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

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| In re: | : | Chapter 11 |
| FIRST MODE HOLDINGS, INC., *et al.*,[1] | : | Case No. 24-12794 (KBO) |
| Debtors. | : | (Jointly Administered) |

# SECOND AMENDED JOINT CHAPTER 11 PLAN OF FIRST MODE HOLDINGS, INC. AND ITS DEBTOR AFFILIATE UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

[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' mailing address is 300 Lenora Street, PMG #1445, Seattle, WA 98121.

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# SECOND AMENDED JOINT CHAPTER 11 PLAN OF FIRST MODE HOLDINGS, INC. AND ITS DEBTOR AFFILIATE UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

First Mode Holdings, Inc. and its affiliated debtor and debtor-in-possession in the above captioned cases (each a "**Debtor**" and, collectively, the "**Debtors**"), propose this joint Plan (as defined herein) for the resolution of the outstanding Claims against, and Interests in, the Debtors. Capitalized terms used in this Plan and not otherwise defined have the meanings ascribed to such terms in Article I.A of this Plan.

Although proposed jointly for administrative purposes, this Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims and Interests pursuant to the Bankruptcy Code. Each Debtor is a proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code. The classifications of Claims and Interests set forth in Article III of the Plan shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable. This Plan provides for consolidation of the Debtors solely for purposes of voting, Confirmation, and distribution, but not for any other purpose.

## Article I.

## DEFINED TERMS AND RULES OF INTERPRETATION

### *A. Defined Terms*

The following terms shall have the following meanings when used in capitalized form herein:

1. "**510(b) Equity Claim**" means any Claim subordinated pursuant to section 510(b) of the Bankruptcy Code.

2. "**Administrative Claim**" means a Claim (other than an Intercompany Claim) arising on or before the Effective Date for costs and expenses of administration under sections 364(c)(1), 503(b), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtors; (b) Professional Fee Claims (to the extent Allowed by the Bankruptcy Court); and (c) U.S. Trustee Fees.

3. "**Administrative Claims Bar Date**" means the date that is the 30th day after service of notice of the Effective Date, which notice shall set forth the Administrative Claims Bar Date, or such other date as is ordered by the Bankruptcy Court.

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

5. "**Allowed**" means: (a) any Claim or Interest (i) as to which no objection has been Filed prior to the applicable Claims Objection Deadline and that is evidenced by a Proof of Claim or Interest, as applicable, that is Filed or that is not required to be evidenced by a Filed Proof of Claim or Interest, as applicable, under the Plan, the Bankruptcy Code, the DIP Orders or a Final

Order, and no request for estimation or other challenge, including pursuant to section 502(d) of the Bankruptcy Code or otherwise, has been interposed, or (ii) as to which any objection has been determined by a Final Order to the extent such objection is determined in favor of the respective Holder; (b) any Claim or Interest that is scheduled by the Debtors as neither disputed, contingent, nor unliquidated, and as for which no Proof of Claim or Interest, as applicable, has been Filed in an unliquidated or a different amount and for which no amendment to the schedule has been Filed prior to the Claims Objection Deadline; (c) any Claim or Interest that is compromised, settled, or otherwise resolved pursuant to the authority of the Debtors; (d) any Claim or Interest as to which the liability of the Debtors, and the amount thereof are determined by a Final Order of a court of competent jurisdiction other than the Bankruptcy Court; or (e) any Claim or Interest expressly allowed under this Plan or by an order of the Bankruptcy Court. "Allow," "Allows," and "Allowing" shall have correlative meanings.

6. "**Anglo**" means the Prepetition Secured Lender collectively with its Affiliates other than FMH and its direct and indirect subsidiaries.

7. "**Anglo Funding Amount**" means, subject to entry of the Confirmation Order and the satisfaction or waiver of each of the conditions precedent to the occurrence of the Effective Date of this Plan in accordance with Article VIII of this Plan, Cash in the amount of $28,870,592, *less* (i) the amount of any payments 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 Committee Professionals exceeds $1,100,000.

8. "**Anglo Plan Funding**" means the funding of the Anglo Funding Amount by Anglo American International Holdings Limited pursuant to this Plan.

9. "**Assumed Contracts**" means those Executory Contracts and Unexpired Leases that are to be assumed and assigned by the Debtors to the Successful Bidder(s) or its designee pursuant to and as set forth in the Sale Order and any applicable Sale Transaction Documentation.

10. "**Assumed Contracts List**" means the list or lists of Assumed Contracts, which will be included in preliminary form in the Plan Supplement, which shall be in form and substance acceptable to the Prepetition Secured Lender.

11. "**Assumed Liabilities**" has the meaning set forth in any Sale Transaction Documentation (or such other similar term as may be used in such Sale Transaction Documentation).

12. "**Avoidance Actions**" means any and all actual or potential avoidance, recovery, subordination, or other claims, actions, or remedies that may be brought by or on behalf of the Debtors or their Estates or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including actions or remedies under sections 502, 510, 542, 544, 545, 547 through 553, and 724(a) of the Bankruptcy Code or under similar or related local, state, federal, or foreign statutes and common law, including fraudulent transfer laws.

13. "**Ballot**" means the ballots accompanying the Disclosure Statement upon which certain Holders of Impaired Claims entitled to vote shall, among other things, indicate their

acceptance or rejection of this Plan in accordance with this Plan and the procedures governing the solicitation process.

14. "**Bankruptcy Code**" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

15. "**Bankruptcy Court**" means the United States Bankruptcy Court for the District of Delaware or such other court having jurisdiction over the Chapter 11 Cases.

16. "**Bankruptcy Rules**" means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, 28 U.S.C. § 2075, as applicable to the Chapter 11 Cases, and the general, local, and chambers rules of the Bankruptcy Court.

17. "**Bar Date**" means the applicable bar date by which Proofs of Claim must be Filed, as established by: (a) the Bar Date Order; (b) a Final Order of the Bankruptcy Court; or (c) this Plan; *provided that* if there is a conflict relating to the bar date for a particular Claim, this Plan shall control.

18. "**Bar Date Order**" means the *Order (I) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim (Including for Claims Arising Under Section 503(b)(9) of the Bankruptcy Code), (II) Approving the Form and Manner of Notice Thereof, and (III) Granting Related Relief* [Docket No. 99].

19. "**Bidding Procedures**" means the bidding procedures attached as Exhibit 1 to the Bidding Procedures Order, as such bidding procedures may be amended from time to time in accordance with its terms, which shall be in form and substance acceptable to the Prepetition Secured Lender.

20. "**Bidding Procedures Order**" means the *Order (I) Approving Bid Procedures in Connection with the Sale of Substantially All of the Debtors' Assets; (II) Scheduling an Auction and a Sale Hearing; (III) Approving the Form and Manner of Notice Thereof; (IV) Authorizing the Debtors to Enter into the Stalking Horse APA and Related Bid Protections; (V) Approving Procedures for the Assumption and Assignment of Contracts and Leases; and (VI) Granting Related Relief* [Docket No. 166], as such order may be amended, supplemented, or modified from time to time, which shall be in form and substance acceptable to the Prepetition Secured Lender.

21. "**Business Day**" means any day, other than a Saturday, Sunday or "legal holiday" (as that term is defined in Bankruptcy Rule 9006(a)).

22. "**Cash**" means the legal tender of the United States of America or the equivalent thereof.

23. "**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.

24. "**Chapter 11 Case(s)**" means (a) when used with reference to a particular Debtor, the chapter 11 case filed for that Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court and (b) when used with reference to all Debtors, the jointly administered chapter 11 cases for all of the Debtors.

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

26. "**Claims Objection Deadline**" means the deadline for objecting to a Claim or amending the Debtors' schedules, which shall be on the date that is the later of (a) (i) with respect to Administrative Claims, ninety (90) days after the Administrative Claims Bar Date or (ii) with respect to all other Claims (including scheduled claims), ninety (90) days after the later of (A) the Effective Date or (B) any Bar Date applicable to such claim, and (b) such other deadline as may be specifically fixed by the Debtors or the Plan Administrator and approved by an order of the Bankruptcy Court.

27. "**Claims Register**" means the official register of Claims maintained by the Notice and Claims Agent.

28. "**Class**" means a category of Claims or Interests as set forth in Article III of the Plan pursuant to section 1122(a) of the Bankruptcy Code.

29. "**Committee**" means the statutory committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code by the United States Trustee.

30. "**Committee Professionals**" means Persons or firms retained by the Committee appointed in the Chapter 11 Cases pursuant to section 328 or 1103 of the Bankruptcy Code.

31. "**Confirmation**" means the entry of the Confirmation Order by the Bankruptcy Court on the docket of the Chapter 11 Cases.

32. "**Confirmation Date**" means the date upon which Confirmation occurs.

33. "**Confirmation Hearing**" means the hearing conducted by the Bankruptcy Court pursuant to section 1128(a) of the Bankruptcy Code to consider confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

34. "**Confirmation Order**" means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code in form and substance acceptable to the Prepetition Secured Lender.

35. "**Consenting Parent**" means Anglo American Technical & Sustainability Limited.

36. "**Cure Cost**" means all amounts, which may be an amount of $0.00, required to cure any monetary defaults under any Executory Contract or Unexpired Lease (or such lesser amount as may be agreed upon by the parties to an Executory Contract or Unexpired Lease) that is to be assumed, or assumed and assigned, by the Debtors pursuant to sections 365 or 1123 of the Bankruptcy Code.

37. "**D&O Liability Insurance Policies**" means, collectively, all insurance policies (including any "tail policies" and all agreements, documents, or instruments related thereto) issued at any time to or providing coverage to of any of the Debtors for current or former directors', managers', and officers' liability.

38. "**Debtor Professionals**" means Persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code, including Latham & Watkins LLP, Young Conaway Stargatt & Taylor, LLP, M3 Advisory Partners, LP, PJT Partners LP, and Omni Agent Solutions, Inc.

39. "**Debtor Release**" means the releases set forth in Article IX.B of the Plan.

40. "**Definitive Documents**" has the meaning set forth in the Restructuring Support Agreement. The Definitive Documents shall be in form and substance acceptable to the Prepetition Secured Lender.

41. "**DIP Credit Agreement**" means that certain *Senior Secured Superpriority Debtor-in-Possession Facility Agreement*, dated as of December 18, 2024, among the Debtors and the DIP Lender, as may be amended, supplemented, or modified from time to time.

42. "**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, each of which shall be in form and substance acceptable to the Prepetition Secured Lender.

43. "**DIP Facility**" means that certain credit facility, the terms of which are governed by the DIP Credit Agreement and the DIP Documents (each as may be amended, modified, ratified, extended, renewed, restated or replaced from time to time in accordance with their terms and the DIP Orders), all as approved by the DIP Orders.

44. "**DIP Facility Claim**" means any Claim held by the DIP Lender derived from, based upon, relating to, or arising under the DIP Facility, the DIP Documents, or the DIP Orders,

including claims for all principal amounts outstanding, interest, fees, and expenses under the DIP Facility.

45. "**DIP Lender**" means Anglo American International Holdings Limited, in its capacity as lender under the DIP Credit Agreement.

46. "**DIP Loans**" means the term loans provided by the DIP Lender under the DIP Credit Agreement.

47. "**DIP Orders**" means, collectively, the Interim DIP Order and the Final DIP Order, as such orders may be modified from time to time in accordance with the terms thereof.

48. "**Disallowed**" means, with respect to any Claim or Interest, as of any date, that such Claim or Interest (or portion thereof) (a) is disallowed by Final Order, or pursuant to a settlement, or (b) was required, pursuant to the Bar Date Order or another order of the Bankruptcy Court to be the subject of a Proof of Claim by a certain date but no Proof of Claim was timely filed, unless otherwise ordered by the Bankruptcy Court.

49. "**Disclosure Statement**" means the disclosure statement for this Plan, including all exhibits and schedules thereto, as amended, supplemented, or modified from time to time, that is prepared and distributed in accordance with sections 1125, 1126(b), and 1145 of the Bankruptcy Code, Bankruptcy Rule 3018, and other applicable law, which shall be in form and substance acceptable to the Prepetition Secured Lender.

50. "**Disclosure Statement Order**" means the order of the Bankruptcy Court approving the Disclosure Statement, which shall be in form and substance acceptable to the Prepetition Secured Lender.

