

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

AN GLOBAL LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11294 (JKS)

(Jointly Administered)

Re: D.I. 72

NOTICE OF FILING OF SUPPLEMENT TO THE STALKING HORSE APA

PLEASE TAKE NOTICE that, on September 1, 2023, the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of: (I) an Order (A) Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (B) Approving Certain Bidding Procedures, Bidding Protections, and Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, (C) Authorizing the Debtors to Enter Into the Stalking Horse APA, and (D) Granting Related Relief; and (II) an Order (A) Approving Asset Purchase Agreement, (B) Authorizing the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, (C) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (D) Granting Related Relief* [Docket No. 72] (the “Sale Motion”)² with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) seeking entry of an order authorizing the Debtors to enter into the Stalking Horse APA, among other things.

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



PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit 1** is the Operating Agreement Term Sheet (Exhibit F to the Stalking Horse APA) as a supplement to the Sale Motion and the Stalking Horse APA.

Dated: September 15, 2023
Wilmington, Delaware

Respectfully submitted,

/s/ Gregory J. Flasser

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Proposed Counsel for the Debtors and Debtors-in-Possession

EXHIBIT 1

Exhibit F

Term Sheet for Operating Agreement

The following term sheet (the “Term Sheet”) summarizes principal terms to be included in a proposed operating services agreement (the “Operating Agreement”), pursuant to which [Blue Torch Finance LLC], a Delaware limited liability company (“Buyer”) or its Affiliates will provide certain specialized services to the Mexican Entities (as defined below) in connection with the transition of the business of the Mexican Entities (the “Mexican Business”) currently conducted by AgileThought, Inc., a Delaware corporation (“Holdings”), to Buyer. The agreements contemplated by this Term Sheet are subject to the satisfactory completion of due diligence and negotiation and execution of definitive legal documentation, which such definitive legal documentation shall be in form and substance acceptable Buyer and Holdings in all respects. This Term Sheet may not itself be relied upon to form any binding obligation and does not constitute either an offer to invest or an offer to sell securities of any form or a solicitation of acceptances or rejections as to any plan. Capitalized terms used in this Term Sheet but not defined herein have the meanings specified in the Asset Purchase Agreement among Buyer, Holdings and the other parties thereto, dated as of [], 2023 (the “APA”).

THIS TERM SHEET HAS BEEN PRODUCED FOR DISCUSSION AND SETTLEMENT PURPOSES ONLY. IT SHALL NOT BE USED AS EVIDENCE IN ANY LITIGATION, CONTESTED MATTER, OR ADVERSARY PROCEEDING, AND IS SUBJECT TO THE PROVISIONS OF RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND OTHER SIMILAR APPLICABLE RULES UNDER FEDERAL AND STATE LAW. THIS TERM SHEET AND THE INFORMATION CONTAINED HEREIN ARE STRICTLY CONFIDENTIAL AND SHALL NOT BE SHARED WITH ANY OTHER PARTY WITHOUT THE PRIOR WRITTEN CONSENT OF BLUE TORCH AND THE HOLDINGS.

Topic	Term
<i>Parties</i>	Each of (i) Buyer and (ii) AgileThought Digital Solutions SAPI de CV, Anzen Soluciones SA de CV, and Faktos Inc, SAPI de CV (the parties listed in clause (ii), collectively, the “ <u>Mexican Entities</u> ”). Buyer and the Mexican Entities are each referred to herein as a “ <u>Party</u> ” and collectively as the “ <u>Parties</u> ”.
<i>Term</i>	Commences on the Closing Date and continues until (i) the expiration or termination of all Mexican Contracts in accordance with their terms, (ii) termination by mutual written consent of the Parties, or (iii) termination of Specialized Services by the Mexican Entities by providing thirty (30) days’ prior written notice to the Buyer.
<i>Services Provided to Mexican Entities</i>	During the Term, Buyer shall, or shall cause its Affiliates to, provide, and cause its and their respective officers, employees, consultants, service providers and agents

	<p>(all of the foregoing, “<u>Service Providers</u>”)¹ to provide the following specialized services (collectively, the “<u>Specialized Services</u>”) to the Mexican Entities:</p> <ul style="list-style-type: none"> ▪ the services described on <u>Schedule A</u>² attached hereto and to be further detailed in the Operating Agreement; and ▪ any Additional Services (as defined below) reasonably requested by the Mexican Entities.
<i>Servicing of Mexican Contracts</i>	The Mexican Entities shall continue to perform their obligations under each of the Mexican Contracts existing as of the date of the APA and which are to be set forth on a schedule to the Operating Agreement ³ until their expiration or termination in accordance with their terms (the term, scope and duration of any such Mexican Contract may not be amended, modified or waived and no extension option may be agreed or elected without the prior written consent of Buyer, in its sole discretion).
<i>IP License</i>	In addition, during the Term, Buyer or its Affiliates will provide a limited, non-sublicensable (other than to IT vendors, contractors and subcontractors solely to the extent necessary for the performance or receipt of the Specialized Services, as applicable), non-exclusive, non-transferable license in and to certain intellectual property owned or sublicensable by Buyer or its Affiliates (the “ <u>IP License</u> ”), solely for the purpose of, and only to the extent required for the Mexican Entities to continue to perform their obligations under the Mexican Contracts.
<i>Additional Services</i>	From time to time during the Term, any Mexican Entity may identify Additional Services that it wishes to receive from the Service Providers, subject to customary limitations. Upon such Mexican Entity’s reasonable request, Buyer will, and will cause the applicable Service Provider to, provide: any such additional services as Sellers or the Acquired Entities historically provided in connection with the Mexican Business; any such additional services that are reasonably necessary to transition the Mexican Business to Buyer; and any other additional services that the Parties agree in writing to provide under the Operating Agreement (collectively, the “ <u>Additional Services</u> ”), in each case, in accordance with applicable law and subject to customary limitations.
<i>Services Standards</i>	The Operating Agreement will include customary provisions regarding service levels and standards, including covenants that Buyer will, and will cause the applicable Service Provider to, provide any services in accordance with applicable laws and in a professional manner and such that the level of service at which such service is performed is of a nature, manner, quality, standard of care, timeliness, level of priority, service level and volume substantially consistent with the nature, manner, quality, standard of care, timeliness, level of priority, service level and

