accounts to make the payments. The Debtors further request that all such banks and financial institutions be authorized to issue new postpetition checks and initiate new postpetition electronic fund transfers to replace any prepetition check or electronic transfer relating to the prepetition obligations discussed in the motion that may be dishonored or rejected. Finally, the Debtors request that the Court authorize the banks and financial institutions to rely upon the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored, and that such banks and financial institutions shall not have any liability to any party for relying on such representations by the Debtors.

i. The Insurance Policies

41. In the ordinary course of business, the Debtors maintain certain insurance policies that are administered by multiple third-party insurance carriers (the “**Insurance Carriers**”), which provide coverage for, among other things, property, general liability, automobile liability, excess liability, directors’ and officers’ liability, cyber, and other liability (collectively, the “**Insurance Policies**”). A detailed list of the Insurance Policies under which the Debtors are currently covered is attached to the motion as Exhibit C.

42. The Debtors have also historically benefited from directors’ and officers’ liability policies held in the name of their corporate parent, Anglo American Technical & Sustainability Ltd, and/or other non-debtor affiliates thereof (collectively, “**Anglo American**”). For the avoidance of doubt, it is my understanding that the Debtors are not seeking authority to make any payments in respect of any policies held by Anglo American.⁴¹

⁴¹ Prior to the Petition Date, the Debtors purchased six years of D&O runoff or “tail” coverage. The premiums related to the tail coverage were paid prior to the Petition Date in the amount of approximately \$1.47 million.

43. I believe that the Insurance Policies provide coverage that is typical in scope and amount for businesses within the Debtors' industry. The Insurance Policies, with the exception of the Workers' Compensation and Medical Benefits Abroad policies and the ERISA Fidelity Bond,⁴² are procured by the Broker, which was appointed as Debtors' Sole Agent/Broker of Record on insurance matters as of December of 2020. The total amount paid in annual premiums and payments paid by the Debtors with respect to the Insurance Policies is approximately \$1.27 million. The majority of the Debtors' Insurance Policies renew in June or July of each year. However, some of the Debtors' Insurance Policies renew at other times throughout each year, as detailed in Exhibit C to the motion.

44. The manner in which the Debtors pay premiums, the Broker's Fees, and other costs associated with the Insurance Policies depends on the particular Insurance Policy. Depending on the policy, the Debtors either make premium payments to the Broker, which the Broker then submits to the carrier, or the carrier bills the Debtors directly and they make payments to the carrier. Most premiums associated with the Debtors' Insurance Policies are due and paid in full by the Debtors at the beginning of the relevant policy period or extension period, as applicable. However, when a policy is amended, invoices are often issued immediately after the amendment has taken effect, which may lead to either an additional premium payment, or in some cases, a

⁴² The Debtors have separately sought authorization to honor their obligations under the Workers' Compensation policy, Medical Benefits Abroad policy, and the ERISA Fidelity Bond (including making any payments associated therewith) as part of the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Payment of Certain Prepetition Workforce Obligations, (II) Authorizing Continuance of Workforce Programs, (III) Authorizing Payment of Withholding and Payroll-Related Taxes, (IV) Authorizing Payment of Prepetition Claims Owing to Administrators, and (V) Granting Related Relief* (the "**Wages Motion**"), filed contemporaneously herewith. While the Debtors have included reference to these items in the Motion, including in Exhibit C, they are not seeking authority to make any associated payments in the motion.

premium return.⁴³ I understand that none of the Insurance Policies are scheduled for renewal until June or July of next year. Because the Debtors prepay their insurance premiums, and the Debtors do not anticipate executing any policy amendments in the near-term that would require payment, I do not expect that any premium payments will become due and payable by the Debtors within the first thirty (30) days of the Chapter 11 Cases.

ii. The Broker

45. The Broker manages the Debtors' relationships with the Insurance Carriers. Among other things, the Broker assists the Debtors in selecting the appropriate carriers (subject to the Debtors' approval), represents the Debtors in negotiations with the Insurance Carriers, and coordinates with the Insurance Carriers when claims are filed. In my opinion, the Broker allows the Debtors to obtain the insurance coverage necessary to operate their business in a reasonable and prudent manner, and to realize savings in the procurement of such policies. In exchange for the receipt of these services, the Broker receives commissions for each procured policy. The Insurance Carriers pass the Broker commissions on to the Debtors, which are paid as the policy premiums come due.⁴⁴

46. The Debtors estimate that aggregate annual Broker's Fees in connection with the Insurance Policies total approximately \$9,400. The Debtors do not expect that any payments in respect of the Broker's Fees will become due and payable by the Debtors within the first thirty (30) days of the Chapter 11 Cases.

⁴³ For example, in 2024, the Debtors executed policy amendments in respect of their Cargo, Foreign Package, and Workers' Compensation policies, and the Debtors received an additional invoice in respect of each policy following the effective date of such amendment.

⁴⁴ For the avoidance of doubt, the premiums listed in Exhibit C to the motion do not include any commissions incurred by the Broker.

47. I believe that the Debtors' relationship with the Broker is necessary for the ordinary course maintenance of the Insurance Policies in the most efficient, cost-effective manner and has the additional benefit of positioning the Debtors to obtain the most competitive rates and high quality service from the Broker in connection with any renewals of the Insurance Policies. Accordingly, to the extent that any amounts accrue on account of the Broker's Fees or other amounts owed to the Broker, I believe that they should be authorized to continue to pay such amounts as they come due.