51. "**Disputed**" means, with respect to any Claim or Equity Interest, a Claim or Interest that is not yet Allowed or Disallowed.

52. "**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 (a) amounts necessary to satisfy (i) 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, (ii) Professional Fee Claims, (iii) Priority Tax Claims, (iv) Other Priority Claims, (v) Other Secured Claims, in each case (i) through (v), to the extent Allowed against the Debtors, or to the extent not Allowed at any time, reasonable reserves for any such claims that are not yet Disallowed, and (b) the wind-down costs as set forth in the Wind-Down Budget.

53. "**Distribution Agent**" means the Debtors or any Entity or Entities chosen by the Debtors, with the consent of the Prepetition Secured Lender, which Entities may include one or more of the Notice and Claims Agent or the Plan Administrator, to make or to facilitate distributions required by this Plan.

54. "**Distribution Record Date**" means, the date for determining which Holders of Claims, if such Claims are Allowed, are eligible to receive distributions on the Initial Distribution

Date under this Plan, which date shall be the Effective Date or such other date designated in a Final Order.

55. "**Effective Date**" means the first date on which: (a) no stay of the Confirmation Order is in effect; and (b) all conditions specified in Article VIII.A and C of the Plan have been (i) satisfied or (ii) waived pursuant to Article VIII.D of this Plan.

56. "**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 (a) the Prepetition Secured Lender and (b) the Committee 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.

57. "**Entity**" means an entity as defined in section 101(15) of the Bankruptcy Code.

58. "**Equity Interest**" means (a) any 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, and (b) any 510(b) Equity Claim.

59. "**Estate**" means, as to each Debtor, the estate created for such Debtor in its Chapter 11 Case pursuant to sections 301 and 541 of the Bankruptcy Code.

60. "**Exculpated Party**" means (a) the Debtors, (b) any Committee, and (c) solely to the extent they are estate fiduciaries, each such Entity's current officers, directors (including any sub-committee of directors), members (including ex officio 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.

61. "**Exculpation**" means the exculpation provision set forth in Article IX.D of this Plan.

62. "**Executory Contract**" means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

63. "**File**," "**Filed**," or "**Filing**" means file, filed, or filing in the Chapter 11 Cases with the Bankruptcy Court or, with respect to the filing of a Proof of Claim, the Notice and Claims Agent or the Bankruptcy Court.

64. "**Final DIP Order**" means the *Order (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, and (V) Granting Related Relief*

[Docket No. 148], which shall be in form and substance acceptable to the Prepetition Secured Lender.

65. "**Final Order**" means an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, stayed, modified, vacated, or amended, and as to which the time to appeal, seek reconsideration under Rule 59(b) or 59(e) of the Federal Rules of Civil Procedure, seek a new trial, reargument, or rehearing and, where applicable, petition for certiorari has expired and no appeal, motion for reconsideration under Rule 59(b) or 59(e) of the Federal Rules of Civil Procedure, motion for a new trial, reargument or rehearing or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought, or as to which any motion for reconsideration that has been filed pursuant to Rule 59(b) or 59(e) of the Federal Rules of Civil Procedure or any motion for a new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice; *provided* that the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024, or any analogous rule, may be filed relating to such order or judgment shall not cause such order or judgment not to be a Final Order.

66. "**FMH**" means First Mode Holdings, Inc.

67. "**General Administrative Claim**" means any Administrative Claim, other than (a) a Professional Fee Claim, (b) a DIP Facility Claim, or (c) a Claim for U.S. Trustee Fees.

68. "**General Unsecured Claim**" means any unsecured Claim other than an Administrative Claim, a Priority Tax Claim, an Other Priority Claim, an Intercompany Claim, or a 510(b) Equity Claim.

69. "**Governmental Unit**" means a governmental unit as defined in section 101(27) of the Bankruptcy Code.

70. "**HEV Purchase Order**" means that certain HEV Purchase Order between Anglo American Services (UK) Limited and FMH dated 1 December 2023.

71. "**Holder**" means an Entity holding a Claim or Interest.

72. "**Impaired**" means "impaired" within the meaning of section 1124 of the Bankruptcy Code.

73. "**Initial Distribution Date**" means the date that is on or as soon as practicable after the Effective Date when distributions under this Plan shall commence for each Class entitled to receive distributions.

74. "**Insurance Contract**" means all insurance policies that have been issued at any time to or provide coverage to any of the Debtors and all agreements, documents or instruments relating thereto, including D&O Liability Insurance Policies.

75. "**Insurer**" means any company or other entity that issued an Insurance Contract, any third party administrator, and any respective predecessors and/or affiliates thereof.

76. "**Intercompany Claims**" means any Claim held by a Debtor or any direct or indirect subsidiary of FMH against any Debtor.

77. "**Intercompany Interest**" means any issued, unissued, authorized, or outstanding shares of common stock, preferred stock, or other instrument evidencing an ownership interest in a Debtor held by another Debtor.

78. "**Interests**" means, collectively, Equity Interests and Intercompany Interests.

79. "**Interim DIP Order**" means the *Interim Order (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, (VI) Modifying the Automatic Stay, (V) Scheduling a Final Hearing and (VI) Granting Related Relief* [Docket No. 66], which shall be in form and substance acceptable to the Prepetition Secured Lender.

80. "**Lien**" means a lien as defined in section 101(37) of the Bankruptcy Code.

81. "**Local Bankruptcy Rules**" means the Local Rules of the United States Bankruptcy Court for the District of Delaware.

82. **"Monitoring Committee"** means a committee formed as of the Effective Date to monitor certain actions of the Plan Administrator as set forth in and pursuant to the terms of the Plan Administrator Agreement.

83. **"Net Distributable Proceeds**" means Distributable Proceeds less (a) actual amounts paid on account of Allowed General Unsecured Claims of Participating GUC Holders pursuant to the Plan, and (b) reasonable amounts that the Plan Administrator, in good faith, believes will be sufficient to pay any remaining General Unsecured Claims of Participating GUC Holders that are or may become Allowed.

84. "**Non-Debtor Subsidiary**" means any direct or indirect subsidiary of either Debtor.

85. "**Non-Participating GUC Holder**" means any Holder of a General Unsecured Claim that is not a Participating GUC Holder.

86. "**Notice and Claims Agent**" means Omni Agent Solutions, Inc., in its capacity as noticing, claims, and solicitation agent for the Debtors, pursuant to one or more orders of the Bankruptcy Court.

87. "**Notice of Forbearance**" means that certain Notice of Forbearance, dated as of August 20, 2024, provided by Anglo American International Holdings Limited, and including any amendments thereto and extensions thereof.

88. "**Other Priority Claim**" means any Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code other than a General Administrative Claim, DIP Facility Claim, Professional Fee Claim, or Priority Tax Claim.

89. "**Other Secured Claim**" means any Secured Claim other than a DIP Facility Claim or a Prepetition Secured Loan Claim.

90. "**Participating GUC Holder**" means any Holder of an Allowed General Unsecured Claim that (a) does not vote to reject the Plan and (b) is a Releasing Party on the Effective Date or becomes a Releasing Party on or prior to the date that is ninety (90) days after the Effective Date.

91. "**Periodic Distribution Date**" means the first Business Day that is as soon as reasonably practicable occurring approximately sixty (60) days after the immediately preceding Periodic Distribution Date. The first Periodic Distribution Date shall be the Initial Distribution Date.

92. "**Person**" means a "person" as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, corporation, general or limited partnership, limited liability company, firm, trust, association, government, governmental agency or other Entity, whether acting in an individual, fiduciary or other capacity.

93. "**Petition Date**" means the date on which each of the Debtors commenced the Chapter 11 Cases.

94. "**Plan**" means this joint plan under chapter 11 of the Bankruptcy Code, as it may be altered, amended, modified, or supplemented from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the terms hereof, as the case may be, including all exhibits, supplements, appendices, and schedules hereto, including the Plan Supplement, which is incorporated herein by reference and made part of the Plan as if set forth herein.

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

96. "**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 this 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.

97. "**Plan Settlement**" has the meaning set forth in Article IV.D of this Plan.

98. "**Plan Supplement**" means a supplement or supplements to the Plan containing certain documents and forms of documents, schedules and exhibits, relevant to the implementation of the Plan, to be filed with the Bankruptcy Court, as amended, modified or supplemented from time to time in accordance with the Bankruptcy Code and the Bankruptcy Rules, which shall be in form and substance acceptable to the Prepetition Secured Lender and which may include the following documents: (a) the Assumed Contracts List; (b) the Rejected Contracts List; (c) a list of retained Causes of Action; (d) the identity of the Plan Administrator; (e) the Plan Administration Agreement; and (f) the Wind-Down Budget.

99. "**Plan Supplement Filing Date**" means the date that is at least seven (7) days prior to the Voting Deadline.

100. "**Prepetition Facility Agreement**" means 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.

101. "**Prepetition Secured Lender**" means Anglo American International Holdings Limited, which holds Prepetition Secured Loan Claims.

102. "**Prepetition Secured Loan Claim**" means any and all Claims arising under, derived from, or based upon the Prepetition Secured Loans and/or the Prepetition Facility Agreement, including any accrued interest, fees, expenses and other charges thereon and any other obligations owing to the Prepetition Secured Lender under the Prepetition Facility Agreement.

103. "**Prepetition Secured Loans**" means the loans made by the Prepetition Secured Lender pursuant to the Prepetition Facility Agreement.

104. "**Priority Tax Claim**" means a Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. "**Pro Rata**" means, with respect to any distribution on account of an Allowed Claim, a distribution equal in amount to the ratio (expressed as a percentage) that the amount of such Allowed Claim bears to the aggregate amount of all Allowed Claims in its Class.

106. "**Professional Fee Claim**" means a Claim by a Retained Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred during the Chapter 11 Cases, through and including the Effective Date, under sections 328, 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code.

107. "**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.

108. "**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 this Plan.

109. "**Proof of Claim**" means a proof of Claim filed against any Debtor in the Chapter 11 Cases.

110. "**Reinstated**" means, with respect to Claims and Interests, that the Claim or Interest shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.

111. "**Rejected Contracts List**" means the list of Executory Contracts and/or Unexpired Leases (including any amendments or modifications thereto) that will be rejected pursuant to this Plan.

112. "**Relationship Agreement**" means that certain Relationship Agreement, dated as of January 5, 2023, by and among the Consenting Parent, FMH, and the FMH Founding Stockholders (as defined therein).

113. "**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.

114. "**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.

115. "**Releasing 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) all Holders of Claims and Interests in the Voting Class who either vote to accept the Plan or abstain from voting on the Plan, and, in each case, opt-in to the Third-Party Release; (g) all Holders of Claims and Interests in any Non-Voting Class who return an opt-in form pursuant to the procedures set forth in the Disclosure Statement Order; (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).

116. "**Restructuring Support Agreement**" means that certain Restructuring Support Agreement, dated December 15, 2024, by and among the Debtors, the Consenting Lender, and the Consenting Parent, including all exhibits, annexes, and schedules thereto, as may be amended, supplemented, or otherwise modified from time to time.

117. "**Retained Professional**" means an Entity: (a) employed in the Chapter 11 Cases pursuant to a Final Order in accordance with sections 327 and/or 1103 of the Bankruptcy Code and to be compensated for services rendered on or prior to the Effective Date, pursuant to sections 327, 328, 329, 330, 331, 363, or 1103 of the Bankruptcy Code or (b) awarded

compensation and reimbursement by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code, upon a motion on notice.

118. "**Sale Order**" means one or more orders of the Bankruptcy Court approving the sale of any assets of the Debtors' Estates pursuant to section 363(b) of the Bankruptcy Code in form and substance acceptable to the Prepetition Secured Lender.

119. **"Sale Process"** means the sale process conducted in accordance with the Bidding Procedures.

120. "**Sale Transaction**" means 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 either the Stalking Horse Bidder or to such other purchaser that is a Successful Bidder.

121. "**Sale Transaction Documentation**" means one or more asset purchase agreements or purchase and sale agreements and related documents, including any list of Assumed Contracts, pursuant to which the Debtors effectuate any Sale Transaction, and each of which shall be in form and substance acceptable to the Prepetition Secured Lender.

122. "**Sale Transaction Proceeds**" means all proceeds from the consummation of the Sale Transaction(s) that are distributable or payable to the Estates, and such proceeds may consist of Cash, debt instruments, or other non-Cash consideration.