1 Definitive Operating Agreement to include a schedule listing all in-scope Service Providers and the expected duration the Mexican Entities need such employees.

2 Definitive Operating Agreement to include specific services related to the functions set forth on Schedule A.

3 Schedule shall include, in Gantt chart format, the expected duration of each Mexican Contract. Such chart shall be updated on a rolling basis and included in the bi-weekly report delivered to Buyer as set forth herein.

	volume in which such Service Provider performs that service for itself or has historically performed such service.
<i>Fees</i>	<ul style="list-style-type: none"> ▪ Specialized Services will be provided to the Mexican Entities at cost. With respect to any services provided by any employee of a Service Provider, “at cost” shall include wages (as well as the employer portion of payroll taxes) and, subject to diligence, continuation of existing benefits, but shall not include any retention or similar bonuses unless the applicable service recipient provides prior written consent to bear such additional compensation. ▪ IP License fee will be agreed in connection with diligence and negotiation of definitive documents.
<i>Reporting</i>	<p>On the Thursday of the second full week following the Closing Date, and every second Thursday thereafter, the Mexican Entities shall deliver a report to Buyer (with such reports to be in form and substance reasonably satisfactory to Buyer) that will include, among other information reasonably requested by Buyer from time to time, (i) a status update on each active project serviced by the Mexican Entities under any Mexican Contract, including the expected date of completion for each such project and expected termination or expiration date for each Mexican Contract, (ii) the identity of employees servicing active projects under any Mexican Contract (“<u>Active Employees</u>”), and (iii) the identity of employees who are not Active Employees (the “<u>Inactive Employees</u>”). With respect to each employee, the Mexican Entities shall provide a census listing (a) whether the employee is currently an Active Employee or Inactive Employee, and the expected date (if any) when any Active Employee is expected to become an Inactive Employee as well as the reason for such expectation, (b) annual compensation or rate of pay, as applicable (as of the Petition Date), (c) employment location (city and state) or remote work location, (d) title or employment position, (e) date of hire or, if applicable, date of rehire, (f) applicable paymaster/payroll entity, if any, and (g) the amount of accrued but unused vacation or paid time off as of the reporting date, with each such individual identified as (1) salaried or hourly, (2) union or nonunion, (3) full-time or part-time, and (4) temporary, regular or leased/staffing agency.</p>
<i>Employees</i>	<p>Upon an employee becoming an Inactive Employee, the Mexican Entities shall provide to the Inactive Employee written notice of termination of employment in accordance with applicable law (with such notice to be in form and substance reasonably satisfactory to Buyer). At its discretion, Buyer may elect to offer employment to any Inactive Employees (each such Inactive Employee who accepts Buyer’s offer of employment shall be considered a “<u>Transferred Employee</u>”); <i>provided</i>, that, for so long as such employees remain employed by the Mexican Entities, Buyer will not make offers to any employees that are not Inactive Employees without the Mexican Entities’ prior written consent.</p>
<i>Covenants</i>	<p>The Mexican Entities will not enter into any new Contracts with customers, other than statements of work under Mexican Contracts, without Buyer’s prior written consent. In addition, the Mexican Entities will be required to exercise any option available to them under any existing contracts (including the Mexican Contracts) to terminate such contracts early, provided that such early termination does not result in any additional liabilities or costs to the relevant Mexican Entity.</p>

	<p>In addition, the Mexican Entities agree not to directly or indirectly compete with Buyer with respect to the products and services to be set forth on a schedule to the Operating Agreement, in any country where such Mexican Entity maintains commercial operations until the earlier of (x) the date the entity is dissolved or (y) a period of two (2) years after the Closing Date.</p>
<p><i>Consents</i></p>	<p>For the provision of Specialized Services during the Term, Buyer shall, and shall cause the applicable Service Provider to, use commercially reasonable efforts (for the avoidance of doubt, without any obligation to pay any funds), to obtain any license (including a modification to or extension or renewal of or a short-term replacement for an existing license for the Term), consent, approval, permission or waiver under its own third-party agreements (each, a “<u>Consent</u>”), including pertaining to any intellectual property rights, IT assets, or associated services, required in connection with performance of the applicable services. If, despite using commercially reasonable efforts, Buyer or the applicable Service Provider is unable to obtain a Consent hereunder, the Parties shall work together in good faith to develop a mutually acceptable alternative arrangement that is sufficient to enable the applicable Service Provider to provide, and the applicable Mexican Entity to receive, the services without such Consent.</p>
<p><i>Governing Law</i></p>	<p>THIS TERM SHEET IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.</p>

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SCHEDULE A

Transition Services

1. Human Resources and Payroll
2. Information Technology and information systems
3. Administrative and Legal
4. Finance, Accounting, Audit and Tax