48. In my opinion, the Debtors' maintenance of their relationships with the Insurance Carriers and the Broker is critical to ensuring the continued availability of insurance coverage and reasonable pricing of such coverage for future policy periods. Thus, the Debtors submit that they should be granted the relief requested in the motion, including authorization (i) to continue to pay premiums, taxes, charges, fees, and other obligations owed under or with respect to the Insurance Policies whether such obligations arose prior to or after the Petition Date and as such obligations come due in the ordinary course of the Debtors' business and (ii) to renew or replace the Insurance Policies as necessary in the ordinary course. The Debtors do not estimate that any amounts relating to the prepetition period will become due and owing in respect of the Insurance Obligations within thirty (30) days after the Petition Date, but, out of an abundance of caution, the Debtors seek authority to make payments on account of Insurance Obligations of up to \$20,000 in the aggregate upon entry of the interim order.

F. Taxes Motion.

49. By this motion, the Debtors request entry of interim and final orders authorizing, but not directing, the Debtors to, in their sole discretion, pay any prepetition tax and fee obligations consisting of property taxes, sales and use taxes, and any other taxes and fees for which the Debtors' officers and managers may be liable or which may not constitute property of the Debtors'

estates and any other types of taxes, fees, assessments or similar charges and any penalty, interest or similar charges in respect of such taxes and fees (collectively, the “**Taxes and Fees**”) owing to federal, state and local taxing, licensing, regulatory, permitting, and other governmental entities (the “**Taxing Authorities**”).⁴⁵ The Debtors’ estimate of Taxes and Fees accrued prior to the Petition Date is as follows:

Category	Approximate Amount Accrued as of Petition Date	Approximate Amount Due Within 30 Days
Sales and Use Taxes	\$48,000	\$0
Income and Franchise Taxes	\$173,000	\$0
Property Taxes	\$216,000	\$0
License and Permit Fees	\$4,000	\$4,000
Deferred Tax Incentives	\$281,000	\$0
Total	\$722,000	\$4,000

50. Certain of the Debtors’ non-debtor affiliates also incur various Taxes and Fees in international jurisdictions, including Chile, the United Kingdom, South Africa, and Australia. I understand that the Debtors are not seeking authority under the motion to pay any Taxes and Fees on behalf of, or for the benefit of, any non-Debtor affiliate. I believe that the amount of Taxes and Fees accrued as of the Petition Date is generally consistent with comparable periods in the past.

⁴⁵ I understand that the schedule attached as **Exhibit C** to the motion reflects the Debtors’ good faith efforts to identify all applicable Taxing Authorities. The inclusion or exclusion of any person or entity from **Exhibit C** is not intended to be determinative of whether such person or entity is a Taxing Authority to whom Taxes and Fees may be owed. The Debtors request authority, but not direction, to pay all Taxes and Fees owed to any Taxing Authority, regardless of such Taxing Authority’s inclusion or exclusion on **Exhibit C**, and reserve the right, in their sole discretion, to add or remove any Taxing Authority from **Exhibit C**.

51. As of the Petition Date, I do not believe that there are any amounts due and owing on account of Taxes and Fees and estimate that they have accrued liabilities, which are not yet due, in the approximate amount of \$722,000. The Debtors estimate that approximately \$4,000 in Taxes and Fees relating to the prepetition period are or will become due and owing to the Taxing Authorities within thirty (30) days after the Petition Date, but it is my understand that, out of an abundance of caution, the Debtors seek authority to make payments on account of Taxes and Fees in an amount of up to \$20,000 in the aggregate upon entry of the interim order. Unless further authorization is obtained from the Court, the Debtors propose to limit the aggregate amount of payments to be made on account of prepetition Taxes and Fees under the motion to (i) \$20,000 on an interim basis and (ii) \$722,000 on a final basis.

52. For the avoidance of doubt, the requested authorization would be discretionary, allowing the Debtors to, among other things, elect to pay Taxes and Fees as to which the Debtors' officers and managers may have personal liability in the event of nonpayment by the Debtors before other Taxes and Fees, subject to the caps set forth in the motion and the interim and final orders. In addition, I believe the requested authorization would be without prejudice to the Debtors' rights to contest the amounts of any Taxes and Fees on any grounds they deem appropriate and would extend to the payment of Taxes and Fees relating to tax audits that have been completed, are in progress, or arise from prepetition periods.

53. The Debtors additionally request that the Debtors' banks and financial institutions be authorized and directed, when requested by the Debtors in their sole discretion, to receive, process, honor, pay, and, if necessary, reissue all prepetition and postpetition checks, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the bank accounts used by the Debtors to satisfy their obligations

in connection with the Taxes and Fees approved in the motion, upon receipt by each bank or financial institution of notice of such authorization, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. The Debtors further request that all such banks and financial institutions be authorized to reissue all prepetition and postpetition checks and fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, issued by the Debtors in payment of Taxes and Fees that had not been honored and paid as of the Petition Date and authorizing the Debtors' banks and financial institutions to rely on the representations of the Debtors as to which checks and fund transfers should be honored and paid in respect of Taxes and Fees, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. Finally, the Debtors request that the Court authorize them to issue new postpetition checks to replace any checks that may nevertheless be dishonored as a consequence of the Chapter 11 Cases with respect to prepetition amounts owed in connection with any Taxes and Fees.