123. "**Secured Claim**" means a Claim: (a) secured by a Lien on property in which one or more Estates has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, to the extent of the value of the creditor's interest in the Estate's interest in such property, or (b) that is based upon a valid right of setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the amount of the setoff, as determined pursuant to section 506(a) of the Bankruptcy Code, or (c) otherwise Allowed pursuant to this Plan or order of the Bankruptcy Court as a secured claim.

124. "**Stalking Horse Bidder**" means Cummins, Inc.

125. **"Successful Bidder"** means any Entity or Entities whose bid for any or all of the Debtors' assets is selected by the Debtors and approved by the Bankruptcy Court as the highest or otherwise best bid pursuant to the Bidding Procedures, which Entity may be the Stalking Horse Bidder. For the avoidance of doubt, the Successful Bidder may be more than one Entity, submitting one or more bids, and, if applicable, use of the term "Successful Bidder" herein may be read as "Successful Bidders."

126. "**Third-Party Release**" means the releases set forth in Article IX.C of the Plan.

127. "**Umbrella Supply Agreement**" means that umbrella supply agreement between Anglo American Services (UK) Limited and FMH dated January 5, 2023.

128. "**Unexpired Lease**" means a lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 or 1123 of the Bankruptcy Code.

129. "**Unimpaired**" means, with respect to a Claim, Interest, or Class of Claims or Interests, not "impaired" within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code.

130. "**United States Trustee**" means the Office of the United States Trustee for the District of Delaware.

131. "**U.S. Trustee Fees**" means all fees incurred pursuant to 28 U.S.C. § 1930(a)(6) and, to the extent applicable, any interest assessed pursuant to 31 U.S.C. § 3717.

132. "**Voting Deadline**" means 4:00 p.m. (prevailing Eastern time) on March 14, 2025, which is the date and time set forth in the Disclosure Statement Order by which Ballots for accepting or rejecting the Plan must be received by the Notice and Claims Agent.

133. "**Voting Record Date**" means the date established as the voting record date pursuant to the Disclosure Statement Order.

134. "**Wind-Down**" means the wind-down and dissolution of the Debtors' Estates as set forth in Article IV.M.

135. "**Wind-Down Support Agreement**" means that certain First Mode Non-U.S. Subsidiary Wind-Down Support Agreement, dated December 9, 2024, by and among the Debtors, certain affiliates of the Debtors party thereto, and the Consenting Lender.

136. "**Wind-Down Amount**" means Cash in an amount to be determined by the Debtors, to be retained by the Debtors to wind-down the Estates and these Chapter 11 Cases in accordance with the Wind-Down Budget.

137. "**Wind-Down Budget**" means a budget for the reasonable activities and expenses to be incurred in winding down the Chapter 11 Cases, including the liquidation of any residual assets and entities not transferred to the Successful Bidder(s), as set forth in the Plan Supplement, which shall be in form and substance acceptable to the Debtors and the Prepetition Secured Lender.

*B. Rules of Interpretation*

1. For purposes herein: (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) unless otherwise specified, any reference herein to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) unless otherwise specified, any reference herein to an existing document or exhibit having been filed or to be filed shall mean that document or exhibit, as it may thereafter be amended, modified, or supplemented, as applicable; (d) unless otherwise specified, all references herein to "Articles" are references to Articles of the Plan; (e) the words ''herein,'' "hereof," and ''hereto'' refer to the Plan in its entirety rather than to a particular portion of the Plan; (f) the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words "without limitation"; (g) references to "shareholders," "directors," and/or "officers" shall also include "members"

and/or "managers," as applicable, as such terms are defined under the applicable state limited liability company laws; (h) references to "Proofs of Claim," "Holders of Claims," "Disputed Claims," and the like shall include "Proofs of Equity Interests," "Holders of Interests," "Disputed Interests," and the like, as applicable; (i) captions and headings to Articles and subdivisions thereof are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (j) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (k) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (l) any effectuating provisions may be interpreted by the Plan Administrator in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity, and such interpretation shall control; and (m) references to docket numbers are references to the docket numbers of documents filed in the Chapter 11 Cases under the Bankruptcy Court's CM/ECF system.

2. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. Unless otherwise specified herein, any references to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter.

3. All references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

*C. Definitive Documents.*

1. Notwithstanding anything herein to the contrary, any and all consultation, information, notice and consent rights of the Prepetition Secured Lender, the DIP Lender, or the Consenting Parent (in any capacity) set forth in the Restructuring Support Agreement or any Definitive Document with respect to the form and substance of any Definitive Document, and any consents, waivers or other deviations under or from any such documents pursuant to such rights, shall be incorporated herein by this reference and shall be fully enforceable as if stated in full herein.

Article II.

## ADMINISTRATIVE CLAIMS, DIP FACILITY CLAIMS, PRIORITY TAX CLAIMS, AND UNITED STATES TRUSTEE STATUTORY FEES

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims (including Professional Fee Claims), DIP Facility Claims, Priority Tax Claims, and Claims on account of U.S. Trustee Fees have not been classified and thus are excluded from the Classes of Claims and Interests set forth in Article III.

*A. Administrative Claims*

1. General Administrative Claims

Except to the extent that a Holder of an Allowed General Administrative Claim and the applicable Debtor(s) agree to less favorable treatment with respect to such Allowed General Administrative Claim, each Holder of an Allowed General Administrative Claim will be paid the

full unpaid amount of such Allowed General Administrative Claim in Cash: (a) on the Effective Date or as soon as reasonably practicable thereafter or, if not then due, when such Allowed General Administrative Claim is due or as soon as reasonably practicable thereafter; (b) if a General Administrative Claim is Allowed after the Effective Date, on the date such General Administrative Claim is Allowed or as soon as reasonably practicable thereafter or, if not then due, when such Allowed General Administrative Claim is due or as soon as reasonably practicable thereafter; (c) at such time and upon such terms as may be agreed upon by such Holder and the Debtors, with the consent of the Prepetition Secured Lender; or (d) at such time and upon such terms as set forth in an order of the Bankruptcy Court; *provided* that any Allowed General Administrative Claim that has been assumed by the Successful Bidder under the Sale Transaction Documentation shall not be an obligation of the Debtors and shall not be entitled to any recovery from the Estates under this Plan.

2. Professional Fee Claims

All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred on and after the Petition Date and prior to and on the Effective Date must be Filed no later than forty-five (45) days after the Effective Date. Any party seeking payment of a Professional Fee Claim that arises under sections 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code must file a motion for approval of the same. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, and prior Bankruptcy Court orders. The Plan Administrator shall pay Professional Fee Claims in Cash to such Retained Professionals in the amount the Bankruptcy Court Allows from funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by entry of an order of the Bankruptcy Court; *provided* that the Debtors' obligations to pay Allowed Professional Fee Claims shall not be limited or deemed limited to funds held in the Professional Fee Escrow Account. To the extent that funds held in the Professional Fee Escrow Account are insufficient to satisfy the Allowed amount of Professional Fee Claims owing to the Retained Professionals, the Plan Administrator shall pay such amounts within ten (10) Business Days after entry of the order approving such Professional Fee Claims.

No later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Retained Professionals and for no other Entities until all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full in Cash to the Retained Professionals pursuant to one or more orders of the Bankruptcy Court. Except as otherwise expressly set forth in the last sentence of this paragraph, no Liens, claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. Before all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full in Cash to the Retained Professionals pursuant to one or more orders of the Bankruptcy Court, no funds held in the Professional Fee Escrow Account shall be property of the Estates of the Debtors or the Plan Administrator, as applicable. When all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full in Cash to the Retained Professionals pursuant to one or more orders of the Bankruptcy Court, any remaining funds held in the Professional Fee Escrow Account shall promptly revert to the Debtors, without any further notice to or action, order, or approval of the Bankruptcy Court or

any other Entity, which amounts shall be Distributable Proceeds and promptly distributed in accordance with this Plan.

The Retained Professionals shall deliver to the Debtors a reasonable and good-faith estimate of their unpaid fees and expenses incurred in rendering services to the Debtors (which estimate may include a cushion to cover unexpected or unknown fees) before and as of the Effective Date projected to be outstanding as of the anticipated Effective Date, and shall deliver such estimate no later than three (3) Business Days prior to the anticipated Effective Date. For the avoidance of doubt, no such estimate shall be considered or deemed an admission or limitation with respect to the amount of the fees and expenses that are the subject of a Retained Professional's final request for payment of Professional Fee Claims Filed with the Bankruptcy Court, and such Retained Professionals are not bound to any extent by the estimates. If a Retained Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Retained Professional for inclusion in the Professional Fee Escrow Amount. The total aggregate amount so estimated to be outstanding as of the anticipated Effective Date shall be utilized by the Debtors to determine the amount to be funded to the Professional Fee Escrow Account; *provided* that the Plan Administrator shall use Cash on hand to increase the amount of the Professional Fee Escrow Account to the extent fee applications are Filed after the Effective Date in excess of the amount held in the Professional Fee Escrow Account based on such estimates.

3. Administrative Claims Bar Date

All requests for payment of an Administrative Claim (other than DIP Facility Claims, Cure Costs, Professional Fee Claims, post-petition tax claims arising under section 503(b)(1)(D) of the Bankruptcy Code, claims arising under section 503(b)(9) of the Bankruptcy Code, or U.S. Trustee quarterly fees payable pursuant to Article II.D below) that accrued on or before the Effective Date must be filed with the Bankruptcy Court and served on the Debtors and the Plan Administrator, as applicable, no later than the Administrative Claims Bar Date. If a Holder of an Administrative Claim (other than DIP Facility Claims, Cure Costs, Professional Fee Claims, claims arising under section 503(b)(9) of the Bankruptcy Code, or U.S. Trustee quarterly fees payable pursuant to Article II.D below) that is required to, but does not, file and serve a request for payment of such Administrative Claim by the Administrative Claims Bar Date, such Administrative Claim shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors, their Estates, or the Plan Administrator.

The Plan Administrator in its discretion, may settle Administrative Claims in the ordinary course of business without further Bankruptcy Court approval. The Debtors or the Plan Administrator, as applicable, may also choose to object to any Administrative Claim no later than the applicable Claims Objection Deadline, subject to extensions by the Bankruptcy Court, agreement in writing of the parties, or on motion of a party in interest approved by the Bankruptcy Court. Unless the Debtors or the Plan Administrator, as applicable, (or other party with standing) objects to a timely-filed and properly served Administrative Claim, such Administrative Claim will be deemed Allowed in the amount requested after expiration of the applicable Claims Objection Deadline (as may be extended). In the event that the Debtors or the Plan Administrator objects to an Administrative Claim, the parties may confer to try to reach a settlement and, failing

that, the Bankruptcy Court will determine whether such Administrative Claim should be Allowed and, if so, in what amount.

*B. DIP Facility Claims*

The DIP Facility Claims shall be deemed Allowed as of the Effective Date in an amount equal to the full amount due and owing under the DIP Credit Agreement, including, for the avoidance of doubt, (a) the principal amount outstanding under the DIP Facility on such date, (b) all interest accrued and unpaid thereon through and including the date of payment, (c) all accrued and unpaid fees, expenses and noncontingent indemnification obligations payable under the DIP Facility and the Final DIP Order and (d) all other "Obligations" as provided for in the DIP Credit Agreement.

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, 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 Net Distributable Proceeds as of the time of such determination. 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.

*C. Priority Tax Claims*

Except to the extent that a Holder of an Allowed Priority Tax Claim and the Debtor(s) against which such Allowed Priority Tax Claim is asserted agree to a less favorable treatment, each Holder of an Allowed Priority Tax Claim shall receive, at the option of the Debtors, either (a) the full unpaid amount of such Allowed Priority Tax Claim in Cash on the later of the Effective Date and the date on which such Priority Tax Claim becomes an Allowed Claim or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Priority Tax Claim is due or as soon as reasonably practicable thereafter), or (b) equal annual installment payments in Cash, of a total value equal to the Allowed amount of such Priority Tax Claim, over a period ending not later than five (5) years after the Petition Date, in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the Plan (other than cash payments made to a class of creditors under section 1122(b)); *provided* that any Allowed Priority Tax Claim that has been expressly assumed by the Successful Bidder under the Sale Transaction Documentation shall not be an obligation of the Debtors. Once an Allowed Priority Tax Claim has been paid in full, any Liens securing such Allowed Priority Tax Claim shall be deemed released, terminated, and extinguished, in each case 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.

*D. United States Trustee Statutory Fees and Related Reporting Obligations*

All U.S. Trustee Fees that are due and owing as of the Effective Date shall be paid by the Debtors in full in Cash on the Effective Date. The Debtors shall file all monthly operating reports

due prior to the Effective Date when they become due. After the Effective Date, the Plan Administrator shall file with the Bankruptcy Court separate UST Form 11-PCR report for each of the Debtors when they become due. After the Effective Date, any and all U.S. Trustee Fees shall be paid in full in Cash when due and payable under 28 U.S.C. § 1930(a)(6). Each and every one of the Debtors, and the Plan Administrator shall remain obligated to pay U.S. Trustee Fees to the Office of the U.S. Trustee until the earliest of the closure, dismissal, or conversion to a case under Chapter 7 of the Bankruptcy Code of the case of that particular Debtor. The U.S. Trustee shall not be treated as providing any release under the Plan. The U.S. Trustee Fees are Allowed. The U.S. Trustee shall not be required to file any proof of claim or any request for administrative expense for U.S. Trustee Fees. The provisions of this paragraph shall control notwithstanding any other provision(s) in this Plan to the contrary.

## Article III.
## CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

### *A. Classification of Claims*

This Plan constitutes a separate chapter 11 plan for each Debtor. Except for the Claims addressed in Article II above (or as otherwise set forth herein), all Claims and Interests are placed in Classes for each of the applicable Debtors. The Plan consolidates Claims against all Debtors solely for purposes of voting, Confirmation, and distribution (for instance, a General Unsecured Claim against any Debtor is classified in Class 4, and to the extent Allowed, is entitled to share Pro Rata with all other Allowed Class 4 Claims, in the treatment provided for Class 4, without any allocation thereof among the Debtors) but not for any other purpose. In accordance with section 1123(a)(1) of the Bankruptcy Code, the Debtors have not classified Administrative Claims, DIP Facility Claims, and Priority Tax Claims, as described in Article II.

The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including voting, Confirmation and distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. This Plan deems a Claim or Interest to be classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies within the description of such different Class. A Claim or an Interest is in a particular Class only to the extent that any such Claim or Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date.

**Summary of Classification and Treatment of Claims and Interests**

| Class | Claim | Status | Voting Rights |
|---|---|---|---|
| 1 | Other Priority Claims | Unimpaired | Presumed to Accept |
| 2 | Other Secured Claims | Unimpaired | Presumed to Accept |
| 3 | Prepetition Secured Loan Claims | Unimpaired | Presumed to Accept |
| 4 | General Unsecured Claims | Unimpaired or Impaired | Entitled to Vote |
| 5 | Intercompany Claims | Unimpaired or Impaired | Presumed to Accept or Deemed to Reject |
| 6 | Intercompany Interests | Unimpaired or Impaired | Presumed to Accept or Deemed to Reject |
| 7 | Equity Interests | Impaired | Deemed to Reject |

*B. Treatment of Claims and Interests*

1. *Class 1 — Other Priority Claims*

a) *Classification*: Class 1 consists of all Other Priority Claims.

b) *Treatment*: On the Effective Date, except to the extent that a Holder of an Allowed Other Priority Claim and the Debtor against which such Allowed Other Priority Claim is asserted agree to less favorable treatment for such Allowed Other Priority Claim, each Holder thereof shall receive payment in full in Cash or other treatment rendering such Claim Unimpaired. Any Allowed Other Priority Claim that has been expressly assumed by the applicable Successful Bidder under the applicable Sale Transaction Documentation shall not be an obligation of the Debtors.

c) *Voting*: Class 1 is Unimpaired and Holders of Class 1 Other Priority Claims are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 1 Other Priority Claims are not entitled to vote to accept or reject this Plan.

2. *Class 2 — Other Secured Claims*

a) *Classification*: Class 2 consists of all Other Secured Claims.

b) *Treatment*: On the Effective Date, except to the extent that a Holder of an Allowed Other Secured Claim and the Debtor against which such Allowed Other Secured Claim is asserted agree to less favorable treatment for such Allowed Other Secured Claim, each allowed Other Secured Claim shall, at the option of the applicable Debtor with the consent of the Prepetition Secured Lender (not to be unreasonably withheld), (i) be paid in full in Cash, (ii) receive the collateral securing its Allowed Other Secured Claim, or (iii) receive any other treatment that would render such Claim Unimpaired. Any Allowed Other Secured

Claim that has been expressly assumed by the applicable Successful Bidder under the applicable Sale Transaction Documentation shall not be an obligation of the Debtors.

c) *Voting*: Class 2 is Unimpaired and Holders of Class 2 Other Secured Claims are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 2 Other Secured Claims are not entitled to vote to accept or reject this Plan.

3. *Class 3 — Prepetition Secured Loan Claims*

a) *Classification*: Class 3 consists of all Prepetition Secured Loan Claims.

b) *Allowance*: On the Effective Date, the Prepetition Secured Loan Claims shall be Allowed in an amount equal to (a) the aggregate outstanding principal amount of $71,513,729 plus (b) all accrued and unpaid interest as of the Petition Date plus (c) all fees, expenses, and other charges due and owing under the Prepetition Secured Loans as of the Petition Date plus (d) all other accrued and unpaid interest on the Prepetition Secured Loans as of the Effective Date to the extent permitted under section 506(b) of the Bankruptcy Code.

c) *Treatment*: Solely to the extent that the DIP Facility Claims are paid in full, and unless the Prepetition Secured Lender agrees to less favorable treatment, the Prepetition Secured Lender shall receive on account of its Prepetition Secured Loan Claims, on the Effective Date and periodically thereafter, as determined by the Plan Administrator from time to time in its reasonable discretion, all Net Distributable Proceeds after the DIP Facility Claims have been satisfied in full. 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.

d) *Voting*: Class 3 is Unimpaired and the Prepetition Secured Lender is conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holder of Class 3 Prepetition Secured Loan Claims are not entitled to vote to accept or reject this Plan.

4. *Class 4 — General Unsecured Claims*

a) *Classification*: Class 4 consists of all General Unsecured Claims.

b) *Treatment*: 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 for such Allowed General Unsecured Claim:

i. each Participating GUC Holder shall receive the lesser of (a) payment in full in cash; and (b) its Pro Rata share of Distributable Proceeds; and

ii. each Non-Participating GUC Holder shall receive no consideration on account of its General Unsecured Claims.

c) *Voting*: Class 4 is either Unimpaired or Impaired and Holders of Class 4 General Unsecured Claims are entitled to vote to accept or reject this Plan.

5. *Class 5 — Intercompany Claims*

a) *Classification*: Class 5 consists of all Intercompany Claims.

b) *Treatment*: On the Effective Date, each Holder of an Allowed Intercompany Claim shall receive no distribution under this 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.

c) *Voting*: Class 5 is either (i) Unimpaired and Holders of Class 5 Intercompany Claims are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code or (ii) Impaired and not receiving any distribution under this Plan and Holders of Class 5 Intercompany Claims are deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, in each case, Holders of Class 5 Intercompany Claims are not entitled to vote to accept or reject this Plan.

6. *Class 6 — Intercompany Interests*

a) *Classification:* Class 6 consists of all Intercompany Interests.

b) *Treatment*: On the Effective Date, each Holder of an Allowed Intercompany Interest shall receive no distribution under this 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 and the Debtors.

c) *Voting*: Class 6 is either (i) Unimpaired and Holders of Class 6 Intercompany Interests are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code or (ii) Impaired and not receiving any distribution under this Plan and Holders of Class 6 Intercompany Interests are deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, in each case, Holders of Class 6 Intercompany Interests are not entitled to vote to accept or reject this Plan.

7. *Class 7 — Equity Interests*

a) *Classification*: Class 7 consists of all Equity Interests.

b) *Treatment*: 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.

c) *Voting*: Class 7 is Impaired and Holders of Class 7 Equity Interests are deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 7 Equity Interests are not entitled to vote to accept or reject the Plan.

*C. Nonconsensual Confirmation*

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of this Plan by an Impaired Class of Claims, determined without including any acceptance of this Plan by any insider. The Debtors shall seek Confirmation pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests.

*D. Subordination*

The allowance, classification, and treatment of all Allowed Claims and Interests, and the respective distributions and treatments under the Plan, shall take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, except where otherwise provided herein, the Plan Administrator and the Debtors reserve the right to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination rights relating thereto.

*E. Elimination of Vacant Classes*

Any Class of Claims that is not occupied as of the date of commencement of the Confirmation Hearing by the Holder of an Allowed Claim or a Claim temporarily Allowed under Bankruptcy Rule 3018 (*i.e.*, no Ballots are cast in a Class entitled to vote on the Plan) shall be deemed eliminated from this Plan for purposes of voting to accept or reject this Plan and for purposes of determining acceptances or rejection of this Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

*F. Intercompany Claims*

To the extent Reinstated under the Plan, any distributions on account of Intercompany Claims are not being received by Holders of such Intercompany Claims on account of their Intercompany Claims but for the purposes of administrative convenience and due to the importance of maintaining the corporate structure to preserve ordinary course intercompany operations and in exchange for the Debtors' or the Plan Administrator's, as applicable, agreement under this Plan to make certain distributions to the Holders of Allowed Claims.

Article IV.

## MEANS FOR IMPLEMENTATION OF THE PLAN

*A. Corporate Existence*

For the purposes set forth in Article IV.L of the Plan, and except as otherwise provided in this Plan, each Debtor shall continue to exist after the Effective Date as a separate corporate Entity, limited liability company, partnership, or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form, as the case may be, pursuant to the applicable law in the jurisdiction in which each Debtor is incorporated or formed and pursuant to the respective certificate of incorporation and bylaws (or other formation documents) in effect prior to the Effective Date, except to the extent such certificate of incorporation and bylaws (or

other formation documents) are amended by this Plan, by the Debtors, or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to this Plan and require no further action or approval.

*B. Indemnification Obligations*

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.

*C. Cancellation of Agreements and Equity Interests*

Except as otherwise provided for in this Plan, on the later of the Effective Date and the date on which the relevant distributions are made pursuant to Articles II and VI: (i) the obligations of the Debtors under the DIP Credit Agreement, the Prepetition Secured Loans, and any other note, bond, indenture, or other instrument or document directly or indirectly evidencing or creating any indebtedness of the Debtors; and (ii) any certificate, equity security, share, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating an ownership interest in the Debtors (except, in each case, such certificates, notes or other instruments or documents evidencing indebtedness or obligation of or ownership interest in the Debtors that are Reinstated pursuant to the Plan), shall be cancelled as to the Debtors, and they shall not have any continuing obligations thereunder; and (b) the obligations of the Debtors pursuant, relating or pertaining to any agreements, indentures, certificates of designation, bylaws or certificate or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, indentures, purchase rights, options, or other instruments or documents evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors (except such agreements, certificates, notes or other instruments evidencing indebtedness or obligation of or ownership interest in the Debtors that are specifically Reinstated or entered into pursuant to this Plan) shall be released; *except that* the DIP Loans and the Prepetition Secured Loans shall continue in effect solely for the purpose of: (a) allowing the DIP Lender and the Prepetition Secured Lender to receive distributions from the Debtors under this Plan as set forth in Articles II and VI of this Plan; (b) preserving the DIP Lender and the Prepetition Secured Lender's right to all amounts due under the DIP Loans and the Prepetition Secured Loans; and (c) preserving the DIP Lender's and

Prepetition Secured Lender's right to indemnification from the Debtors pursuant and subject to the terms of the DIP Loans and the Prepetition Secured Loans.

*D. Anglo Plan Funding, Subordination, and Settlement*

Subject to the 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 the Anglo Plan Funding in the Anglo Funding Amount.

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 "**Plan Settlement**") of all actual and potential disputes between and among the Debtors and Anglo, including without limitation, any and all issues relating to (1) the incurrence of the obligations under the Prepetition Facility Agreement, the termination of any facilities thereunder, and acceleration of any loans thereunder, (2) the Umbrella Supply Agreement and the termination thereof, (3) the HEV Purchase Order 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.