54. Based on my understanding as explained to me by the Debtors' advisors, I believe that the Taxes and Fees at issue are appropriate for payment to the extent that they are priority or secured claims that are payable in full or, alternatively, under the personal liability theory or the doctrine of necessity. By paying the Taxes and Fees in the ordinary course of business, as and when due, I believe the Debtors will avoid unnecessary disputes with the Taxing Authorities—and expenditures of time and money resulting from such disputes—over myriad issues that are typically raised by the Taxing Authorities as they attempt to enforce their rights to collect Taxes and Fees.

55. I believe that the continued payment of the Taxes and Fees on their normal due dates will also ultimately preserve the resources of the Debtors' estates, thereby promoting their

prospects for a successful chapter 11 process. If such obligations are not timely paid, the Debtors will be required to expend time and incur attorneys' fees and other costs to resolve a multitude of issues related to such obligations, each turning on the particular terms of each Taxing Authority's applicable laws, including whether (i) the obligations are priority, secured, or unsecured in nature, (ii) the obligations are pro-ratable or fully prepetition or postpetition, and (iii) penalties, interest, attorneys' fees and costs can continue to accrue on a postpetition basis and, if so, whether such penalties, interest, attorneys' fees and costs are priority, secured or unsecured in nature.

56. Moreover, I understand that certain of the Taxes and Fees may be considered to be obligations as to which the Debtors' officers and managers may be held directly or personally liable pursuant to applicable federal, state, or local laws in the event of nonpayment. If any such taxes or fees remain unpaid, the Debtors' officers and managers may be subject to lawsuits or even criminal prosecution on account of such nonpayment during the pendency of the Chapter 11 Cases. In such event, I believe that collection efforts by the Taxing Authorities would distract the Debtors' officers and managers from their focus on the Chapter 11 Cases.

i. **Sales and Use Taxes**

57. The Debtors incur various state and local sales taxes, and similar obligations in connection with the sale of various products (collectively, the "**Sales Taxes**"). Sales Taxes are essentially general consumption taxes charged at the point of purchase for certain goods, which taxes usually are established by the applicable Taxing Authority as a percentage of the retail price of the good purchased.

58. The Debtors incur use taxes on account of the purchase of various inventory, supplies, or other goods utilized by the Debtors in the ordinary course of business (collectively, the "**Use Taxes**" and, together with the Sales Taxes, the "**Sales and Use Taxes**"). Use Taxes

typically arise if a supplier does not have business operations in the state in which it is supplying goods and, therefore, does not charge sales tax on goods that are otherwise taxable to the purchaser.

59. As a general matter, the Debtors are required to remit Sales and Use Taxes to the applicable Taxing Authorities on a monthly basis. The Debtors estimate that, as of the Petition Date, they have accrued approximately \$48,000 in Sales and Use Taxes, none of which will become due and payable during the Interim Period.

ii. **Income and Franchise Taxes**

60. The Debtors incur franchise taxes assessed by the State of Delaware to incorporate their business in that jurisdiction (the “**Franchise Taxes**”). The Franchise Taxes are generally remitted by the Debtors on a quarterly basis and are based on the number of authorized shares of the company or, alternatively, the gross assets and issued shares of the Debtors, as well as the net income of the Debtors. Certain states and localities where the Debtors operate also require that the Debtors pay income or corporate taxes, including certain gross receipts taxes, business and occupation taxes, and miscellaneous fees (“**State Income Taxes**” and, together with the Franchise Taxes, the “**Income and Franchise Taxes**”).⁴⁶ With the exception of business and occupation taxes, which are calculated based on gross receipts, State Income Taxes are generally calculated as a percentage of net income (the difference between gross receipts and expenses, after accounting for additional write-offs).⁴⁷

⁴⁶ The Debtors’ estimate of accrued State Income Taxes includes approximately \$12,000 on account of the City of Seattle’s Jumpstart Payroll Tax, which is an excise tax levied on certain employers within that jurisdiction who exceed a certain payroll threshold. It is my understanding that the Debtors are not seeking authority to make any payments associated with traditional payroll-related taxes under the motion, but have separately sought such authorization as part of the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing (A) Payment of Certain Prepetition Workforce Obligations, (B) Continuance of Workforce Programs, (C) Payment of Withholding and Payroll-Related Taxes, (D) Payment of Prepetition Claims Owning to Administrators, and (II) Granting Related Relief* (the “**Wages Motion**”), filed contemporaneously herewith.

⁴⁷ The business and occupation tax in Washington state, which accounts for approximately \$99,000 of the Debtors’ accrued State Income Taxes, is a gross receipts tax applied to retailing, wholesaling, and manufacturing activities occurring within the state. Because the Debtors’ principal place of business is, and has historically been, located

61. Although I believe the Debtors are current with respect to their payment of Franchise Taxes and State Income Taxes, the Debtors estimate that, as of the Petition Date, they have accrued approximately \$173,000 in Franchise Taxes and State Income Taxes for the 2024 tax year, none of which will become due and payable during the Interim Period.

iii. **Property Taxes**

62. State and local laws in some of the jurisdictions where the Debtors operate generally grant the applicable Taxing Authorities the power to levy property taxes against the Debtors' real or personal property ("**Property Taxes**"). The Debtors generally pay Property Taxes on a bi-annual basis for their property located in Washington state. Certain Taxing Authorities may assert a lien for Property Taxes upon the property so taxed.