*E. Sources for Plan Distributions*

The Debtors shall fund distributions under this Plan with Cash on hand, the Anglo Funding Amount, the proceeds of all non-Cash assets of the Debtors' Estates, and any proceeds of retained Causes of Action of the Estates.

*F. Exemption from Certain Transfer Taxes and Recording Fees*

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfer from a Debtor to any Entity pursuant to or in connection with this Plan, including: (1) the issuance, distribution, transfer, or exchange of any debt, securities, or other interest in the Debtors; (2) the creation, modification, consolidation, or recording of any mortgage, deed of trust or other security interest, or the securing of additional indebtedness by such or other means; (3) the making, assignment, or recording of any lease or sublease; or (4) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, this Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to this Plan, shall not be subject to any U.S. federal, state or local document recording tax, stamp tax, conveyance fee, intangibles, or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and the appropriate U.S. state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

*G. Plan Administrator*

On and after the Plan Effective Date, the Plan Administrator shall act for the Debtors in the same fiduciary capacity as applicable to a board of managers, directors, and officers, subject to the provisions hereof (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same). On the Effective Date, the authority, power, and incumbency of the persons acting as managers, directors, and officers of the Debtors shall be deemed to have terminated, the persons acting as managers, directors, and officers of the Debtors shall be deemed to have resigned, and the Plan Administrator shall be appointed as the sole manager, sole director, and sole officer of the Debtors, and shall succeed to the powers of the Debtors' managers, directors, and officers. From and after the Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Debtors. The Plan Administrator shall use commercially reasonable efforts to operate in a manner consistent with the Wind-Down Budget. The Plan Administrator shall carry out any necessary functions required by the applicable Sale Transaction Documentation.

The powers of the Plan Administrator shall include any and all powers and authority to implement this Plan and wind-down the businesses and affairs of the Debtors, in each case, without the need for further Court approval, including: (a) selling, disposing, liquidating, receiving, holding, investing, supervising, protecting, and abandoning the Debtors' assets; (b) taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under this Plan; (c) making distributions as contemplated under this Plan; (d) establishing and maintaining bank accounts in the name of the Debtors; (e) subject to the terms set forth herein, employing, retaining, terminating, or replacing professionals to represent it with respect to its responsibilities or otherwise effectuating this Plan to the extent necessary; (f) paying all reasonable fees, expenses, debts, charges, and liabilities of the Debtors; (g) administering and paying taxes of the Debtors, including filing tax returns; (h) representing the interests of the Debtors before any taxing authority in all matters, including any action, suit, proceeding or audit; and (i) exercising such other powers as may be vested in it pursuant to order of the Bankruptcy Court or pursuant to this Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of this Plan.

Following the Effective Date, at any time after the businesses and affairs of the Debtors have been substantially wound down, the Plan Administrator shall, if requested by the Prepetition Secured Lender, and after consultation with the Monitoring Committee, transfer to the Prepetition Secured Lender (or any affiliate designated by the Prepetition Secured Lender) for no consideration (i) any equity interests held by a Debtor at such time in any Non-Debtor Subsidiary and/or (ii) any claim held by a Debtor at such time against any Non-Debtor Subsidiary; provided that (A) the Plan Administrator has determined (such determination to be made reasonably and not to be unreasonably withheld, conditioned or delayed) that any such equity or claim is of inconsequential value or of no value to any Beneficiary other than the Prepetition Secured Lender and (B) in each case such transfer would not reasonably be expected to (considering the direct and indirect costs and expenses of continuing to administer such equity or claim) have any material adverse effect on the Debtors' estates. If the Prepetition Secured Lender makes the election described in the foregoing sentence, the Plan Administrator shall cooperate with the Prepetition Secured Lender in facilitating the prompt transfer of the applicable equity interests in or claims against any such Non-Debtor Subsidiary, including by negotiating the documentation of such

transfer reasonably and in good faith. Each of the Prepetition Secured Lender and the Plan Administrator shall bear its own costs in the transfer of any equity or claims.

The Plan Administrator may resign at any time upon thirty (30) days' written notice delivered to the Bankruptcy Court, *provided* that such resignation shall only become effective upon the appointment of a permanent or interim successor Plan Administrator. Upon his or her appointment, the successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of his or her predecessor and all responsibilities of the predecessor Plan Administrator relating to the Debtors shall be terminated.

1. Appointment of the Plan Administrator

The Plan Administrator shall be appointed by the Debtors with the consent of the Prepetition Secured Lender. The Plan Administrator shall retain and have all the rights, powers, and duties necessary to carry out its responsibilities under this Plan, and as otherwise provided in the Confirmation Order.

2. Retention of Professionals

The Plan Administrator shall have the right to retain the services of attorneys, accountants, and other professionals that, in the discretion of the Plan Administrator, are necessary to assist the Plan Administrator in the performance of his or her duties. The reasonable fees and expenses of such professionals shall be paid by the Debtors solely from the Wind-Down Amount, upon the monthly submission of statements to the Plan Administrator. The payment of the reasonable fees and expenses of the Plan Administrator's retained professionals shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court.

3. Compensation of the Plan Administrator

The Plan Administrator's compensation, on a post-Effective Date basis, shall be as described in the Plan Supplement and shall be subject to the consent of the Prepetition Secured Lender.

4. Plan Administrator Exculpation, Indemnification, Insurance, and Liability Limitation

The Plan Administrator and all professionals retained by the Plan Administrator, each in their capacities as such, shall be deemed indemnified by the Debtors to the extent provided in the Plan Administration Agreement. The Plan Administrator may obtain, at the expense of the Debtors and solely from the Wind-Down Amount, commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Debtors. The Plan Administrator may rely upon written information previously generated by the Debtors.

For the avoidance of doubt, notwithstanding anything to the contrary contained herein, the Plan Administrator, in its capacity as such, shall have no liability whatsoever to any party for the liabilities and/or obligations, however created, whether direct or indirect, in tort, contract, or otherwise, of the Debtors, other than expressly provided for by this Plan and the Plan Administration Agreement.

*H. Directors and Officers Insurance Policies*

In accordance with and without altering Article V.A of the Plan, (i) on the Effective Date, the Debtors shall be deemed to have assumed all of the Debtors' D&O Liability Insurance Policies (including any "tail policy" and all agreements, documents, or instruments related thereto) in effect prior to the Effective Date pursuant to sections 105 and 365(a) of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court; (ii) confirmation of this Plan shall not discharge, impair, or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Debtors under this Plan as to which no Proof of Claim need be filed; (iii) the Debtors shall retain the ability to supplement such D&O Liability Insurance Policies as the Debtors may deem necessary; and (iv) for the avoidance of doubt, entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the assumption of each of the unexpired D&O Liability Insurance Policies.

In addition, on or after the Effective Date, the Plan Administrator shall not terminate or otherwise reduce the coverage under any D&O Liability Insurance Policies (including any "tail policy" and all agreements, documents, or instruments related thereto) in effect on or prior to the Effective Date, with respect to conduct occurring prior thereto, and all current and former directors, officers, and managers of the Debtors who served in such capacity at any time prior to the Effective Date shall be entitled to the full benefits of any such policies for the full term of such policies regardless of whether such current and former directors, officers, and managers remain in such positions after the Effective Date, all in accordance with the terms and conditions of the D&O Liability Insurance Policies, which shall not be altered.

*I. Preservation of Rights of Action*

In accordance with section 1123(b) of the Bankruptcy Code, but subject to the releases set forth in this section and in Article IX below, and to the extent not transferred to a Successful Bidder in any Sale Transaction, all Causes of Action that a Debtor may hold against any Entity other than those Causes of Actions released pursuant to the releases and exculpations contained in the Plan, including Article IX below, shall vest in the Plan Administrator on the Effective Date. Thereafter, the Plan Administrator shall have the right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, whether arising before or after the Petition Date, and to decline to do any of the foregoing without the consent or approval of any other third party or further notice to or action, order, or approval of the Bankruptcy Court; *provided*, *however*, that the Plan Administrator shall not affirmatively bring Avoidance Actions against trade creditors, but may use such Avoidance Actions solely in the Claims reconciliation process for Claims reduction, setoff, or other defensive purposes. **No Entity may rely on the absence of a specific reference in this Plan, the Plan Supplement, or the Disclosure Statement to any specific Cause of Action as any indication that the Debtors or the Plan Administrator will not pursue any and all available Causes of Action. The Debtors and the Plan Administrator expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in this Plan,** and, therefore, no preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or

otherwise) or laches, shall apply to any Cause of Action as a consequence of the Confirmation or the occurrence of the Effective Date.

*J. Corporate Action*

Upon the Effective Date, all actions contemplated by this Plan shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, directors, managers, or officers of the Debtors, the Plan Administrator, or any other Entity, including, as applicable: (1) the rejection or assumption, as applicable, of Executory Contracts and Unexpired Leases and (2) all other acts or actions contemplated, or reasonably necessary or appropriate to promptly consummate the transactions contemplated by this Plan (whether to occur before, on, or after the Effective Date). All matters provided for in this Plan involving the company structure of the Debtors, and any company action required by the Debtors or the Plan Administrator in connection therewith, shall be deemed to have occurred on, and shall be in effect as of, the Effective Date, without any requirement of further action by the security holders, directors, managers, authorized persons, or officers of the Debtors.

On or prior to the Effective Date, the appropriate officers, directors, managers, or authorized persons of the Debtors (including any president, vice-president, chief executive officer, treasurer, general counsel, or chief financial officer thereof) shall be authorized and directed to issue, execute and deliver the agreements, documents, securities, certificates of incorporation, certificates of formation, bylaws, operating agreements, and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by this Plan) in the name of and on behalf of the applicable Debtors. The authorizations and approvals contemplated by this Article IV.I shall be effective notwithstanding any requirements under non-bankruptcy law.

*K. Effectuating Documents; Further Transactions*

Prior to, on, and after the Effective Date, the Debtors and the directors, managers, officers, authorized persons, and members of the boards of directors or managers and directors thereof, are authorized to and may issue, execute, deliver, file, or record such contracts, securities, notes, instruments, certificates, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and provisions of this Plan, without the need for any approvals, authorizations, actions, or consents except for those expressly required pursuant to this Plan.

*L. Wind-Down*

On and after the Effective Date, in accordance with the Wind-Down Budget, the Debtors shall (1) continue in existence for purposes of (a) winding down the Debtors' businesses and affairs as expeditiously as reasonably possible, (b) resolving Disputed Claims as provided hereunder, (c) paying Allowed Claims not assumed by the applicable Successful Bidder as provided hereunder, (d) filing appropriate tax returns, (e) complying with their continuing obligations under the applicable Sale Transaction Documentation (including with respect to the transfer of any permits to the applicable Successful Bidder as contemplated therein), and (f) administering this Plan in an efficient manner; and (2) thereafter liquidate and dissolve as set forth in this Plan. The Plan Administrator shall carry out these actions for the Debtors.

Consistent with Article IV.G of this Plan, the Plan Administrator shall also have the power and authority and shall be required to exercise such power and authority, in lieu of the board of directors or similar governing body of any of the direct and indirect Non-Debtor Subsidiaries to take any action necessary to wind-down and dissolve such Entities, including filing a certificate of dissolution or similar documents for any of such Entities, together with all other necessary corporate and company documents, to effect the dissolution of such Entities under the applicable laws of the jurisdiction in which such Entities were formed.

*M. Wind-Down Amount.*

On the Effective Date, the Debtors shall retain Cash in the amount of the Wind-Down Amount, which shall be used in accordance with the terms of the Wind-Down Budget. Any remaining Cash held by the Debtors after making all of the disbursements contemplated by the Wind-Down Budget shall promptly become Distributable Proceeds and shall be promptly distributed in accordance with this Plan.

*N. Dissolution of the Debtors.*

As of the Effective Date, the Plan Administrator shall act as the sole officer, director, and manager, as applicable, of the Debtors with respect to their affairs. Subject in all respects to the terms of this Plan, the Plan Administrator shall have the power and authority to take any action necessary to wind-down and dissolve any of the Debtors, and shall be authorized to (a) file a certificate of dissolution for any of the Debtors, together with all other necessary corporate and company documents, to effect the dissolution of the Debtors under the applicable laws of the applicable state(s) of formation; and (b) complete and file all final or otherwise required federal, state, and local tax returns and shall pay taxes required to be paid for any of the Debtors, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of any of the Debtors or their Estates for any tax incurred during the administration of such Debtor's Chapter 11 Case, as determined under applicable tax laws.

The filing by the Plan Administrator of any of the Debtors' certificate of dissolution shall be authorized and approved in all respects without further action under applicable law, regulation, order, or rule, including any action by the stockholders, members, board of directors, or board of managers of any of the Debtors or any of their Affiliates.

*O. Closing the Chapter 11 Cases*

Upon administering in full the Chapter 11 Cases, the Plan Administrator may seek authority from the Bankruptcy Court to close any of the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules, and the requirements set forth in Local Rule 3022-1. After the Effective Date, all contested matters relating to any of the Debtors, including claim objections and any adversary proceedings, shall be administered and heard in the Chapter 11 Case of First Mode Holdings, Inc., irrespective of whether such Claim(s) were Filed or such adversary proceeding was commenced against a Debtor whose Chapter 11 Case was closed.

## Article V.
## TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; EMPLOYEE BENEFITS; AND INSURANCE POLICIES

### *A. Assumption and Rejection of Executory Contracts and Unexpired Leases*

On the Effective Date, except as otherwise provided herein, all Executory Contracts or Unexpired Leases will be deemed rejected as of the Effective Date or on such later date as may be identified on the Rejected Contracts List, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, other than those Executory Contracts or Unexpired Leases that are or were (i) previously assumed pursuant to an order of the Bankruptcy Court, (ii) assumed and assigned or to be assumed and assigned in accordance with any Sale Transaction Documentation, (iii) previously rejected pursuant to an order of the Bankruptcy Court, (iv) the subject of a pending motion to reject, assume, or assume and assign as of the Effective Date, or (v) identified on the Assumed Contract List.

Entry of the Confirmation Order by the Bankruptcy Court shall constitute an order approving the assumptions, assumptions and assignments, or rejections of the Debtors' Executory Contracts and Unexpired Leases pursuant to the Plan pursuant to sections 365(a) and 1123 of the Bankruptcy Code. To the maximum extent permitted by law, to the extent any provision in any Executory Contract or Unexpired Lease assumed pursuant to this Plan restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption of such Executory Contract or Unexpired Lease, then such provision shall be deemed modified such that the transactions contemplated by this Plan shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto.

Notwithstanding anything to the contrary in the Plan, the Debtors reserve the right to amend or supplement the Assumed Contracts List and the Rejected Contracts List, with the consent of the Prepetition Secured Lender, prior to the Effective Date (or such later date as may be permitted by Article V.B or Article V.E below), *provided* that the Debtors shall give prompt notice of any such amendment or supplement to any affected counterparty and such counterparty shall have a reasonable opportunity to object thereto on any grounds.

Notwithstanding anything to the contrary herein, the terms of any Sale Transaction Documentation, any Sale Order, and Bidding Procedures Order shall govern the cure of defaults, assumption and assignment, and compliance with section 365 of the Bankruptcy Code with respect to any Executory Contracts or Unexpired Leases assumed and assigned, or to be assumed and assigned, pursuant to such Sale Transaction Documentation and Sale Order.

### *B. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases*

Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed or assumed and assigned pursuant to this Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the applicable Cure Cost in Cash on the Effective Date or as soon as reasonably practicable, subject to the limitation described below, or on such other terms as the parties to such Executory Contract or Unexpired Lease may otherwise agree.

In the event of an assumption, or an assumption and assignment, of an Executory Contract or Unexpired Lease under the Plan, at least fourteen (14) days prior to the applicable objection deadline, the Debtors shall File and serve upon counterparties to such Executory Contracts and Unexpired Leases, a notice of the proposed assumption, or proposed assumption and assignment, which will: (a) list the applicable Cure Cost, if any; (b) if applicable, identify the party to which the Executory Contract or Unexpired Lease will be assigned; (c) describe the procedures for filing objections thereto; and (d) explain the process by which related disputes will be resolved by the Bankruptcy Court.

Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption, or proposed assumption and assignment under the Plan, or the Cure Cost, must be Filed, served and actually received by the Debtors prior to the applicable objection deadline. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption, or proposed assumption and assignment, or Cure Cost will be deemed to have consented to such matters and will be deemed to have assented to such assumption, assumption or assignment, and Cure Cost and to have forever released and waived any objection to such proposed assumption, proposed assumption and assignment, and Cure Cost.

In the event of a dispute regarding (a) the amount of any Cure Cost, (b) the ability of any Debtor or assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or assumed and assigned or (c) any other matter pertaining to assumption or assignment, the applicable cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving such assumption, or assumption and assignment. If such objection is sustained or partially sustained by Final Order of the Bankruptcy Court, the Debtors or the Plan Administrator, as applicable, may elect to reject such Executory Contract or Unexpired Lease in lieu of assuming or assigning it. The Debtors or the Plan Administrator, as applicable, shall be authorized to effect such rejection by filing a written notice of rejection with the Bankruptcy Court and serving such notice on the applicable counterparty within thirty (30) days of the entry of such Final Order.

Upon payment of the Cure Cost, assumption of any Executory Contract or Unexpired Lease shall result in the full satisfaction and cure of any Claims and defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, under any assumed Executory Contract or Unexpired Lease arising at any time prior to the effective date of assumption.

*C. Claims Based on Rejection of Executory Contracts and Unexpired Leases*

Unless otherwise provided by a Bankruptcy Court order, any Proofs of Claim asserting Claims arising from the rejection of the Executory Contracts and Unexpired Leases by virtue of this Plan must be filed with the Notice and Claims Agent by the date that is twenty-one (21) days following service of an order (which may be the Confirmation Order) approving the rejection of the applicable Executory Contract or Unexpired Lease. The deadline for Governmental Units to file any such Proofs of Claim shall be the later of thirty (30) days after the effectiveness of rejection of the applicable Executory Contract or Unexpired Lease or the Governmental Bar Date as set forth in the Bar Date Order. The notice of Effective Date shall set forth the date by which Proofs of Claim asserting Claims arising from the rejection of the Executory Contracts and Unexpired

Leases must be filed. **Any Proofs of Claim arising from the rejection of the Executory Contracts and Unexpired Leases that are not timely filed shall be forever disallowed and barred, absent a Final Order to the contrary.** All Allowed Claims arising from the rejection of the Executory Contracts and Unexpired Leases shall constitute General Unsecured Claims and shall be treated in accordance with Article III.B of the Plan.

*D. Reserved.*

*E. Reservation of Rights*

Neither the exclusion nor inclusion of any contract or lease in the Rejected Contracts List or Assumed Contracts List, as applicable, nor anything contained in this Plan or any Sale Transaction Documentation, nor the Debtors' delivery of a notice of proposed assumption and proposed Cure Cost to any contract and lease counterparties, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Plan Administrator, as applicable, shall have forty-five (45) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease. If there is a dispute regarding a Debtor's liability under an assumed Executory Contract or Unexpired Lease, the Plan Administrator shall be authorized to move to have such dispute heard by the Bankruptcy Court pursuant to Article X.C of the Plan.

## Article VI.
## PROVISIONS GOVERNING DISTRIBUTIONS

*A. Distribution on Account of Claims Allowed as of the Effective Date*

Except as otherwise provided in this Plan or a Final Order, or as agreed to by the relevant parties, initial distributions under this Plan on account of Claims Allowed on or before the Effective Date shall be made on the Initial Distribution Date; *provided* that Allowed Priority Tax Claims shall be satisfied in accordance with Article II.C herein.

*B. Distributions on Account of Claims Allowed After the Effective Date*

1. Payments and Distributions on Disputed Claims

Except as otherwise provided in this Plan, a Final Order, or as agreed to by the relevant parties, distributions on account of Disputed Claims that become Allowed after the Effective Date shall be made by the Plan Administrator on the next Periodic Distribution Date that is at least thirty (30) days after the Disputed Claim becomes an Allowed Claim; *provided* that (a) Disputed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business that become Allowed after the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice and (b) Disputed Priority Tax Claims that become Allowed Priority Tax Claims after the Effective Date shall be treated as Allowed Priority Tax Claims in accordance with Article II.C of the Plan.

2. Distributions of Distributable Proceeds

After the Initial Distribution Date, the Plan Administrator shall, or shall direct the Distribution Agent to, distribute additional Distributable Proceeds as soon as practicable upon such Distributable Proceeds becoming available to the Debtors or the Plan Administrator, or on the next Periodic Distribution Date. Such additional Distributable Proceeds shall be distributed in accordance with the terms of Article IV of this Plan.

*C. Timing and Calculation of Amounts to Be Distributed*

Except as otherwise provided herein, on each Periodic Distribution Date each Holder of an Allowed Claim shall receive the full amount of the distributions that this Plan provides for Allowed Claims in the applicable Class, subject to taking into account any reserves established with respect to Disputed Claims. If and to the extent that any Disputed Claims exist, distributions on account of such Disputed Claims shall be made pursuant to Article VI.B and Article VII of this Plan. Except as otherwise provided in this Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in this Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

*D. Delivery of Distributions*

1. Record Date for Distributions

For purposes of making distributions on the Initial Distribution Date only, the Distribution Agent shall be authorized and entitled to recognize only those Holders of Claims reflected on the Claims Register as of the close of business on the Distribution Record Date. If a Claim is transferred (a) twenty-one (21) or more days before the Distribution Record Date and reasonably satisfactory documentation evidencing such transfer is Filed with the Court, the Distribution Agent shall make the applicable distributions to the applicable transferee, or (b) twenty (20) or fewer days before the Distribution Record Date, the Distribution Agent shall make distributions to the transferee only to the extent practical and, in any event, only if the relevant transfer form is Filed with the Court and contains an unconditional and explicit certification and waiver of any objection to the transfer by the transferor. With respect to periodic distributions, the Distribution Agent shall be entitled to set a reasonable record date, and to recognize only those Holders of Claims reflected on the Claims Register as of the close of business on such date.

2. Delivery of Distributions in General

Except as otherwise provided in the Plan, the Distribution Agent shall make distributions to Holders of Allowed Claims at the address for each such Holder as indicated in the Debtors' records as of the date of any such distribution, including the address set forth in any Proof of Claim filed by that Holder, if applicable; *provided* that the manner of such distributions shall be determined at the discretion of the Plan Administrator.

3. Distributions by Distribution Agents

The Debtors or the Plan Administrator, as applicable, shall have the authority to enter into agreements with one or more Distribution Agents to facilitate the distributions required hereunder.

To the extent the Debtors or the Plan Administrator, as applicable, determines to utilize a Distribution Agent to facilitate the distributions under this Plan to Holders of Allowed Claims, any such Distribution Agent would first be required to: (a) affirm its obligation to facilitate the prompt distribution of any documents; (b) affirm its obligation to facilitate the prompt distribution of any recoveries or distributions required under this Plan; (c) waive any right or ability to setoff, deduct from or assert any lien or encumbrance against the distributions required under this Plan to be distributed by such Distribution Agent; and (d) post a bond, obtain a surety or provide some other form of security for the performance of its duties, the costs and expenses of procuring which shall be borne by the Debtors or the Plan Administrator, as applicable.

The Debtors or the Plan Administrator, as applicable, shall pay to the Distribution Agents all reasonable and documented fees and expenses of the Distribution Agents without the need for any approvals, authorizations, actions, or consents. The Distribution Agents shall submit detailed invoices to the Debtors or the Plan Administrator, as applicable, for all fees and expenses for which the Distribution Agent seeks reimbursement and the Debtors or the Plan Administrator, as applicable, shall pay those amounts that they, in their sole discretion, deem reasonable, and shall object in writing to those fees and expenses, if any, that the Debtors or the Plan Administrator, as applicable, deem to be unreasonable. In the event that the Debtors or the Plan Administrator, as applicable, objects to all or any portion of the amounts requested to be reimbursed in a Distribution Agent's invoice, the Debtors or the Plan Administrator, as applicable, and such Distribution Agent shall endeavor, in good faith, to reach mutual agreement on the amount of the appropriate payment of such disputed fees and/or expenses. In the event that the Debtors or the Plan Administrator, as applicable, and a Distribution Agent are unable to resolve any differences regarding disputed fees or expenses, either party shall be authorized to move to have such dispute heard by the Bankruptcy Court.