63. Although I believe that the Debtors are current with respect to their payment of Property Taxes, the Debtors estimate that, as of the Petition Date, they have accrued approximately \$216,000 in Property Taxes, none of which will become due and payable during the Interim Period.

iv. **License and Permit Fees**

64. State and local laws require the Debtors to obtain and pay fees for certain business licenses and permits (collectively, the "**License and Permit Fees**"). The methods for calculating the License and Permit Fees and the deadlines for paying such amounts vary by jurisdiction.

65. As of the Petition Date, the Debtors estimate that they have accrued approximately \$4,000 in aggregate License and Permit Fees, all of which will become due and payable during the interim period.

in Washington, this tax accounts for a large proportion of the State Income Taxes. Washington does not have a separate state tax levied on net income.

v. **Deferred Tax Incentives**

66. The Debtors have also accrued certain deferred tax obligations, including deferred sales tax on invoices, pursuant to a tax incentive program covering their factory building located at Seattle 10, 3417 1st Avenue South, Seattle, WA 98134 (the “**Deferred Tax Incentives**”). The Debtors expect that certain wind-down transactions contemplated during the Chapter 11 Cases (but after the interim period) will render the Deferred Tax Incentives due and payable in early 2025 under the terms of the deferral.

67. The Debtors estimate that, as of the Petition Date, they have accrued approximately \$281,000 in Deferred Tax Incentives, none of which is projected to become due and payable during the interim period.

G. Utilities Motion.

68. By this motion, the Debtors seek entry of interim and final orders (i) prohibiting the Utility Companies (as defined below) from altering, refusing, or discontinuing service to, or discriminating against, the Debtors except as may be permitted by the proposed procedures, (ii) approving the Debtors’ deposit of \$4,033.63 (which amount I understand represents approximately fifty percent (50%) of the estimated monthly cost of the electricity, water and sewage, waste services, telecommunications, internet, and similar utility products and services (collectively, the “**Utility Services**”)⁴⁸ based on historical averages over the ten (10) months from January to October 2024 with their utility service providers (the “**Utility Companies**”)) into a segregated, non-interest-bearing account, as adequate assurance of the Debtors’ ability to honor postpetition payment obligations to the Utility Companies pursuant to section 366(b) of the Bankruptcy Code,

⁴⁸ Subject to Paragraphs 62-63 below, a list of the Utility Companies that provide Utility Services to the Debtors is attached to the motion as **Exhibit C** (the “**Utility Company List**”).

(iii) approving the Additional Adequate Assurance Procedures (as defined below) as the method for resolving disputes regarding adequate assurance of payment to the Utility Companies, and (iv) granting related relief.

i. **The Debtors' Utility Companies**

69. As of the Petition Date, approximately six (6) Utility Companies provide Utility Services to the Debtors at or near their research and development facility, their "factory 1.0" facility, and their proving ground facility, each located in the state of Washington. Synchronous LLC pays for all of the Utility Services on behalf of the Debtors.

70. Over the last few of months, the Debtors have been significantly reducing their operations, and the Debtors recently vacated their headquarters. In connection with these changes, the Debtors' use of Utility Services has decreased, and I believe that, for purposes of calculating the amount of the Adequate Assurance Deposit (as defined below), examining the Debtors' usage of the Utilities Services over the ten (10) month period from January to October 2024 is reasonable and accounts for such decreased usage.

71. On average, in the ten (10) months from January to October 2024, the Debtors incurred expenses totaling \$8,067.26 each month for utility costs and the Debtors timely paid such utility costs. Based on the timing of the filings of these Chapter 11 Cases in relation to the Utility Companies' billing cycles, however, there may be outstanding invoices reflecting prepetition utility costs that have been incurred by the Debtors but for which payment is not yet due, as well as prepetition utility costs for services provided to the Debtors since the end of the last billing cycle that have not yet been invoiced.

72. While the Debtors are currently conducting limited operations, I believe that enabling the Debtors to avoid the threat of imminent termination of Utility Services is critical to preserving the value of their estates and, ultimately, the recoveries for the Debtors' creditors.

73. In general, the Debtors have established satisfactory payment histories with the Utility Companies and payments have been made on a regular and timely basis. To the best of my knowledge, there are no material defaults or arrearages with respect to invoices for prepetition Utility Services as of the Petition Date. The Debtors intend to pay any postpetition obligations to the Utility Companies in the ordinary course and in a timely fashion. The Debtors have budgeted for the payments and believe that cash on hand, funds from the proposed DIP Facility (as defined in the First Day Declaration), and cash generated through operations will be sufficient to satisfy their obligations to the Utility Companies in the ordinary course on a postpetition basis.

ii. **The Adequate Assurance Deposit**

74. The Debtors intend to pay all postpetition obligations owed to the Utility Companies in a timely manner. Nevertheless, to provide additional assurance of payment for future services to the Utility Companies, the Debtors propose to deposit \$4,033.63, which is an amount equal to approximately fifty percent (50%) of the estimated monthly cost of the Utility Services, into a segregated, non-interest-bearing account (the "**Adequate Assurance Account**") within twenty (20) days after the Petition Date (the "**Adequate Assurance Deposit**"). The Adequate Assurance Deposit will be maintained during these Chapter 11 Cases with a minimum balance equal to fifty percent (50%) of the Debtors' estimated monthly cost of Utility Services, calculated based on the Debtors' average expenses for such Utility Services during the ten (10) full months from January to October 2024. As of the Petition Date, I do not believe there are any existing deposits on hand with the Utility Companies. The amount of the Adequate Assurance

Deposit will remain \$4,033.63 throughout these Chapter 11 Cases (*i.e.*, the amount will not be recalculated), unless otherwise adjusted as provided for in the motion.