4. Minimum Distributions

Notwithstanding anything herein to the contrary, other than on account of Claims in Classes 1 and 2, the Distribution Agents shall not be required to make distributions or payments aggregating less than $50 (whether Cash or otherwise) to any particular Holder of an Allowed Claim in such Classes and shall not be required to make partial distributions or payments of fractions of dollars. If any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment will reflect a rounding down of such fraction to the nearest whole dollar.

5. Undeliverable Distributions

a. Holding of Certain Undeliverable Distributions

Undeliverable distributions shall remain in the possession of the Distribution Agents until such distributions become deliverable, at which time such distributions shall be made without interest, dividends, or other accruals of any kind on account of the distributions being undeliverable; *provided* that distributions returned as undeliverable shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six (6) months from the date the distributions were initially made. After such date, all unclaimed property or interests in property shall revert (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property Laws to the contrary) to the Estate automatically and without need for a further

order by the Bankruptcy Court and the Claim or Interest of any Holder to such property or interest in property shall be forever barred, absent order of the Bankruptcy Court to the contrary.

b. Failure to Present Checks

Checks issued by the Distribution Agents on account of Allowed Claims shall be null and void if not negotiated within 180 days after the issuance of such check. Requests for reissuance of any check shall be made directly to the Distribution Agent by the Holder of the relevant Allowed Claim with respect to which such check originally was issued.

*E. Compliance with Tax Requirements/Allocations*

In connection with this Plan, to the extent applicable, the Plan Administrator shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant hereto shall be subject to such withholding and reporting requirements. Notwithstanding any provision in this Plan to the contrary, the Plan Administrator and/or the Distribution Agent, as applicable, shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under this Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions or establishing any other mechanisms they believe are reasonable and appropriate, including requiring as a condition to the receipt of a distribution, that the Holders of an Allowed Claim complete an IRS Form W-8 or W-9, as applicable. The Plan Administrator reserves the right to allocate all distributions made under this Plan in compliance with all applicable wage garnishments, alimony, child support and other spousal awards, liens and encumbrances. For tax purposes, distributions in full or partial satisfaction of Allowed Claims shall be allocated first to the principal amount (as determined for U.S. federal income tax purposes) of Allowed Claims, with any excess allocated to unpaid interest that accrued on such Claims.

*F. Surrender of Canceled Instruments or Securities*

On the Effective Date or as soon as reasonably practicable thereafter, each Holder of a certificate or instrument evidencing a Claim or an Equity Interest shall be deemed to have surrendered such certificate or instrument to the Distribution Agent. Such surrendered certificate or instrument shall be cancelled solely with respect to the Debtors, and except as provided otherwise under this Plan, including the Debtor Release and the Third-Party Release, such cancellation shall not alter the obligations or rights of any non-Debtor third parties vis-à-vis one another with respect to such certificate or instrument, including with respect to any agreement that governs the rights of the Holder of a Claim or Equity Interest, which shall continue in effect for purposes of allowing Holders to receive distributions under this Plan.

*G. Applicability of Insurance Policies.*

Except as otherwise provided in this Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable Insurance Contract. Except for the releases and exculpation provisions of Article IX, nothing contained in this Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any other Entity, including Insurers under any Insurance Contracts, nor shall anything contained herein

constitute or be deemed a waiver by such Insurers of any rights or defenses, including coverage defenses, held by such Insurers under the Insurance Contracts.

*H. Claims Paid or Payable by Third Parties*

1. Claims Paid by Third Parties

The Debtors or the Plan Administrator, as applicable, shall reduce a Claim, and such Claim shall be disallowed to such extent without an objection having to be Filed and without any notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment on account of such Claim from a party that is not a Debtor or the Plan Administrator. Subject to the last sentence of this paragraph, to the extent a Holder of a Claim receives a distribution under the Plan on account of such Claim and receives payment from a party that is not a Debtor or the Plan Administrator on account of such Claim, such Holder shall, within fourteen days of receipt thereof, repay or return the distribution to the applicable Debtor or the Plan Administrator, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the applicable Debtor or the Plan Administrator annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the fourteen day grace period specified above until the amount is repaid.

## Article VII.
## PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS OR EQUITY INTERESTS

*A. Allowance of Claims*

After the Effective Date, and except as otherwise provided in this Plan, the Plan Administrator shall have and shall retain any and all available rights and defenses that the Debtors had with respect to any Claim, including the right to assert any objection to Claims based on the limitations imposed by section 502 of the Bankruptcy Code. The Plan Administrator may contest the amount and validity of any Disputed Claim or contingent or unliquidated Claim in the ordinary course of business in the manner and venue in which such Claim would have been determined, resolved or adjudicated if the Chapter 11 Cases had not been commenced.

*B. Prosecution of Objections to Claims*

Except as otherwise specifically provided in this Plan, the Plan Administrator shall have the authority: (1) to file, withdraw, or litigate to judgment objections to Claims; (2) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

*C. Estimation of Claims*

Before or after the Effective Date, the Debtors or the Plan Administrator may (but are not required to) at any time request that the Bankruptcy Court estimate any Disputed Claim that is

contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection; and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection; *provided* that if the Bankruptcy Court resolves the Allowed amount of a Claim, the Plan Administrator shall not be permitted to seek an estimation of such Claim). Notwithstanding any provision otherwise in this Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute either the Allowed amount or a maximum limitation on such Claim for all purposes under this Plan (including for purposes of distributions), as determined by the Bankruptcy Court, and the Plan Administrator may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim subject to applicable law.

*D. No Distributions Pending Allowance*

If a Claim is Disputed, no payment or distribution provided hereunder shall be made on account of such Claim unless and until such Claim becomes an Allowed Claim by settlement or Final Order; *provided* that if only a portion of a Claim is Disputed, such Claim shall be deemed Allowed in the amount not Disputed and payment or distribution shall be made on account of such undisputed amount.

*E. Reserve on Account of Disputed Claims.*

Upon the Effective Date, the Debtors, and from and after the Effective Date, the Plan Administrator, shall establish a cash reserve for distributions on account of Disputed Claims in an amount deemed to be appropriate by the Debtors or the Plan Administrator, as applicable, acting in good faith. Following the Effective Date the Plan Administrator may, from time to time, reduce such cash reserves and distribute all or a portion of such cash to Holders of Allowed Claims entitled to Distributable Proceeds as the Plan Administrator determines in good faith is appropriate.

The Plan Administrator shall not have any liability whatsoever if any of the reserves established pursuant to the Plan are determined to be insufficient to satisfy any Claims herein, including any Disputed Claims after such Claims become Allowed.

*F. Time to File Objections to Claims*

Any objections to Claims shall be Filed on or before the Claims Objection Deadline, subject to any extensions thereof approved by the Bankruptcy Court, upon a motion on notice served on all affected claimants.

*G. Amendments for Proofs of Claims and Interests*

On or after the applicable bar date, a Proof of Claim or Interest may not be Filed or amended without the prior written authorization of, as applicable, the Bankruptcy Court or the applicable Debtor or the Plan Administrator. Absent such authorization, any new or amended Claim or Interest Filed shall be deemed disallowed in full and expunged without any further action.

Article VIII.

## CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE

*A. Conditions Precedent to Confirmation*

The following are conditions precedent to Confirmation that must be satisfied or waived in accordance with Article VIII.D hereof:

1. This Plan, including any amendments, modification, or supplements thereto, is in form and substance materially consistent with the Restructuring Support Agreement and acceptable in all respects to the Debtors and the Prepetition Secured Lender;

2. The Sale Transaction(s) shall have been consummated pursuant to the Sale Transaction Documentation; and

3. The proposed Confirmation Order shall be in form and substance materially consistent with the Restructuring Support Agreement and acceptable in all respects to the Debtors and the Prepetition Secured Lender.

*B. Effect of Non-Occurrence of Conditions to Confirmation*

If the conditions precedent to Confirmation are not satisfied, then: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise embodied in this Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected under this Plan, and any document or agreement executed pursuant to this Plan, shall be deemed null and void; and (3) nothing contained in this Plan or the Disclosure Statement shall: (a) constitute a waiver or release of any Claims, Interests, or Causes of Action; (b) prejudice in any manner the rights of the Debtors or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors or any other Entity.

*C. Conditions Precedent to the Effective Date*

The following are conditions precedent to the Effective Date that must be satisfied or waived in accordance with Article VIII.D hereof:

1. the Bankruptcy Court shall have entered the Confirmation Order in form and substance acceptable to the Debtors and the Prepetition Secured Lender and such order shall not have been reversed, stayed, modified, amended, or vacated;

2. this Plan, the Disclosure Statement, any Sale Transaction Documentation, 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;

3. the Plan Administrator acceptable to the Prepetition Secured Lender shall have been appointed and vested with the authority under the Plan;

4. the Plan Administration Agreement 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;

5. 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 of the transactions contemplated by the Plan, the Sale Transaction(s) or any related transactions;

6. all conditions precedent to the consummation of the Sale Transaction(s) shall have been satisfied in accordance with the terms thereof, any the closing of the Sale Transaction(s) shall have occurred;

7. the Professional Fee Escrow Amount shall have been transferred to the Professional Fee Escrow Account;

8. the Anglo Plan Funding (including the Wind-Down Amount) shall have been funded in accordance with this Plan; and

9. the Restructuring Support Agreement shall remain in full force and effect, and shall not have been terminated.

*D. Waiver of Conditions*

The Debtors, with the consent of the Prepetition Secured Lender, may waive any of the conditions to Confirmation or to the Effective Date set forth above at any time, without any notice to parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than a proceeding to confirm the Plan, except that there cannot be a waiver of (1) the condition that the Bankruptcy Court shall have entered the Confirmation Order as set forth in Article VIII.C.1 and (2) the condition that the Anglo Plan Funding shall have been funded as set forth in Article VIII.C.8.

*E. Effect of Non-Occurrence of Conditions to the Effective Date*

If the Effective Date does not occur and upon a notice filed by the Debtors to state the non-occurrence of the Effective Date**,** then: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise embodied in this Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected under this Plan, and any document or agreement executed pursuant to this Plan, shall be deemed null and void; and (3) nothing contained in this Plan, the Confirmation Order, or the Disclosure Statement shall: (a) constitute a waiver or release of any Claims, Interests, or Causes of Action; (b) prejudice in any manner the rights of the Debtors or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors or any other Entity.

Article IX.

## SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

### *A. Satisfaction of Claims and Termination of Interests.*

Any default or "event of default" by the Debtors or their Affiliates with respect to any Claim or Interest in the Debtors that existed immediately before or on account of the filing of the Chapter 11 Cases shall be deemed cured (and no longer continuing) as of the Effective Date with respect to a Claim that is Unimpaired by the Plan, once such Unimpaired Claim is paid in full.

### *B. Releases by the Debtors*

**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 Support 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 Support 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.**

***C. Releases by Holders of Claims and Interests***

**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 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 Support 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 Support 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 enforce the terms of 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 Support Agreement.**

***D. 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.**

***E. 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 compromised or settled under the Plan (including pursuant to Articles II and III of 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, on 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 their successors (including the Plan Administrator) 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 (including the Plan Administrator), or any property of any such transferee or successor (including the Plan Administrator); (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 (including the Plan Administrator), or any property of any such transferee or successor (including the Plan Administrator); 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 (including the Debtors or their successors (including the Plan Administrator)) or against the property of such Entities including the Debtors or their successors (including the Plan Administrator)) 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.**

*F. Satisfaction of Claims.*

Subject to the occurrence of the Effective Date, as of the Effective Date, except as provided in the Plan, the treatment and rights afforded under the Plan and the treatment of Claims and Interests under the Plan shall be in exchange for and in complete satisfaction of all Claims against the Debtors, and in satisfaction of all Interests and the termination of Interests in the Debtors. Accordingly, except as otherwise provided in the Plan or the Confirmation Order, Confirmation of the Plan shall, as of the Effective Date, satisfy, terminate and cancel all Claims against and Interests in the Debtors and other rights of equity security holders in the Debtors. Subject to the occurrence of the Effective Date, as of the Effective Date, except as provided in the Plan, all Persons shall be precluded from asserting against the Debtors, the Plan Administrator, or their respective successors or property, any other or further Claims, debts, rights, Causes of Action, liabilities or Interests based upon any act, omission, transaction or other activity of any kind or

nature. No Person holding a Claim may receive on account of such Claim any payment from, or seek recourse or recovery against, any Cash or other assets that are to be distributed under the Plan, other than Cash or assets required to be distributed to that Person under the Plan.