75. I understand that the Debtors propose that the Adequate Assurance Deposit may be adjusted and/or reduced by the Debtors to account for any of the following: (i) the extent to which the Adequate Assurance Deposit includes any amount on account of a company that the Debtors subsequently determine is not a “utility” within the meaning of section 366 of the Bankruptcy Code, (ii) the termination of a Utility Service by a Debtor regardless of any Additional Adequate Assurance Request (as defined below), (iii) the closure of a utility account with a Utility Company for which funds have been contributed for the Adequate Assurance Deposit, or (iv) any other arrangements with respect to adequate assurance of payment reached by a Debtor with individual Utility Companies; *provided*, that, with respect to the Debtors’ termination of a Utility Service or closure of a utility account with a Utility Company, the Debtors may adjust and/or amend the balance of the Adequate Assurance Deposit upon reconciliation and payment by the Debtors of such Utility Company’s final invoice in accordance with applicable non-bankruptcy law, to the extent that there are no outstanding disputes related to postpetition payments due.

76. Based on my understanding of the Bankruptcy Code as explained to me by the Debtors’ advisors, I believe that the Adequate Assurance Deposit, in conjunction with the Debtors’ ability to pay for future Utility Services in the ordinary course of business, constitutes sufficient adequate assurance to the Utility Companies. The Debtors will maintain the Adequate Assurance Deposit as described in the motion until the earlier of the Court’s entry of an order authorizing the return of the Adequate Assurance Deposit to the Debtors or the effective date (the “**Effective Date**”) of a plan of liquidation for the Debtors (at which time the funds comprising the Adequate

Assurance Deposit shall automatically, without further order of the Court, be returned to the Debtors).

iii. **The Additional Adequate Assurance Procedures**

77. In the event that any Utility Company requests additional adequate assurance of payment pursuant to section 366(c)(2) of the Bankruptcy Code, I understand that the Debtors propose that such request be addressed pursuant to the following procedures (the “**Additional Adequate Assurance Procedures**”):

- (a) The Debtors will serve on the Utility Companies (i) copies of the motion and the interim order granting the relief requested therein within forty-eight (48) hours⁴⁹ after the entry of the interim order by fax, e-mail or overnight mail and (ii) a copy of the final order granting the relief requested therein.
- (b) The Debtors will deposit the Adequate Assurance Deposit in the Adequate Assurance Account within twenty (20) calendar days after the Petition Date; provided that, to the extent any Utility Company receives any other value from the Debtors as adequate assurance of payment, the Debtors may, with the consent of the Utility Company, reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account on account of such Utility Company by the amount of such other value.
- (c) In the event that a Utility Company asserts that the Adequate Assurance Deposit is not satisfactory adequate assurance of payment as contemplated by section 366(c)(2) of the Bankruptcy Code, such Utility Company must serve on the Adequate Assurance Notice Parties (as defined in the motion) a written request (an “**Additional Adequate Assurance Request**”) for adequate assurance in addition to or in lieu of its rights in the Adequate Assurance Deposit.
- (d) Any Additional Adequate Assurance Request must (i) set forth the location(s) for which Utility Services are provided and the type of Utility Services provided, (ii) set forth the account number(s) for which Utility Services are provided, (iii) include a summary of the Debtors’ payment history relevant to the affected account(s), including any security deposit(s) or other security currently held by the requesting Utility Company, (iv) set forth why the Utility Company believes the proposed adequate assurance is not sufficient adequate assurance of future payment, (v) set forth the amount and nature of the adequate assurance of payment that would be

⁴⁹ I understand that Local Rule 9013-1(m)(iv) requires service of all first day motions and orders on affected parties within forty-eight (48) hours of entry of the first day order.

satisfactory to the Utility Company, and (vi) provide an email address to which the Debtors may respond to the Additional Adequate Assurance Request.

- (e) Until a Utility Company serves on the Adequate Assurance Notice Parties an Additional Adequate Assurance Request, such Utility Company shall be (i) deemed to have received adequate assurance of payment “satisfactory” to such Utility Company in compliance with section 366 of the Bankruptcy Code and (ii) prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of the commencement of the Debtors’ Chapter 11 Cases or any unpaid prepetition charges and from requiring additional assurance of payment other than the Adequate Assurance Deposit.
- (f) Upon the Debtors’ receipt of an Additional Adequate Assurance Request, the Debtors shall have the greater of (i) twenty (20) days after receipt of such Additional Adequate Assurance Request and (ii) thirty (30) days after entry of this interim order (the “**Resolution Period**”), or such greater period as may be agreed to by the Debtors and the relevant Utility Company, to negotiate with such Utility Company to resolve its Additional Adequate Assurance Request.
- (g) Without further order of the Court, the Debtors may resolve an Additional Adequate Assurance Request by entering into agreements granting additional adequate assurance to the requesting Utility Company if the Debtors, with the consent of the DIP Lender (not to be unreasonably withheld), determine that the Additional Adequate Assurance Request is reasonable or if the parties, with the consent of the DIP Lender (not to be unreasonably withheld) negotiate alternative consensual provisions.
- (h) If the Debtors determine that the Additional Adequate Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Company during the Resolution Period, during or immediately after the Resolution Period, the Debtors will request a hearing before the Court to determine the adequacy of assurance of payment with respect to the Utility Company (the “**Determination Hearing**”) pursuant to section 366(c)(3) of the Bankruptcy Code. The Determination Hearing will be held at the next regularly-scheduled omnibus hearing in the Chapter 11 Cases that is not less than twenty-one (21) days after the Resolution Period or such other date and time agreed to by the parties.
- (i) The Determination Hearing will be an evidentiary hearing at which the Court will determine whether the Adequate Assurance Deposit and any additional adequate assurance of payment requested by the Utility Company should be modified pursuant to section 366(c)(3) of the Bankruptcy Code. Pending resolution of any Additional Adequate Assurance Request, the Utility Company making such request will be prohibited from altering, refusing, or discontinuing service to the Debtors, or from discriminating against the Debtors with respect to the provision of Utility Services, on account of unpaid charges for prepetition services, the filing of the

Chapter 11 Cases, or any objection to the adequacy of the Additional Adequate Assurance Procedures.

- (j) Any Additional Adequate Assurance Request must be made and actually received by the Debtors. Unless and until a Utility Company serves an Additional Adequate Assurance Request on the Adequate Assurance Notice Parties, it will be (i) deemed to have received adequate assurance of payment that is satisfactory to such Utility Company within the meaning of section 366(c)(2) of the Bankruptcy Code and (ii) prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of the commencement of the Debtors' Chapter 11 Cases or any unpaid prepetition charges and, subject to the Utility Company's right to seek modification of the Proposed Adequate Assurance under section 366(c)(3)(A), from requiring additional assurance of payment other than the Adequate Assurance Deposit.
- (k) Absent compliance with the Additional Adequate Assurance Procedures and the terms of the orders granting the relief requested in the motion, the Utility Companies (including Utility Companies subsequently added to the Utility Company List) are forbidden to (i) alter, refuse, or discontinue services to, or discriminate against, the Debtors on account of unpaid prepetition invoices or due to the commencement of the Chapter 11 Cases or (ii) require the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than the funding of the Adequate Assurance Deposit, without prejudice to the Utility Company's right to seek modification of the Proposed Adequate Assurance under section 366(c)(3)(A).

78. I understand that the Debtors request a final hearing on the motion to be held within thirty (30) days after the Petition Date to ensure that, if a Utility Company argues that the Adequate Assurance Deposit or the Additional Adequate Assurance Procedures are not satisfactory and that the Utility Company is entitled to unilaterally alter, refuse, or discontinue Utility Services to the Debtors immediately following the thirtieth (30th) day after the Petition Date, the Debtors will have the opportunity, to the extent necessary, to request that the Court make such modifications to the proposed adequate assurance of payment in time to avoid any potential termination of Utility Services.

iv. **Subsequently Identified Utility Companies**

79. I believe the Debtors have made a good-faith effort to identify all of their Utility Companies and include them on the Utility Company List attached to the motion as **Exhibit C**. Nevertheless, to the extent that the Debtors subsequently identify additional Utility Companies or Utility Companies that may have been inadvertently omitted from the Utility Company List, I understand the Debtors seek authority to amend the Utility Company List to add any Utility Company. I further understand that the Debtors further reserve the right to assert or determine that any of the entities now or hereafter listed on the Utility Company List is not a “utility” within the meaning of section 366(a) of the Bankruptcy Code. To the extent that the Debtors subsequently identify any additional Utility Companies that provide Utility Services to them, the Debtors propose to add such Utility Companies to the Utility Company List and to have the terms of the orders with respect to the motion apply to any such Utility Companies. It is my understanding that the Debtors will serve on any of the subsequently identified Utility Companies a copy of the motion and any order entered with respect to the motion, along with an amended Utility Company list that includes such Utility Company. Additionally, to the extent that the Debtors add any Utility Companies to the Utility Company List, it is my understanding that the Debtors will increase the amount of the Adequate Assurance Deposit by an amount equal to approximately fifty percent (50%) of the Debtors’ estimated average monthly cost of Utility Services from such Utility Company over the ten (10) months from January to October 2024.

80. In the motion, the Debtors respectfully request that, absent compliance with the Additional Adequate Assurance Procedures, the Utility Companies—including subsequently added Utility Companies—be forbidden from altering, refusing, or discontinuing service to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring

additional adequate assurance of payment other than the proposed Adequate Assurance Deposit described in the motion. In addition, I believe that the Utility Companies should be prohibited from unilaterally applying any payments on account of postpetition services to any outstanding prepetition invoices or drawing upon any existing security deposit, surety bond, or other form of security to secure future payment for Utility Services.

H. Critical Vendors Motion.

81. By this motion, the Debtors seek entry of interim and final orders (i) authorizing (a), but not directing, the Debtors to, in their sole discretion, pay the prepetition fixed, liquidated, and undisputed claims (the “**Critical Vendor Claims**”) owing to certain suppliers of goods and services, with whom the Debtors continue to do business and whose goods and services are critical and essential to the Debtors’ operations (the “**Critical Vendors**”) and (b) and directing all banks to receive, process, honor, and pay all of the Debtors’ prepetition checks and fund transfers on account of any obligations authorized to be paid pursuant hereto, and (ii) granting certain related relief.

i. Payment of the Critical Vendor Claims is in the Best Interests of the Debtors’ Estates and their Creditors

82. The Debtors design and manufacture products to abate the use of diesel in heavy industry applications like ultra-class mine haul trucks and rail freight locomotives. Specifically, the Debtors design and produce diesel-battery hybrid, battery electric, and hydrogen fuel cell systems. My understanding is that, as is commonplace throughout the industrial manufacturing and battery production industries, the Debtors’ business relies on a complex network of vendors to provide them with raw materials and highly specialized goods and services needed to design and manufacture such batteries and fuel cell systems.