*G. Setoffs and Recoupment*

Except as otherwise provided herein, the Plan Administrator, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable bankruptcy or non-bankruptcy law, or as may be agreed to by the Holder of an Allowed Claim, may set off or recoup against any Allowed Claim and the distributions to be made pursuant to this Plan on account of such Allowed Claim, any claims, rights, and Causes of Action of any nature that the applicable Debtor may hold against the Holder of such Allowed Claim, to the extent such claims, rights, or Causes of Action have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to this Plan, a Final Order or otherwise); *provided* that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim pursuant to this Plan shall constitute a waiver or release by the Plan Administrator of any such claims, rights, and Causes of Action. The Plan Administrator shall provide notice to the affected claimant of any setoffs or recoupments, and such claimant may challenge in Bankruptcy Court or any other court with jurisdiction any such setoffs or recoupments.

*H. Release of Liens*

Except as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to this Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to this Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released.

To the extent that any Holder of a Secured Claim that has been satisfied in full pursuant to this Plan, or any agent for such Holder, has filed or recorded publicly any Liens and/or security interests to secure such Holder's Secured Claim, then as soon as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any and all steps requested by the Debtors or the Plan Administrator that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens and/or security interests, including the making of Uniform Commercial Code termination statements, deposit account control agreement terminations, and any other applicable filings or recordings, and the Plan Administrator shall be entitled to file Uniform Commercial Code terminations or to make any other such filings or recordings on such Holder's behalf.

## Article X.
## RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, except to the extent set forth herein, and in addition to the matters over which the Bankruptcy Court shall have retained jurisdiction pursuant to the Sale Order(s), if any, or any other order of the Bankruptcy Court, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and this Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

A. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests;

B. decide and resolve all matters related to the granting and denying, in whole or in part, of any applications for allowance of compensation or reimbursement of expenses to Retained Professionals required by the Bankruptcy Code or this Plan;

C. resolve any matters related to: (1) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure Costs arising therefrom, including Cure Costs pursuant to section 365 of the Bankruptcy Code; (2) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; and (3) any dispute regarding whether a contract or lease is or was executory, terminated, or expired;

D. ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

E. adjudicate, decide, or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

F. adjudicate, decide, or resolve any and all matters related to Causes of Action;

G. adjudicate, decide or resolve any and all matters related to section 1141 of the Bankruptcy Code;

H. resolve any cases, controversies, suits, or disputes that may arise in connection with General Unsecured Claims, including the establishment of any bar dates, related notices, claim objections, allowance, disallowance, estimation and distribution;

I. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of this Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with this Plan or the Disclosure Statement;

J. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

K. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the interpretation or enforcement of this Plan or any contract, instrument, release or other agreement or document that is entered into or delivered pursuant to this Plan, or any Entity's rights arising from or obligations incurred in connection with this Plan;

L. issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with enforcement of this Plan;

M. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, and other provisions contained in this Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

N. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid;

O. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

P. determine any other matters that may arise in connection with or related to this Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with this Plan or the Disclosure Statement;

Q. enter one or more orders or final decrees concluding or closing the Chapter 11 Cases;

R. adjudicate any and all disputes arising from or relating to distributions under this Plan;

S. consider any modification of this Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

T. determine requests for payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;

U. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan, or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with this Plan;

V. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

W. hear and determine all disputes involving any dispute relating to any liability arising out of any termination of employment, regardless of whether such termination occurred prior to or after the Effective Date;

X. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the releases, injunctions, and exculpations provided under Article IX of this Plan;

Y. resolve any cases, controversies, suits, disputes, or Causes of Action to recover all assets of the Debtors and property of the Debtors' Estates, wherever located;

Z. enforce all orders previously entered by the Bankruptcy Court; and

AA. hear any other matter over which the Court has jurisdiction.

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in this Article X of the Plan, the provisions of Article X of the Plan shall have no effect on and shall not control, limit, or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

Article XI.

## MODIFICATION, REVOCATION, OR WITHDRAWAL OF PLAN

*A. Modification of Plan*

Subject to the limitations contained in this Plan, the Debtors or the Plan Administrator, as applicable, reserve the right to, in accordance with the Bankruptcy Code and the Bankruptcy Rules, as acceptable to the Prepetition Secured Lender: (1) amend or modify this Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129(b) of the Bankruptcy Code, in accordance with section 1127(a) of the Bankruptcy Code; (2) amend or modify this Plan after the entry of the Confirmation Order and before substantial consummation of this Plan in accordance with section 1127(b) of the Bankruptcy Code upon order of the Bankruptcy Court; and (3) remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan upon order of the Bankruptcy Court.

*B. Effect of Confirmation on Modifications*

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

*C. Revocation of Plan; Reservation of Rights if Effective Date Does Not Occur*

Subject to the conditions to the Effective Date, the Debtors reserve the right to revoke or withdraw this Plan prior to the entry of the Confirmation Order and to file subsequent plans. If the Debtors revoke or withdraw this Plan or if entry of the Confirmation Order does not occur, then: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise embodied in this Plan, assumption or rejection of executory contracts or leases effected by this Plan, and any document or agreement executed pursuant hereto shall be deemed null and void; and (3) nothing contained in this Plan shall: (a) constitute a waiver or release of any claims by or against, or any Equity Interests in, such Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtors or any other Entity; or (c) constitute an admission of any sort by the Debtors or any other Entity.

Article XII.

## MISCELLANEOUS PROVISIONS

*A. Additional Documents*

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan. The Debtors or Plan Administrator, as applicable, and all Holders of Claims receiving distributions pursuant to this Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order.

*B. Reservation of Rights*

This Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. None of the filing of this Plan, any statement or provision contained in this Plan, or the taking of any action by any Debtor with respect to this Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Interests unless and until the Effective Date has occurred.

*C. Successors and Assigns*

The rights, benefits, and obligations of any Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, affiliate, officer, director, agent, representative, attorney, beneficiaries or guardian, if any, of each Entity.

*D. Service of Documents*

Any notice, direction or other communication given regarding the matters contemplated by this Plan must be in writing, sent by personal delivery, electronic mail or courier, and addressed as follows:

| Debtors | Counsel to the Debtors |
|---|---|
| First Mode Holdings, Inc.<br>Synchronous LLC<br>300 Lenora Street, PMB #1445<br>Seattle, WA 98121<br>Attn: Julian Soles<br>Email: julian.soles@firstmode.com | **LATHAM & WATKINS LLP**<br>Caroline Reckler (admitted *pro hac vice*)<br>330 North Wabash Avenue, Suite 2800<br>Chicago, IL 60611<br>Telephone: (312) 876-7700<br>Facsimile: (312) 993-9767<br>Email: caroline.reckler@lw.com<br><br>- and -<br><br>Annemarie V. Reilly (admitted *pro hac vice*)<br>Brian S. Rosen (admitted *pro hac vice*)<br>1271 Avenue of the Americas<br>New York, NY 10020<br>Telephone: (212) 906-1200<br>Facsimile: (212) 751-4864<br>Email: annemarie.reilly@lw.com<br>brian.rosen@lw.com<br><br>- and -<br><br>Jeffrey T. Mispagel (admitted *pro hac vice*)<br>355 South Grand Avenue, Suite 100<br>Los Angeles, CA 90071<br>Telephone: (213) 485-1234<br>Facsimile: (213) 891-8763<br>Email: jeffrey.mispagel@lw.com<br><br>-and-<br><br>**YOUNG CONAWAY STARGATT & TAYLOR LLP**<br>Michael R. Nestor (No. 3526)<br>Kara Hammond Coyle (No. 4410)<br>Joseph M. Mulvihill (No. 6061)<br>Rodney Square<br>1000 North King Street<br>Wilmington, DE 19801<br>Telephone: (302) 571-6600<br>Facsimile: (302) 571-1253<br>Email: mnestor@ycst.com<br>kcoyle@ycst.com<br>jmulvihill@ycst.com |

| Counsel to the Prepetition Secured Lender and DIP Lender | |
|---|---|
| **DAVIS POLK & WARDWELL LLP**<br>450 Lexington Ave<br>New York, New York 10017<br>Attn: Darren Klein<br>Aryeh Ethan Falk<br>Email: darren.klein@davispolk.com<br>aryeh.falk@davispolk.com<br><br>-and-<br><br>**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**<br>1201 North Market Street, 16th Floor<br>Wilmington, Delaware 19899-1347<br>Attn: Robert J. Dehney<br>Email: rdehney@morrisnichols.com | |

After the Effective Date, the Plan Administrator has authority to send a notice to Entities indicating that, to continue to receive documents pursuant to Bankruptcy Rule 2002, they must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Plan Administrator is authorized to limit the list of Entities receiving documents pursuant to a pre-Effective Date request under Bankruptcy Rule 2002 to those Entities who have filed renewed requests pursuant to Bankruptcy Rule 2002.

In accordance with Bankruptcy Rules 2002 and 3020(c), within ten (10) Business Days of the date of entry of the Confirmation Order, the Debtors shall serve the Notice of Confirmation by United States mail, first class postage prepaid, by hand, or by overnight courier service to all parties served with the Confirmation Hearing Notice; *provided* that no notice or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtors mailed a Confirmation Hearing Notice, but received such notice returned marked "undeliverable as addressed," "moved, left no forwarding address" or "forwarding order expired," or similar reason, unless the Debtors have been informed in writing by such Entity, or are otherwise aware, of that Entity's new address, provided that the Debtors are unable to ascertain new address information for such Entity after a commercially reasonable search. Mailing of the Notice of Confirmation in the time and manner set forth in this paragraph shall be good and sufficient notice under the particular circumstances and in accordance with the requirements of Bankruptcy Rules 2002 and 3020(c), and no further notice is necessary.

*E. Term of Injunctions or Stays*

Unless otherwise provided in this Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in this Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

*F. Entire Agreement*

On the Effective Date, the Confirmation Order, this Plan, and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects.

*G. Governing Law*

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Delaware without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of this Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with this Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate governance matters; *provided* that corporate governance matters relating to Debtors not incorporated in Delaware shall be governed by the laws of the state of incorporation of the applicable Debtor.

*H. Exhibits*

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of this Plan as if set forth in full in this Plan. Except as otherwise provided in this Plan, such exhibits and documents included in the Plan Supplement shall initially be filed with the Bankruptcy Court on or before the Plan Supplement Filing Date to the extent practicable. After the exhibits and documents are filed, copies of such exhibits and documents shall be made available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the Debtors' case website at https://omniagentsolutions.com/FirstMode or the Bankruptcy Court's website at www.deb.uscourts.gov. To the extent any exhibit or document is inconsistent with the terms of this Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of this Plan shall control.

*I. Nonseverability of Plan Provisions upon Confirmation*

If, prior to Confirmation, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to this Plan and may not be deleted or modified without the consent of the Debtors; and (3) non-severable and mutually dependent.

*J. Conflicts*

To the extent that any provision of the Disclosure Statement (or any exhibits, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of this Plan, this Plan shall govern and control. To the extent that any provision of the Plan Supplement (or any exhibits, appendices, supplements, or amendments to any of the foregoing), conflicts with or is in any way inconsistent with any provision of this Plan, the Plan shall govern and control. To the extent that any provision of this Plan, the Plan Supplement, or the Disclosure Statement conflicts with or is in any way inconsistent with any provision of the Confirmation Order, the Confirmation Order shall govern and control.

*K. Dissolution of the Committee*

The Committee shall dissolve, and the current and former members of the Committee shall be released and discharged from all rights and duties arising from, or related to, the Chapter 11 Cases on the Effective Date; provided that the Committee and its professionals shall have the right to file, prosecute, review, and object to any applications for compensation and reimbursement of expenses filed in accordance with Article II.A.2 hereof.

Respectfully submitted,

Dated: March 21, 2025

**FIRST MODE HOLDINGS INC**

By: *<u>/s/ Colin Mark Freed</u>*
Name: Colin Mark Freed
Title: Chief Financial Officer

**SYNCHRONOUS LLC**

By: *<u>/s/ Colin Mark Freed</u>*
Name: Colin Mark Freed
Title: Authorized Signatory