83. It is my understanding that at the outset of the Chapter 11 Cases, the Debtors are

critically focused on ensuring that certain of their operations continue in order to preserve and maximize the value of the Debtors' estates for all stakeholders. I believe that the Debtors' ability to signal to certain critical vendors that certain aspects of the business will continue uninterrupted in the ordinary course is of the utmost importance.

84. As of the Petition Date, the Debtors estimate that they owe approximately \$350,000 to Critical Vendors, all of which will come due in the first thirty (30) days of the Chapter 11 Cases (the "**Interim Period**"). I understand that the Debtors request authorization to pay the Critical Vendor Claims, subject to the stringent identification criteria below, because payment of such claims is necessary to achieve the Debtors' chapter 11 objectives and preserve the value of their businesses for the benefit of all stakeholders. In particular, it is my understanding that the Stalking Horse Bidder (as defined in the First Day Declaration) is requesting payment of certain Critical Vendors in order to maintain the value of the business that it has bargained for by virtue of the Stalking Horse APA (as defined in the First Day Declaration). Additionally, and as set forth below, to the extent possible, I understand the Debtors propose to condition the payment of each Critical Vendor Claim on the agreement of the applicable Critical Vendor to continue supplying goods and/or services to the Debtors on the same or better trade terms (including, without limitation, credit limits, pricing, timing of payments, allowances, rebates, discounts, and other applicable terms and programs) that such Critical Vendor offered the Debtors immediately prior to the Petition Date, or, if more favorable, within the sixty-day period prior to the Petition Date (the "**Customary Trade Terms**"), or pursuant to such other terms, trade practices, and programs that are favorable to the Debtors.

ii. Stringent Criteria Will Be Used to Identify Critical Vendors

85. I believe that certain of the Debtors' employees who are responsible for maintaining the Debtors' vendor and service provider relationships have conducted an analysis and review, with the assistance of certain of the Debtors' professionals, of the Debtors' immediate needs for goods and services in order to properly identify the Critical Vendors.

86. As part of such analysis and review, I believe that the Debtors have used, and will continue to use, the following criteria to determine which of the Debtors' vendors and service providers should be designated as Critical Vendors: (i) whether the vendor or service provider is a sole-source or limited-source provider; (ii) whether the Debtors receive advantageous pricing or other terms from a vendor or service provider such that a postpetition replacement of the vendor or service provider would result in significantly higher costs; (iii) whether quality and safety requirements, geographic constraints, customizations, or other specifications prevent the Debtors from obtaining the necessary goods or services from alternative sources within a reasonable timeframe; (iv) if the vendor is not a sole-source provider, whether the Debtors have insufficient inventory of goods or in-house capabilities to continue operations while a replacement is found; (v) whether the Debtors can afford the time and expense of an enforcement action if a vendor or service provider that is contractually obligated to continue to provide goods and services to the Debtors wrongfully refuses to perform; and (vi) whether a vendor or service provider meeting any of the aforementioned standards in (i) through (v) refuses to, demands pricing or trade terms that constitute an effective refusal to, or is likely financially unable to provide goods or services to the Debtors on a postpetition basis if the prepetition balances are not paid. I further believe that the Debtors have also considered the foregoing in connection with requests made by the Stalking Horse Bidder to maintain the value of the Debtors' business. I believe the Debtors are confident

that this process will result in designating as Critical Vendors only those vendors and service providers that are truly critical to the Debtors' estates.

iii. Types of Goods and Services Giving Rise to Critical Vendor Claims and Application of Established Stringent Identification Criteria Evidence Necessity for Payment

87. Among the Critical Vendors identified by the Debtors are providers of essential goods and services that the Debtors rely upon in the operation for their businesses. Specifically, the Critical Vendors include (i) providers of raw materials; (ii) providers of key or specialized manufacturing inputs, including battery components; and (iii) suppliers of business services, including technology solutions and facility maintenance.

88. Regardless of which of the foregoing (or other) categories a particular vendor falls into, I believe that each of the vendors they have identified as critical satisfies the stringent criteria described above and there is a high likelihood that such vendors will refuse to continue to do business with the Debtors if their outstanding prepetition claims are not paid. The Debtors' concern in this regard are exacerbated by the fact that the Debtors often do not engage with the vendors described in the motion pursuant to long-term contracts. Rather, purchases are typically undertaken on a purchase order-by-purchase order basis and services are procured on an as-needed basis. Thus, I believe that the Debtors do not have the ability to compel contractual performance across the broad base of their vendors.

89. To be clear, I believe that any refusal by the vendors identified as critical to provide essential goods or perform key services would have immediate and severe adverse repercussions, including jeopardizing or impairing the Debtors' ability to consummate a sale since the Stalking Horse Bidder has specifically requested payment of the Critical Vendors to maintain continuity in the business that it has agreed to purchase. It is my understanding that the Debtors therefore

believe that paying the Critical Vendor Claims is both necessary and essential to their ability to achieve their chapter 11 objectives and preserve value for their various constituencies.

iv. Proposed Terms and Conditions for Payment of Critical Vendor Claims

90. I believe that the Debtors will use commercially reasonable efforts to condition the payment of Critical Vendor Claims on the agreement of individual Critical Vendors to continue supplying goods or services to the Debtors on Customary Trade Terms, or pursuant to such other trade practices and programs that are favorable to the Debtors. The Debtors reserve the right to negotiate new trade terms (the “**Minimum Credit Terms**”) with any Critical Vendor as a condition to payment of any Critical Vendor Claim, in the Debtors’ sole discretion.

91. I understand that to ensure that the Critical Vendors transact with the Debtors on either Customary Trade Terms or Minimum Credit Terms, the Debtors propose that a letter agreement (a “**Trade Agreement**”)⁵⁰ substantially in the form attached to the motion as **Exhibit C** be sent to the Critical Vendors for execution, together with a copy of the interim order or final order, as applicable. It is my understanding that the Debtors propose that each Trade Agreement include, without limitation:

- (a) the amount of the relevant Critical Vendor’s estimated Critical Vendor Claims, accounting for any setoffs, other credits, and discounts thereto; *provided, however*, such amount shall be used only for the purposes of determining such Critical Vendor’s claim subject to the interim order or the final order, as applicable, and shall not be deemed a claim allowed by the Court, and the rights of all interested persons to object to such claim shall be fully preserved until further order of the Court;
- (b) the Customary Trade Terms or Minimum Credit Terms applicable to such Critical Vendor, or such other terms as the Critical Vendor and the Debtors may agree, and the Critical Vendor’s agreement to provide goods or services to the Debtors under

⁵⁰ The Debtors’ entry into a Trade Agreement will not change the nature or priority of the underlying Critical Vendor Claims and will not constitute an assumption or rejection of any executory contract or prepetition or postpetition agreement between the Debtors and a Critical Vendor.

such terms for the duration of the Chapter 11 Cases unless the Debtors fail to make timely payments under the agreed-upon trade terms;

- (c) the Critical Vendor's agreement not to file or otherwise assert, directly or indirectly, against any or all of the Debtors, their estates, or any of their respective assets or property (real or personal), any lien (a "**Lien**"), a claim for reclamation (a "**Reclamation Claim**"), or a claim under section 503(b)(9) of the Bankruptcy Code, regardless of the statute or other legal authority upon which such Lien, Reclamation Claim, or claim under section 503(b)(9) of the Bankruptcy Code may be asserted, related in any way to any remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from agreements or other arrangements entered into prior to the Petition Date; and, to the extent the Critical Vendor, as applicable, has already obtained or otherwise asserted such a Lien, Reclamation Claim, or claim under section 503(b)(9) of the Bankruptcy Code, the Critical Vendor shall take (at such vendor's own expense) whatever actions are necessary to remove such Lien or withdraw such Reclamation Claim or claim under section 503(b)(9) of the Bankruptcy Code, unless the Critical Vendor's participation in the program to pay Critical Vendor Claims authorized by the Interim Order or the Final Order, as applicable, is terminated;
- (d) the Critical Vendor's agreement not to file a motion to compel assumption or rejection of any contract under which the Critical Vendor Claim arises; and
- (e) the Critical Vendor's acknowledgment that it has reviewed the terms and provisions of the interim order or the final order, as applicable, sought hereby and is bound thereby.

92. By the motion, I understand that the Debtors request only the authorization to enter into Trade Agreements when the Debtors determine, in their sole discretion, that payment of such Critical Vendor Claims is necessary to enable the Debtors to realize their chapter 11 objectives and that such Trade Agreements are advisable. I further understand that the Debtors also request authorization to make payments on account of Critical Vendor Claims in the absence of a Trade Agreement if the Debtors determine, in their business judgment, that the failure to pay such Critical Vendor Claims will result in harm to the Debtors' business.⁵¹

⁵¹ Nothing in the critical vendor motion should be construed as a waiver by any of the Debtors of their rights to contest any claim of a Critical Vendor under applicable bankruptcy or non-bankruptcy law.

93. In the event that a Critical Vendor party to a Trade Agreement refuses to supply goods and/or services to the Debtors on Customary Trade Terms or Minimum Credit Terms (or such other terms as are agreed by the parties) following receipt of payment on its Critical Vendor Claim, or otherwise fails to comply with its Trade Agreement with the Debtors, I understand that the Debtors reserve their rights to return the parties to the positions they held immediately prior to entry of the interim order and/or final order, as applicable, approving the motion with respect to all prepetition claims. Further, my understanding is that the Debtors reserve their rights to and may seek approval of the Court to: (i) declare that any Trade Agreement between the Debtors and any Critical Vendor is terminated; (ii) seek entry of an order declaring that payments made to such Critical Vendor on account of its Critical Vendor Claims be deemed to have been in payment of then-outstanding (or subsequently accruing) postpetition claims of such Critical Vendor; and (iii) seek entry of an order directing such Critical Vendor to disgorge any payment made to such Critical Vendor on account of its Critical Vendor Claims to the extent that such payments exceed the value of the postpetition claims of such Critical Vendor, without giving effect to any rights of setoff, claims, provision for payment of reclamation or trust fund claims, or other defenses. In addition, I understand that the Debtors reserve the right to seek damages or other appropriate remedies against any breaching Critical Vendor.

94. It is my understanding that the Debtors further propose that any Trade Agreement terminated as a result of a Critical Vendor's refusal to comply with the terms thereof may be reinstated if the underlying default under the Trade Agreement is fully cured by the Critical Vendor not later than five (5) business days following the Debtors' notification to the Critical Vendor of such a default; or the Debtors, in their sole discretion, reach a favorable alternative agreement with the Critical Vendor.